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Contents

Federal Register

Vol. 85, No. 202

Monday, October 19, 2020

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
10102.....66467

5 CFR
Proposed Rules:
532.....66282

7 CFR
Proposed Rules:
927.....66283

10 CFR
830.....66201
Proposed Rules:
72.....66285

12 CFR
Proposed Rules:
228.....66410

13 CFR
120.....66214

18 CFR
Proposed Rules:
153.....66287
157.....66287

21 CFR
101.....66217

26 CFR
1.....66219

28 CFR
541.....66226

33 CFR
Proposed Rules:
165 (2 documents) 66290, 66292

40 CFR
2.....66230
52 (3 documents) 66240, 66257, 66264
Proposed Rules:
52 (2 documents) 66295, 66296

48 CFR
1503.....66266
1552.....66266

50 CFR
660.....66270
679.....66280

Rules and Regulations

Federal Register
Vol. 85, No. 202
Monday, October 19, 2020

DEPARTMENT OF ENERGY

10 CFR Part 830

RIN 1992–AA57

Nuclear Safety Management

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is amending its regulations concerning nuclear safety management. These regulations govern the conduct of DOE contractors, DOE personnel, and other persons conducting activities (including providing items and services) that affect, or may affect, the safety of DOE nuclear facilities. The revisions reflect the experience gained in the implementation of the regulations over the past seventeen years, with specific improvements to the unreviewed safety question (USQ) process and the review and approval of safety documentation. The revisions are intended to enhance operational efficiency while maintaining robust safety performance.

DATES: This rule is effective November 18, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Garrett Smith, U.S. Department of Energy, Office of Nuclear Safety, AU–30, 1000 Independence Avenue SW, Washington, DC 20585; (301) 903–7440 or *nuclearsafety@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Introduction

Pursuant to the Atomic Energy Act of 1954, as amended (the AEA), the Energy Reorganization Act of 1974, and the Department of Energy Organization Act of 1977, the Department of Energy (DOE or the Department) owns and leases nuclear and non-nuclear facilities at various locations in the United States. These facilities are operated either by DOE or by contractors with DOE oversight. Activities at these facilities include, but are not limited to: Research, testing, production, disassembly, or transporting nuclear materials. DOE rules governing nuclear safety at these facilities are set forth in the Nuclear Safety Management rule (10 CFR part 830). The regulations were issued in response to external assessments from the National Academy of Sciences (NAS), the enactment of the Price-Anderson Amendments Act of 1988 (PAAA), and DOE efforts to improve safety at DOE nuclear facilities. Aspects of 10 CFR part 830 were finalized and issued from 1994 to 2001, covering core safety requirements for quality assurance and facility safety basis. Over the past 17 years, DOE has gained considerable experience in the implementation of 10 CFR part 830, and is modifying the requirements to incorporate that experience and help ensure more effective safety performance.

B. Procedural History of the Rule

On December 9, 1991, DOE published an Notice of Proposed Rulemaking and Public Hearing proposing ''Procedural Rules for DOE Nuclear Activities'' (56 FR 64290) and a Notice of Proposed Rulemaking and Public Hearing proposing ''Nuclear Safety Management'' (1991 Notice, 56 FR 64316) to add Parts 820 and 830, respectively, to Title 10 of the Code of Federal Regulation (CFR).[1] Title 10 CFR part 830 was proposed to establish safety management requirements for DOE nuclear facilities. DOE issued, as final, the sections of 10 CFR part 830 related to the initial provisions (§§ 830.1–830.7) and Subpart A—General Provisions (§§ 830.100–830.120) on April 5, 1994 (1994 Notice, 59 FR 15843).

The Department issued a Notice of Limited Reopening of Comment Periods for the remaining topics to be addressed in 10 CFR part 830 on August 31, 1995 (Reopening Notice, 60 FR 45381).

On October 10, 2000, the Department published an Interim Final Rule and Opportunity for Public Comment (65 FR 60291) which amended the nuclear safety regulations to (1) establish and maintain safety bases for Hazard Category 1, 2, and 3 DOE nuclear facilities and perform work in accordance with safety bases, and (2) clarify that the quality assurance work process requirements apply to standards and controls adopted to meet regulatory or contract requirements that may affect nuclear safety (Interim Final Rule). The Interim Final Rule was also issued to provide further opportunity for public comment on the rule.

Following the public comment period, the Department issued a Final Rule on January 10, 2001 (66 FR 1810).

To incorporate the past 17 years of experience into its implementation of nuclear safety management, DOE issued a Notice of Proposed Rulemaking (NOPR) on 10 CFR part 830 on August 8, 2018 (83 FR 38982). The NOPR proposed amending 10 CFR part 830 to: Facilitate the improvement of facility hazard categorization, modify the process for defining USQs, improve DOE's approval process for facility modifications, and update definitions related to new and existing facilities. The final rule is incorporating the changes to the definition of USQs, the improvement of DOE's approval process for facility modifications, and updates to certain definitions, described in

[1] The Department proposed 10 CFR part 820 (Part 820), *Procedural Rules for DOE Nuclear Activities,* to establish the procedural requirements for enforcement activities in accordance with PAAA. On August 17, 1993, the Department issued the Final Rule for 10 CFR part 820, *Procedural Rules for DOE Nuclear Activities* (58 FR 43680). Part 820 establishes the procedures for DOE enforcement actions and for issuing civil and criminal penalties for contractor, subcontractor, and supplier violations of DOE nuclear safety requirements. Part 820 was most recently amended on December 27th, 2016 to clarify what constitutes nuclear safety requirements.

greater detail below. The final rule is not incorporating the proposed change that would have added ''or successor document'' to 10 CFR 830.202(b)(3), which pertains to facility hazard categorization. Further details on the changes are included in Section III. Description of the Final Rule.

II. Summary of Public Comments and Responses

DOE issued a NOPR on August 8, 2018 (83 FR 38982), inviting public comment. The 60-day public comment period also included a series of four public meetings to provide additional opportunities for public input. DOE received public comments from multiple individuals and one entity. For those comments relevant to the proposed changes, DOE provides responses and describes changes from the NOPR in the paragraphs that follow.

DOE did not finalize the proposed language regarding successor versions of hazard categorization standards. Instead, DOE intends to incorporate any future changes to hazard categorization through the rulemaking process. DOE received comments directed toward the recommendation to remove this proposed change, which have been addressed through DOE's decision on this issue.

1. Commenters indicated concern about the proposed deletion of Table 1 in Appendix A to Subpart B, which incorporated a qualitative conceptualization of the methodology for defining hazard categorization from DOE–STD–1027–92, CN1. The comments expressed concern that this proposed change, in conjunction with the proposed addition of ''or successor document'' to the version of DOE–STD–1027 would potentially allow for DOE to change the hazard categorization methodology without public comment.

Response: DOE maintains the removal of Table 1 in this final rule. 10 CFR part 830 continues to require categorization consistent with a specific quantitative process that is unchanged by the removal. DOE–STD–1027–92, CN1 also continues to provide multiple qualitative concepts to illuminate hazard categorization. In addition, DOE notes that if substantive changes are made to DOE–STD–1027–92, CN1, DOE would conduct a rulemaking to update the reference to DOE–STD–1027–92, CN1, in 10 CFR part 830.

2. Commenters expressed concern that the proposed removal of the approval process for annual updates in § 830.202(c)(2) would make it more difficult for DOE to exercise its authority and responsibility to protect health and minimize danger to life or property. The comments also expressed concern that DOE has not adequately assessed the nature of the problem and therefore, it was unclear if the proposed solution would suffice. The comments noted that the proposed change would place an increased emphasis on the effective implementation of the USQ process and DOE's ability to assess cumulative changes.

Response: DOE agrees that the proposed change increases the importance of an effectively implemented process for USQs. In fact, this increased importance is an intended aspect of the change, as it allows DOE to emphasize the central role the USQ process plays in gaining DOE's approval for changes. The shift to having DOE's approval occur in direct association to proposed changes is intentional and beneficial, and does not preclude DOE from directing changes nor does it present challenges to DOE in exercising its authority. The periodicity of documented safety analysis examinations is based on risk rather than rote annual reviews of changes that have already been approved. Changes to documented safety analyses as a result of positive USQ determinations will continue to be required to be submitted to DOE for review and approval.

3. Commenters expressed concern that the proposed change to the annual approval process would create gaps in how DOE approves the incorporation of changes into the safety basis with regard to Justification for Continued Operations (JCO) and Evaluation of the Safety of the Situation (ESS). In particular, comments were addressed regarding the concern that JCO's and ESS's could represent changes that would not be approved by DOE.

Response: The proposed rule provides in § 830.203(d) that ''A contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must obtain DOE approval prior to taking any action determined to involve a USQ.'' The text has not changed from the current Rule (in § 830.203(e)). While JCOs are not explicitly discussed in the Rule, DOE's process for reviewing and approving facility safety bases (DOE–STD–1104–2016) indicates that JCOs, documents that result from positive USQ determinations, are ''mechanism[s] by which a contractor may request that DOE review and approve a temporary change to the facility safety basis'' and that a ''JCO is associated only with situations where the PISA [Potential Inadequacy of the Safety Analysis] USQD is positive.'' Given that DOE, pursuant to § 830.203(d), must approve any action determined to involve a USQ, control over significant changes (JCO's or ESS's with a positive USQ determination) is maintained. It is understood that current DOE guidance (DOE G 424.1–1B Chg 2) and practice have frequently used the annual update to process the approval of these changes. This guidance will be updated to reflect the changes in 10 CFR part 830, but the requirement for DOE's approval will not change.

4. Commenters were concerned with language proposed to be added to Appendix A to Subpart B that included statements that could be viewed as requirements, despite the disclaimer that the appendix does not create any new requirements. Specifically, questions were raised about the addition of the statement, ''If additional changes are proposed by the contractor and included in the annual update that have not been previously approved by DOE or have not been evaluated as a part of the USQ process, DOE must review and approve these changes.''

Response: Commenters are correct that the appendix does not create new requirements. The statement referenced by the commenter restates a requirement established in the main body of the Rule. Specifically, the new addition to the appendix restates the core requirements already established in § 830.203(c) and § 830.203(d). It is DOE's position that such changes should be evaluated as part of the USQ process, but this statement was included in the appendix to ensure that the past practice of using the annual update as a vehicle for DOE's initial approval would not create confusion regarding the requirement to obtain DOE approval before taking any action DOE determined to involve a USQ.

5. Comments indicated concern that removing the requirement for DOE to approve the annual update would negatively impact DOE's ability to review and direct changes to safety analysis documents.

Response: As stated in § 830.202(c)(3), the contractor responsible for the facility must ''[i]ncorporate in the safety basis any changes, conditions, or hazard controls directed by DOE''. There are no limitations placed on DOE's review or direction. To reflect the changes in the annual update process, DOE will revise DOE–STD–1104–2016, *Review and Approval of Nuclear Facility Safety Basis and Safety Design Basis Documents,* which contains the requirements and guidance for approval of safety basis documents. The revisions will incorporate the changes in requirements within 10 CFR part 830 and provide additional guidance for their implementation.

6. A comment noted that DOE proposed deletion from Appendix A to Subpart B, A. *Introduction,* the outdated reference to DOE Policy 450.2A, *Identifying, Implementing, and Complying with Environmental, Safety and Health Requirements* rather than updating the reference to the newest version of the policy, DOE P 450.4A Chg 1, *Integrated Safety Management Policy.*

Response: The pertinent requirements related to the referenced policy document are already contained in 10 CFR part 830. The removal of the specific reference does not change any requirements in the regulation.

7. Comments were received that recommended an alternate approach to the proposed removal of the concept of a ''margin of safety'' from the definition of an USQ. The comments specifically note that the Nuclear Regulatory Commission (NRC) process that made a similar change also developed additional criteria during their rulemaking.

Response: There is a long history of the ''margin of safety'' criteria not providing a safety benefit. DOE has determined that the diversion of effort and attention to resolving the vague application of a criteria that does not result in independent positive determinations could be a net negative impact on the safety of DOE operations. While the NRC process for large reactors has maintained additional criteria that were determined to provide value, the process the NRC uses for non-reactor facilities does not contain these additional criteria. DOE will examine the benefit of additional guidance on the impact of cumulative changes in potential revisions to guidance associated with the USQ process and DOE approval of safety analysis changes.

8. Comments received noted a small number of grammatical improvements, word choice recommendations, and typographical errors.

Response: DOE acknowledges these comments and has made several editorial improvements in the final rule.

III. Description of the Final Rule

With the exception of the changes described below, the modifications to 10 CFR part 830 adopted in this Final Rule are described in the Discussion of Proposed Rule, Proposed Changes in Order of Appearance in Section II.B of DOE's NOPR published August 8, 2018 (83 FR 38982).

1. In § 830.3 Definitions, the definition for ''*Hazard Category 1, 2, and 3 DOE nuclear facilities*'' was modified to remove ''or successor document'' pursuant to DOE's decision not to adopt that proposed change. The definition is now that Hazard Category 1, 2, and 3 DOE nuclear facilities are nuclear facilities that meet the criteria for their respective hazard category consistent with the provisions of DOE–STD–1027–92, Change Notice 1 and that Hazard Category 1, 2, and 3 DOE nuclear facilities are required to have safety bases established in accordance with Subpart B of this part. Hazard categories are based on their radioactive material inventories and the potential consequences to the public, workers, and the environment. Hazard Category 1 represents the highest potential consequence and Hazard Category 3 represents the lowest potential consequence of the facilities required to establish safety bases.

2. In § 830.202, *Safety basis,* (b)(3) now reads identically to the previous text of the Rule, with the proposed insertion of the phrase ''or successor document'' rescinded pursuant to DOE's decision not to adopt that proposed change.

3. Appendix A to Subpart B to Part 830—*General Statement of Safety Basis Policy,* Section C. Scope was changed by the inclusion of a comma to improve readability, but did not change intent.

4. In Appendix A to Subpart B to Part 830—*General Statement of Safety Basis Policy,* Section F. Documented Safety Analysis (3) was changed from ''USQ'' to ''USQ determination'' to highlight that the modifier of ''positive'' is more appropriately applied to a USQ determination rather than a USQ.

5. In Appendix A to Subpart B to Part 830—*General Statement of Safety Basis Policy,* Section F. Documented Safety Analysis, Table 1 (10) was changed to correct a typographical error in the previous Rule.

6. In Appendix A to Subpart B to Part 830—*General Statement of Safety Basis Policy,* Section F. Documented Safety Analysis (5) was changed to more closely link the text discussing nuclear facilities with the formal definition established in this Rule.

IV. Regulatory Review

A. Review Under Executive Order 12866

This final rulemaking has been determined not to be a significant regulatory action under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this Final Rule was not subject to review by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. This Final rule is expected to be an E.O. 13771 deregulatory action. Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this Final rule is consistent with the directives set forth in these executive orders. These provisions in this Final rule are intended, as described in section II, to enhance operational efficiency while maintaining robust safety performance at DOE nuclear facilities.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website (*http://energy.gov/gc/office-general-counsel*).

DOE has reviewed this Final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The Final rule will incorporate the experience of more than a decade of implementation to improve the effectiveness of the DOE nuclear safety regulatory framework while maintaining safety performance.

This Final rule is expected to reduce burden on affected DOE contractors. On this basis, DOE certified that this Final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis were provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b). DOE received no comments on the certification or the economic impact of the proposed rule.

D. Paperwork Reduction Act

The information collection necessary to administer DOE's nuclear safety program under 10 CFR part 830 is subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection provisions of this Rule are included in the information collection requirements contained in DOE contracts with DOE prime contractors covered by this Rule and were previously approved by the Office of Management and Budget (OMB) and under OMB Control No. 1910–0300. Public reporting burden for the certification is estimated to average 1.91 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. National Environmental Policy Act

DOE has determined that this Final rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemaking that interprets or amends an existing rule or regulation without changing the environmental effect of the rule or regulation that is being amended. The Final rule will amend DOE's regulations by removing duplicative approval requirements, updating definitions, and increasing the efficiency of internal processes. These changes are primarily procedural and will not change the environmental effect of 10 CFR part 830. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For regulatory actions likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820). (This policy is also available at *http://energy.gov/gc/office-general-counsel*.) DOE examined this Final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal government, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999, 5 U.S.C. 601 note, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family wellbeing. This Final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this Final rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

I. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification

and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this Final rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516 note, provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this Final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action has been determined to not be a significant regulatory action, and it would not have an adverse effect on the supply, distribution, or use of energy. Thus, this action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this final rule.

List of Subjects in 10 CFR Part 830

Administrative practice and procedure, DOE contracts, Environment, Federal buildings and facilities, Government contracts, Nuclear materials, Nuclear power plants and reactors, Nuclear safety, Penalties, Public health, Reporting and recordkeeping requirements, and Safety.

Signing Authority

This document of the Department of Energy was signed on August 24, 2020, by Dan Brouillette, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 27, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE revises part 830 of title 10 of the Code of Federal Regulations as set forth below:

PART 830—NUCLEAR SAFETY MANAGEMENT

Sec.

Subpart A—Quality Assurance Requirements

Subpart B—Safety Basis Requirements

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.;* and 50 U.S.C. 2401 *et seq.*

§ 830.1 Scope.

This part governs the conduct of DOE contractors, DOE personnel, and other persons conducting activities (including providing items and services) that affect, or may affect, the safety of DOE nuclear facilities.

§ 830.2 Exclusions.

This part does not apply to:

(a) Activities that are regulated through a license by the Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, including activities certified by the NRC under section 1701 of the Atomic Energy Act (Act);

(b) Activities conducted under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 106–65;

(c) Transportation activities which are regulated by the Department of Transportation;

(d) Activities conducted under the Nuclear Waste Policy Act of 1982, as amended, and any facility identified under section 202(5) of the Energy Reorganization Act of 1974, as amended; and

(e) Activities related to the launch approval and actual launch of nuclear energy systems into space.

§ 830.3 Definitions.

(a) The following definitions apply to this part:

Administrative controls means the provisions relating to organization and management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility.

Bases appendix means an appendix that describes the basis of the limits and other requirements in technical safety requirements.

Critical assembly means special nuclear devices designed and used to sustain nuclear reactions, which may be subject to frequent core and lattice configuration change and which frequently may be used as mockups of reactor configurations.

Criticality means the condition in which a nuclear fission chain reaction becomes self-sustaining.

Design features means the design features of a nuclear facility specified in the technical safety requirements that, if altered or modified, would have a significant effect on safe operation.

Document means recorded information that describes, specifies, reports, certifies, requires, or provides data or results.

Documented safety analysis means a documented analysis of the extent to which a nuclear facility can be operated safely with respect to workers, the public, and the environment, including a description of the conditions, safe boundaries, and hazard controls that provide the basis for ensuring safety.

Environmental restoration activities means the process(es) by which contaminated sites and facilities are identified and characterized and by which contamination is contained, treated, or removed and disposed.

Fissionable materials means a nuclide capable of sustaining a neutron-induced chain reaction (*e.g.,* uranium-233, uranium-235, plutonium-238, plutonium-239, plutonium-241, neptunium-237, americium-241, and curium-244).

Graded approach means the process of ensuring that the level of analysis, documentation, and actions used to comply with a requirement in this part are commensurate with:

(1) The relative importance to safety, safeguards, and security;

(2) The magnitude of any hazard involved;

(3) The life cycle stage of a facility;

(4) The programmatic mission of a facility;

(5) The particular characteristics of a facility;

(6) The relative importance of radiological and nonradiological hazards; and

(7) Any other relevant factor.

Hazard means a source of danger (*i.e.,* material, energy source, or operation) with the potential to cause illness, injury, or death to a person or damage to a facility or to the environment (without regard to the likelihood or credibility of accident scenarios or consequence mitigation).

Hazard Category 1, 2, and 3 DOE nuclear facilities means nuclear facilities that meet the criteria for their respective hazard category consistent with the provisions of DOE–STD–1027–92, Change Notice 1. Hazard Category 1, 2, and 3 DOE nuclear facilities are required to have safety bases established in accordance with Subpart B of this part. Hazard categories are based on their radioactive material inventories and the potential consequences to the public, workers, and the environment. Hazard Category 1 represents the highest potential consequence and Hazard Category 3 represents the lowest potential consequence of the facilities required to establish safety bases.

Hazard controls means measures to eliminate, limit, or mitigate hazards to workers, the public, or the environment, including:

(1) Physical, design, structural, and engineering features;

(2) Safety structures, systems, and components;

(3) Safety management programs;

(4) Technical safety requirements; and

(5) Other controls necessary to provide adequate protection from hazards.

Item is an all-inclusive term used in place of any of the following: Appurtenance, assembly, component, equipment, material, module, part, product, structure, subassembly, subsystem, system, unit, or support systems.

Limiting conditions for operation means the limits that represent the lowest functional capability or performance level of safety structures, systems, and components required for safe operations.

Limiting control settings means the settings on safety systems that control process variables to prevent exceeding a safety limit.

Low-level residual fixed radioactivity means the remaining radioactivity following reasonable efforts to remove radioactive systems, components, and stored materials. The remaining radioactivity is composed of surface contamination that is fixed following chemical cleaning or some similar process; a component of surface contamination that can be picked up by smears; or activated materials within structures. The radioactivity can be characterized as low-level if the smearable radioactivity is less than the values defined for removable contamination by 10 CFR part 835, Appendix D, Surface Contamination Values, and the hazard analysis results show that no credible accident scenario or work practices would release the remaining fixed radioactivity or activation components at levels that would prudently require the use of active safety systems, structures, or components to prevent or mitigate a release of radioactive materials.

Major modification means a modification to a DOE nuclear facility that substantially changes the existing safety basis for the facility.

New Hazard Category 1, 2, and 3 DOE nuclear facility means a Hazard Category 1, 2, or 3 DOE nuclear facility that is in design or under construction that does not yet have a DOE approved safety basis.

Nonreactor nuclear facility means those facilities, activities or operations that involve, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear or a nuclear explosive hazard potentially exists to workers, the public, or the environment, but does not include accelerators and their operations and does not include activities involving only incidental use and generation of radioactive materials or radiation such as check and calibration sources, use of radioactive sources in research and experimental and analytical laboratory activities, electron microscopes, and X-ray machines.

Nuclear facility means a reactor or a nonreactor nuclear facility where an activity is conducted for or on behalf of DOE and includes any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established by this Part.

Operating limits means those limits required to ensure the safe operation of a nuclear facility, including limiting control settings and limiting conditions for operation.

Preliminary documented safety analysis means documentation prepared in connection with the design and construction of a new Hazard Category 1, 2, or 3 DOE nuclear facility or a major modification to an existing Hazard Category 1, 2, or 3 DOE nuclear facility that provides a reasonable basis for the preliminary conclusion that the nuclear facility can be operated safely through the consideration of factors such as:

(1) The nuclear safety design criteria to be satisfied;

(2) A safety analysis that derives aspects of design that are necessary to satisfy the nuclear safety design criteria; and

(3) An initial listing of the safety management programs that must be developed to address operational safety considerations.

Process means a series of actions that achieves an end or result.

Quality means the condition achieved when an item, service, or process meets or exceeds the user's requirements and expectations.

Quality assurance means all those actions that provide confidence that quality is achieved.

Quality Assurance Program (QAP) means the overall program or management system established to assign responsibilities and authorities, define policies and requirements, and provide for the performance and assessment of work.

Reactor means any apparatus that is designed or used to sustain nuclear chain reactions in a controlled manner such as research, test, and power reactors, and critical and pulsed assemblies and any assembly that is designed to perform subcritical experiments that could potentially reach criticality; and, unless modified by words such as containment, vessel, or core, refers to the entire facility, including the housing, equipment and associated areas devoted to the operation and maintenance of one or more reactor cores.

Record means a completed document or other media that provides objective evidence of an item, service, or process.

Safety basis means the documented safety analysis and hazard controls that provide reasonable assurance that a DOE nuclear facility can be operated safely in a manner that adequately protects workers, the public, and the environment.

Safety class structures, systems, and components means the structures, systems, or components, including portions of process systems, whose preventive or mitigative function is necessary to limit radioactive hazardous material exposure to the public, as determined from safety analyses.

Safety evaluation report means the report prepared by DOE to document:

(1) The sufficiency of the documented safety analysis for a Hazard Category 1, 2, or 3 DOE nuclear facility;

(2) The extent to which a contractor has satisfied the requirements of Subpart B of this part; and

(3) The basis for approval by DOE of the safety basis for the facility, including any conditions for approval.

Safety limits means the limits on process variables associated with those safety class physical barriers, generally passive, that are necessary for the intended facility function and that are required to guard against the uncontrolled release of radioactive materials.

Safety management program means a program designed to ensure a facility is operated in a manner that adequately protects workers, the public, and the environment by covering a topic such as: Quality assurance; maintenance of safety systems; personnel training; conduct of operations; inadvertent criticality protection; emergency preparedness; fire protection; waste management; or radiological protection of workers, the public, and the environment.

Safety management system means an integrated safety management system established consistent with 48 CFR 970.5223–1, *Integration of environment, safety, and health into work planning and execution.*

Safety significant structures, systems, and components means the structures, systems, and components which are not designated as safety class structures, systems, and components, but whose preventive or mitigative function is a major contributor to defense in depth and/or worker safety as determined from safety analyses.

Safety structures, systems, and components means both safety class structures, systems, and components and safety significant structures, systems, and components.

Service means the performance of work, such as design, manufacturing, construction, fabrication, assembly, decontamination, environmental restoration, waste management, laboratory sample analyses, inspection, nondestructive examination/testing, environmental qualification, equipment qualification, repair, installation, or the like.

Surveillance requirements means requirements relating to test, calibration, or inspection to ensure that the necessary operability and quality of safety structures, systems, and components and their support systems required for safe operations are maintained, that facility operation is within safety limits, and that limiting control settings and limiting conditions for operation are met.

Technical safety requirements (TSRs) means the limits, controls, and related actions that establish the specific parameters and requisite actions for the safe operation of a nuclear facility and include, as appropriate for the work and the hazards identified in the documented safety analysis for the facility: Safety limits, operating limits, surveillance requirements, administrative and management controls, use and application provisions, and design features, as well as a bases appendix.

Unreviewed Safety Question (USQ) means a situation where:

(1) The probability of the occurrence or the consequences of an accident or the malfunction of equipment important to safety previously evaluated in the documented safety analysis could be increased;

(2) The possibility of an accident or malfunction of a different type than any evaluated previously in the documented safety analysis could be created; or

(3) The documented safety analysis may not be bounding or may be otherwise inadequate.

Unreviewed Safety Question process means the mechanism for keeping a safety basis current by reviewing potential unreviewed safety questions, reporting unreviewed safety questions to DOE, and obtaining approval from DOE prior to taking any action that involves an unreviewed safety question.

Use and application provisions means the basic instructions for applying technical safety requirements.

(b) Terms defined in the Act or in 10 CFR part 820 and not defined in this section of the rule are to be used consistent with the meanings given in the Act or in 10 CFR part 820.

§ 830.4 General requirements.

(a) No person may take or cause to be taken any action inconsistent with the requirements of this part.

(b) A contractor responsible for a nuclear facility must ensure implementation of, and compliance with, the requirements of this part.

(c) The requirements of this part must be implemented in a manner that provides reasonable assurance of adequate protection of workers, the public, and the environment from adverse consequences, taking into account the work to be performed and the associated hazards.

(d) If there is no contractor for a DOE nuclear facility, DOE must ensure implementation of, and compliance with, the requirements of this part.

§ 830.5 Enforcement.

The requirements in this part are DOE Nuclear Safety Requirements and are subject to enforcement by all appropriate means, including the imposition of civil and criminal

penalties in accordance with the provisions of 10 CFR part 820.

§ 830.6 Recordkeeping.

A contractor must maintain complete and accurate records as necessary to substantiate compliance with the requirements of this part.

§ 830.7 Graded approach.

Where appropriate, a contractor must use a graded approach to implement the requirements of this part, document the basis of the graded approach used, and submit that documentation to DOE. The graded approach may not be used in implementing the unreviewed safety question (USQ) process or in implementing technical safety requirements.

Subpart A—Quality Assurance Requirements

§ 830.120 Scope.

This subpart establishes quality assurance requirements for contractors conducting activities, including providing items or services that affect, or may affect, nuclear safety of DOE nuclear facilities.

§ 830.121 Quality Assurance Program (QAP).

(a) Contractors conducting activities, including providing items or services, that affect, or may affect, the nuclear safety of DOE nuclear facilities must conduct work in accordance with the Quality Assurance criteria in § 830.122.

(b) The contractor responsible for a DOE nuclear facility must:

(1) Submit a QAP to DOE for approval and regard the QAP as approved 90 days after submittal, unless it is approved or rejected by DOE at an earlier date.

(2) Modify the QAP as directed by DOE.

(3) Annually submit any changes to the DOE-approved QAP to DOE for approval. Justify in the submittal why the changes continue to satisfy the quality assurance requirements.

(4) Conduct work in accordance with the QAP.

(c) The QAP must:

(1) Describe how the quality assurance criteria of § 830.122 are satisfied.

(2) Integrate the quality assurance criteria with the Safety Management System, or describe how the quality assurance criteria apply to the Safety Management System.

(3) Use voluntary consensus standards in its development and implementation, where practicable and consistent with contractual and regulatory requirements, and identify the standards used.

(4) Describe how the contractor responsible for the nuclear facility ensures that subcontractors and suppliers satisfy the criteria of § 830.122.

§ 830.122 Quality assurance criteria.

The QAP must address the following management, performance, and assessment criteria:

(a) *Criterion 1—Management/Program.* (1) Establish an organizational structure, functional responsibilities, levels of authority, and interfaces for those managing, performing, and assessing the work.

(2) Establish management processes, including planning, scheduling, and providing resources for the work.

(b) *Criterion 2—Management/Personnel Training and Qualification.* (1) Train and qualify personnel to be capable of performing their assigned work.

(2) Provide continuing training to personnel to maintain their job proficiency.

(c) *Criterion 3—Management/Quality Improvement.* (1) Establish and implement processes to detect and prevent quality problems.

(2) Identify, control, and correct items, services, and processes that do not meet established requirements.

(3) Identify the causes of problems and work to prevent recurrence as a part of correcting the problem.

(4) Review item characteristics, process implementation, and other quality-related information to identify items, services, and processes needing improvement.

(d) *Criterion 4—Management/Documents and Records.* (1) Prepare, review, approve, issue, use, and revise documents to prescribe processes, specify requirements, or establish design.

(2) Specify, prepare, review, approve, and maintain records.

(e) *Criterion 5—Performance/Work Processes.* (1) Perform work consistent with technical standards, administrative controls, and other hazard controls adopted to meet regulatory or contract requirements, using approved instructions, procedures, or other appropriate means.

(2) Identify and control items to ensure their proper use.

(3) Maintain items to prevent their damage, loss, or deterioration.

(4) Calibrate and maintain equipment used for process monitoring or data collection.

(f) *Criterion 6—Performance/Design.* (1) Design items and processes using sound engineering/scientific principles and appropriate standards.

(2) Incorporate applicable requirements and design bases in design work and design changes.

(3) Identify and control design interfaces.

(4) Verify or validate the adequacy of design products using individuals or groups other than those who performed the work.

(5) Verify or validate work before approval and implementation of the design.

(g) *Criterion 7—Performance/Procurement.* (1) Procure items and services that meet established requirements and perform as specified.

(2) Evaluate and select prospective suppliers on the basis of specified criteria.

Establish and implement processes to ensure that approved suppliers continue to provide acceptable items and services.

(h) *Criterion 8—Performance/Inspection and Acceptance Testing.* (1) Inspect and test specified items, services, and processes using established acceptance and performance criteria.

(2) Calibrate and maintain equipment used for inspections and tests.

(i) *Criterion 9—Assessment/Management Assessment.* Ensure managers assess their management processes and identify and correct problems that hinder the organization from achieving its objectives.

(j) *Criterion 10—Assessment/Independent Assessment.* (1) Plan and conduct independent assessments to measure item and service quality, to measure the adequacy of work performance, and to promote improvement.

(2) Establish sufficient authority, and freedom from line management, for the group performing independent assessments.

(3) Ensure persons who perform independent assessments are technically qualified and knowledgeable in the areas to be assessed.

Subpart B—Safety Basis Requirements

§ 830.200 Scope.

This Subpart establishes safety basis requirements for Hazard Category 1, 2, and 3 DOE nuclear facilities.

§ 830.201 Performance of work.

A contractor must perform work in accordance with the DOE-approved safety basis for a Hazard Category 1, 2, or 3 DOE nuclear facility and, in particular, with the hazard controls that ensure adequate protection of workers, the public, and the environment.

§ 830.202 Safety basis.

(a) The contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must establish and maintain the safety basis for the facility.

(b) In establishing the safety basis for a Hazard Category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the facility must:

(1) Define the scope of the work to be performed;

(2) Identify and analyze the hazards associated with the work;

(3) Categorize the facility consistent with DOE–STD–1027–92 (''Hazard Categorization and Accident Analysis Techniques for compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports,'' Change Notice 1, September 1997);

(4) Prepare a documented safety analysis for the facility; and

(5) Establish the hazard controls upon which the contractor will rely to ensure adequate protection of workers, the public, and the environment.

(c) In maintaining the safety basis for a Hazard Category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the facility must:

(1) Update the safety basis to keep it current and to reflect changes in the facility, the work and the hazards as they are analyzed in the documented safety analysis;

(2) Annually provide DOE the current documented safety analysis or a letter stating that there have been no changes in the documented safety analysis since the prior submittal; and

(3) Incorporate in the safety basis any changes, conditions, or hazard controls directed by DOE.

§ 830.203 Unreviewed safety question process.

(a) The contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must establish, implement, and take actions consistent with a DOE-approved USQ procedure that meets the requirements of this section.

(b) The contractor responsible for a new Hazard Category 1, 2, or 3 DOE nuclear facility must submit for DOE approval a procedure for its USQ process on a schedule that allows DOE approval in a safety evaluation report issued pursuant to § 830. 207(a) of this part.

(c) The contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must implement the DOE-approved USQ procedure in situations where there is a:

(1) Temporary or permanent change in the facility as described in the existing documented safety analysis;

(2) Temporary or permanent change in the procedures as described in the existing documented safety analysis;

(3) Test or experiment not described in the existing documented safety analysis; or

(4) Potential inadequacy of the documented safety analysis because the analysis potentially may not be bounding or may be otherwise inadequate.

(d) A contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must obtain DOE approval prior to taking any action determined to involve a USQ.

(e) The contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must annually provide to DOE a summary of the USQ determinations performed since the prior submittal.

(f) If a contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility discovers or is made aware of a potential inadequacy of the documented safety analysis, it must:

(1) Take action, as appropriate, to place or maintain the facility in a safe condition until an evaluation of the safety of the situation is completed;

(2) Notify DOE of the situation;

(3) Perform a USQ determination and notify DOE promptly of the results; and

(4) Submit the evaluation of the safety of the situation to DOE prior to removing any operational restrictions initiated to meet paragraph (f)(1) of this section.

§ 830.204 Documented safety analysis.

(a) The contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must obtain approval from DOE for the methodology used to prepare the documented safety analysis for the facility unless the contractor uses a methodology set forth in Table 1 of Appendix A to this part.

(b) The documented safety analysis for a Hazard Category 1, 2, or 3 DOE nuclear facility must, as appropriate for the complexities and hazards associated with the facility:

(1) Describe the facility (including the design of safety structures, systems and components) and the work to be performed;

(2) Provide a systematic identification of both natural and man-made hazards associated with the facility;

(3) Evaluate normal, abnormal, and accident conditions, including consideration of natural and man-made external events, identification of energy sources or processes that might contribute to the generation or uncontrolled release of radioactive and other hazardous materials, and consideration of the need for analysis of accidents which may be beyond the design basis of the facility;

(4) Derive the hazard controls necessary to ensure adequate protection of workers, the public, and the environment, demonstrate the adequacy of these controls to eliminate, limit, or mitigate identified hazards, and define the process for maintaining the hazard controls current at all times and controlling their use;

(5) Define the characteristics of the safety management programs necessary to ensure the safe operation of the facility, including (where applicable) quality assurance, procedures, maintenance, personnel training, conduct of operations, emergency preparedness, fire protection, waste management, and radiation protection; and

(6) With respect to a nonreactor nuclear facility with fissionable material in a form and amount sufficient to pose a potential for criticality, define a criticality safety program that:

(i) Ensures that operations with fissionable material remain subcritical under all normal and credible abnormal conditions;

(ii) Identifies applicable nuclear criticality safety standards; and

(iii) Describes how the program meets applicable nuclear criticality safety standards.

§ 830.205 Technical safety requirements.

(a) A contractor responsible for a Hazard Category 1, 2, or 3 DOE nuclear facility must:

(1) Develop technical safety requirements that are derived from the documented safety analysis;

(2) Prior to use, obtain DOE approval of technical safety requirements and any change to technical safety requirements; and

(3) Notify DOE of any violation of a technical safety requirement.

(b) A contractor may take emergency actions that depart from an approved technical safety requirement when no actions consistent with the technical safety requirement are immediately apparent, and when these actions are needed to protect workers, the public or the environment from imminent and significant harm. Such actions must be approved by a certified operator for a reactor or by a person in authority as designated in the technical safety requirements for nonreactor nuclear facilities. The contractor must report the emergency actions to DOE as soon as practicable.

(c) A contractor for an environmental restoration activity may follow the provisions of 29 CFR 1910.120 or 29 CFR 1926.65 to develop the appropriate

hazard controls (rather than the provisions for technical safety requirements in paragraph (a) of this section), provided the activity involves either:

(1) Work not done within a permanent structure, or

(2) The decommissioning of a facility with only low-level residual fixed radioactivity.

§ 830.206 Preliminary documented safety analysis.

Prior to construction of a new Hazard Category 1, 2, or 3 DOE nuclear facility or a major modification to an existing Hazard Category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the design and construction of the new facility or major modification must:

(a) Prepare a preliminary documented safety analysis for the facility, and

(b) Obtain DOE approval of:

(1) The nuclear safety design criteria to be used in preparing the preliminary documented safety analysis unless the contractor uses the design criteria in DOE Order 420.1, *Facility Safety,* or successor document; and

(2) The preliminary documented safety analysis before the contractor can procure materials or components or begin construction; provided that DOE may authorize the contractor to perform limited procurement and construction activities without approval of a preliminary documented safety analysis if DOE determines that the activities are not detrimental to public health and safety and are in the best interests of DOE.

§ 830.207 DOE approval of safety basis.

(a) With respect to a new Hazard Category 1, 2, or 3 DOE nuclear facility or a major modification to an existing Hazard Category 1, 2, or 3 DOE nuclear facility, a contractor may not begin operation of the facility or modification prior to the issuance of a safety evaluation report in which DOE approves the safety basis for the facility or modification.

(b) Pending issuance of a safety evaluation report in which DOE approves an updated or amended safety basis for an existing Hazard Category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the facility must continue to perform work in accordance with the DOE-approved safety basis for the facility and maintain the existing safety basis consistent with the requirements of this Subpart.

Appendix A to Subpart B to Part 830—General Statement of Safety Basis Policy

A. Introduction

This appendix describes DOE's expectations for the safety basis requirements of 10 CFR part 830, acceptable methods for implementing these requirements, and criteria DOE will use to evaluate compliance with these requirements. This appendix does not create any new requirements and should be used consistently with DOE's policy that work be conducted safely and efficiently and in a manner that ensures protection of workers, the public, and the environment.

B. Purpose

1. The safety basis requirements of Part 830 require the contractor responsible for a DOE nuclear facility to analyze the facility, the work to be performed, and the associated hazards and to identify the conditions, safe boundaries, and hazard controls necessary to protect workers, the public and the environment from adverse consequences. These analyses and hazard controls constitute the safety basis upon which the contractor and DOE rely to conclude that the facility can be operated safely. Performing work consistent with the safety basis provides reasonable assurance of adequate protection of workers, the public, and the environment.

2. The safety basis requirements are intended to further the objective of making safety an integral part of how work is performed throughout the DOE complex. Developing a thorough understanding of a nuclear facility, the work to be performed, the associated hazards and the needed hazard controls is essential to integrating safety into management and work at all levels. Performing work in accordance with the safety basis for a nuclear facility is the realization of that objective.

C. Scope

1. A contractor must establish and maintain a safety basis for a Hazard Category 1, 2, or 3 DOE nuclear facility because these facilities have the potential for significant radiological consequences. DOE–STD–1027 sets forth the methodology for categorizing a DOE nuclear facility based on the inventory of radioactive materials.

2. Unlike the quality assurance requirements of Part 830 that apply to all DOE nuclear facilities, the safety basis requirements only apply to Hazard Category 1, 2, and 3 DOE nuclear facilities and do not apply to nuclear facilities below Hazard Category 3.

D. Integrated Safety Management

1. The safety basis requirements are consistent with integrated safety management. DOE expects that, if a contractor complies with the Department of Energy Acquisition Regulation (DEAR) clause on integration of environment, safety, and health into work planning and execution (48 CFR 970.5223–1, *Integration of Environment, Safety and Health into Work Planning and Execution*) and the DEAR clause on laws, regulations, and DOE directives (48 CFR 970.5204–2, Laws, Regulations and DOE Directives), the contractor will have established the foundation to meet the safety basis requirements.

2. The processes embedded in a safety management system should lead to a contractor establishing adequate safety bases and safety management programs that will meet the safety basis requirements of this Subpart. Consequently, the DOE expects if a contractor has adequately implemented integrated safety management, few additional requirements will stem from this Subpart and, in such cases, the existing safety basis prepared in accordance with integrated safety management provisions, including existing DOE safety requirements in contracts, should meet the requirements of this Subpart.

3. DOE does not expect there to be any conflict between contractual requirements and regulatory requirements. In fact, DOE expects that contract provisions will be used to provide more detail on implementation of safety basis requirements such as preparing a documented safety analysis, developing technical safety requirements, and implementing a USQ process.

E. Enforcement of Safety Basis Requirements

1. Enforcement of the safety basis requirements will be performance oriented. That is, DOE will focus its enforcement efforts on whether a contractor operates a nuclear facility consistent with the safety basis for the facility and, in particular, whether work is performed in accordance with the safety basis.

2. As part of the approval process, DOE will review the content and quality of the safety basis documentation. DOE intends to use the approval process to assess the adequacy of a safety basis developed by a contractor to ensure that workers, the public, and the environment are provided reasonable assurance of adequate protection from identified hazards. Once approved by DOE, the safety basis documentation will not be subject to regulatory enforcement actions unless DOE determines that the information which supports the documentation is not complete and accurate in all material respects, as required by 10 CFR 820.11. This is consistent with the DOE enforcement provisions and policy in 10 CFR part 820.

3. DOE does not intend the adoption of the safety basis requirements to affect the existing quality assurance requirements or the existing obligation of contractors to comply with the quality assurance requirements. In particular, in conjunction with the adoption of the safety basis requirements, DOE revised the language in 10 CFR 830.122(e)(1) to make clear that hazard controls are part of the work processes to which a contractor and other persons must adhere when performing work. This obligation to perform work consistent with hazard controls adopted to meet regulatory or contract requirements existed prior to the adoption of the safety basis requirements and is both consistent with and independent of the safety basis requirements.

4. A documented safety analysis must address all hazards (that is, both radiological and nonradiological hazards) and the controls necessary to provide adequate

protection to the public, workers, and the environment from these hazards. Section 234A of the Atomic Energy Act only authorizes DOE to issue civil penalties for violations of requirements related to nuclear safety. Therefore, DOE will impose civil penalties for violations of the safety basis requirements (including hazard controls) only if they are related to nuclear safety.

F. Documented Safety Analysis

1. A documented safety analysis must demonstrate the extent to which a nuclear facility can be operated safely with respect to workers, the public, and the environment.

2. DOE expects a contractor to use a graded approach to develop a documented safety analysis and describe how the graded approach was applied. The level of detail, analysis, and documentation will reflect the complexity and hazards associated with a particular facility. Thus, the documented safety analysis for a simple, low hazard facility may be relatively short and qualitative in nature, while the documented safety analysis for a complex, high hazard facility may be quite elaborate and more quantitative. DOE will work with its contractors to ensure a documented safety analysis is appropriate for the facility for which it is being developed.

3. Because DOE has ultimate responsibility for the safety of its facilities, DOE will review each documented safety analysis:

(i) As part of the initial submittal;

(ii) When revisions are submitted as part of a positive USQ determination or major modification;

(iii) If DOE has reason to believe a portion of the safety basis to be inadequate, or;

(iv) If DOE has reason to believe a portion of the safety basis has substantially changed. DOE will review the documented safety analysis to determine whether the rigor and detail of the documented safety analysis are appropriate for the complexity and hazards expected at the nuclear facility. In particular, DOE will evaluate the documented safety analysis by considering the extent to which the documented safety analysis:

(A) Satisfies the provisions of the methodology used to prepare the documented safety analysis and

(B) Adequately addresses the criteria set forth in 10 CFR 830.204(b). DOE will prepare a Safety Evaluation Report to document the results of its review of the documented safety analysis. A documented safety analysis must contain any conditions or changes required by DOE in the Safety Evaluation Report. Generally, DOE's review of the annual submittal may be limited to ensuring that the results of USQs have been adequately incorporated into the documented safety analysis. If additional changes are proposed by the contractor and included in the annual update that have not been previously approved by DOE or have not been evaluated as a part of the USQ process, DOE must review and approve these changes. DOE has the authority to review the safety basis at any time.

4. In most cases, the contract will provide the framework for specifying the methodology and schedule for developing a documented safety analysis. Table 1 sets forth acceptable methodologies for preparing a documented safety analysis.

TABLE 1

The contractor responsible for:	May prepare its document safety analysis by:
(1) A DOE reactor	Using the method in U.S. Nuclear Regulatory Commission Regulatory Guide 1.70, Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants, or successor document.
(2) A DOE nonreactor nuclear facility	Using the method in DOE–STD–3009, Change Notice No. 1, January 2000, Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis Reports, July 1994, or successor document.
(3) A DOE nuclear facility with a limited operational life.	Using the method in either: (i) DOE–STD–3009–, Change Notice No. 1, January 2000, or successor document, or (ii) DOE–STD–3011–94, Guidance for Preparation of DOE 5480.22 (TSR) and DOE 5480.23 (SAR) Implementation Plans, November 1994, or successor document.
(4) The deactivation or the transition surveillance and maintenance of a DOE nuclear facility.	Using the method in either: (i) DOE–STD–3009, Change Notice No. 1, January 2000, or successor document, or (ii) DOE–STD–3011–94 or successor document.
(5) The decommissioning of a DOE nuclear facility.	(i) Using the method in DOE–STD–1120–98, Integration of Environment, Safety, and Health into Facility Disposition Activities, May 1998, or successor document; (ii) Using the provisions in 29 CFR 1910.120 (or 29 CFR 1926.65 for construction activities) for developing Safety and Health Programs, Work Plans, Health and Safety Plans, and Emergency Response Plans to address public safety, as well as worker safety; and (iii) Deriving hazard controls based on the Safety and Health Programs, the Work Plans, the Health and Safety Plans, and the Emergency Response Plans.
(6) A DOE environmental restoration activity that involves either work not done within a permanent structure or the decommissioning of a facility with only low-level residual fixed radioactivity.	(i) Using the method in DOE–STD–1120–98 or successor document, and (ii) Using the provisions in 29 CFR 1910.120 (or 29 CFR 1926.65 for construction activities) for developing a Safety and Health Program and a site-specific Health and Safety Plan (including elements for Emergency Response Plans, conduct of operations, training and qualifications, and maintenance management).
(7) A DOE nuclear explosive facility and the nuclear explosive operations conducted therein.	Developing its documented safety analysis in two pieces: (i) A Safety Analysis Report for the nuclear facility that considers the generic nuclear explosive operations and is prepared in accordance with DOE–STD–3009, Change Notice No. 1, January 2000, or successor document, and (ii) A Hazard Analysis Report for the specific nuclear explosive operations prepared in accordance with DOE–STD–3016–99, Hazards Analysis Reports for Nuclear Explosive Operations, February 1999, or successor document.
(8) A DOE Hazard Category 3 nonreactor nuclear facility.	Using the methods in Chapters 2, 3, 4, and 5 of DOE–STD–3009, Change Notice No. 1, January 2000, or successor document to address in a simplified fashion: (i) The basic description of the facility/activity and its operations, including safety structures, systems, and components; (ii) A qualitative hazards analysis; and (iii) The hazard controls (consisting primarily of inventory limits and safety management programs) and their bases.
(9) Transportation activities	(i) Preparing a Safety Analysis Report for Packaging in accordance with DOE–O–460.1A, Packaging and Transportation Safety, October 2, 1996, or successor document and (ii) Preparing a Transportation Safety Document in accordance with DOE–G–460.1–1, Implementation Guide for Use with DOE O 460.1A, Packaging and Transportation Safety, June 5, 1997, or successor document.

TABLE 1—Continued

The contractor responsible for:	May prepare its document safety analysis by:
(10) Transportation and onsite transfer of nuclear explosives, nuclear components, Naval nuclear fuel elements, Category I and Category II special nuclear materials, special assemblies, and other materials of national security.	(i) Preparing a Safety Analysis Report for Packaging in accordance with DOE–O–461.1, Packaging and Transportation of Materials of National Security Interest, September 29, 2000, or successor document and (ii) Preparing a Transportation Safety Document in accordance with DOE–M–461.1–1, Packaging and Transfer of Materials of National Security Interest Manual, September 29, 2000, or successor document.

5. Table 1 refers to specific types of nuclear facilities. These references are not intended to constitute an exhaustive list of the specific types of nuclear facilities. Part 830 defines nuclear facility broadly to include a reactor or a nonreactor nuclear facility where an activity is conducted for or on behalf of DOE and includes any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established by this part. The only exceptions are those facilities specifically excluded such as accelerators. Table 2 defines the terms referenced in Table 1 that are not defined in 10 CFR 830.3.

TABLE 2

For purposes of Table 1:	Means:
(1) Deactivation	The process of placing a facility in a stable and known condition, including the removal of hazardous and radioactive materials.
(2) Decontamination	The removal or reduction of residual radioactive and hazardous materials by mechanical, chemical, or other techniques to achieve a stated objective or end condition.
(3) Decommissioning	Those actions taking place after deactivation of a nuclear facility to retire it from service and includes surveillance and maintenance, decontamination, and/or dismantlement.
(4) Environmental restoration activities	The process by which contaminated sites and facilities are identified and characterized and by which existing contamination is contained, or removed and disposed.
(5) Generic nuclear explosive operation	A characterization that considers the collective attributes (such as special facility system requirements, physical weapon characteristics, or quantities and chemical/physical forms of hazardous materials) for all projected nuclear explosive operations to be conducted at a facility.
(6) Nuclear explosive facility	A nuclear facility at which nuclear operations and activities involving a nuclear explosive may be conducted.
(7) Nuclear explosive operation	Any activity involving a nuclear explosive, including activities in which main-charge, high-explosive parts and pits are collocated.
(8) Nuclear facility with a limited operational life	A nuclear facility for which there is a short remaining operational period before ending the facility's mission and initiating deactivation and decommissioning and for which there are no intended additional missions other than cleanup.
(9) Specific nuclear explosive operation	A specific nuclear explosive subjected to the stipulated steps of an individual operation, such as assembly or disassembly.
(10) Transition surveillance and maintenance activities.	Activities conducted when a facility is not operating or during deactivation, decontamination, and decommissioning operations when surveillance and maintenance are the predominant activities being conducted at the facility. These activities are necessary for satisfactory containment of hazardous materials and protection of workers, the public, and the environment. These activities include providing periodic inspections, maintenance of structures, systems, and components, and actions to prevent the alteration of hazardous materials to an unsafe state.

6. The contractor responsible for the design and construction of a new Hazard Category 1, 2, or 3 DOE nuclear facility or a major modification to an existing Hazard Category 1, 2, or 3 DOE nuclear facility must prepare a preliminary documented safety analysis. A preliminary documented safety analysis can ensure that substantial costs and time are not wasted in constructing a nuclear facility that will not be acceptable to DOE. If a contractor is required to prepare a preliminary documented safety analysis, the contractor must obtain DOE approval of the preliminary documented safety analysis prior to procuring materials or components or beginning construction. DOE, however, may authorize the contractor to perform limited procurement and construction activities without approval of a preliminary documented safety analysis if DOE determines that the activities are not detrimental to public health and safety and are in the best interests of DOE. DOE Order 420.1, or successor document, sets forth acceptable nuclear safety design criteria for use in preparing a preliminary documented safety analysis. As a general matter, DOE does not expect preliminary documented safety analyses to be needed for activities that do not involve significant construction such as environmental restoration activities, decontamination and decommissioning activities, specific nuclear explosive operations, or transition surveillance and maintenance activities.

G. Hazard Controls

1. Hazard controls are measures to eliminate, limit, or mitigate hazards to workers, the public, or the environment. They include:

(i) Physical, design, structural, and engineering features;

(ii) Safety structures, systems, and components;

(iii) Safety management programs;

(iv) Technical safety requirements; and

(v) Other controls necessary to provide adequate protection from hazards.

2. The types and specific characteristics of the safety management programs necessary for a DOE nuclear facility will be dependent on the complexity and hazards associated with the nuclear facility and the work being performed. In most cases, however, a contractor should consider safety management programs covering topics such as quality assurance, procedures, maintenance, personnel training, conduct of operations, criticality safety, emergency preparedness, fire protection, waste management, and radiation protection. In general, DOE Orders set forth DOE's expectations concerning specific topics. For example, DOE Order 420.1, or successor

document provides DOE's expectations with respect to fire protection and criticality safety.

3. Safety structures, systems, and components require formal definition of minimum acceptable performance in the documented safety analysis. This is accomplished by first defining a safety function, then describing the structure, systems, and components, placing functional requirements on those portions of the structures, systems, and components required for the safety function, and identifying performance criteria that will ensure functional requirements are met. Technical safety requirements are developed to ensure the operability of the safety structures, systems, and components and define actions to be taken if a safety structure, system, or component is not operable.

4. Technical safety requirements establish limits, controls, and related actions necessary for the safe operation of a nuclear facility. The exact form and contents of technical safety requirements will depend on the circumstances of a particular nuclear facility as defined in the documented safety analysis for the nuclear facility. As appropriate, technical safety requirements may have sections on:

(i) Safety limits;
(ii) Operating limits;
(iii) Surveillance requirements;
(iv) Administrative controls;
(v) Use and application; and
(vi) Design features.

It may also have an appendix on the bases for the limits and requirements. DOE Guide 423.1–1B, Implementation Guide for Use in Developing Technical Safety Requirements, or successor document, provides a complete description of what technical safety requirements should contain and how they should be developed and maintained.

5. DOE will examine and approve the technical safety requirements as part of preparing the safety evaluation report and reviewing updates to the safety basis. As with all hazard controls, technical safety requirements must be kept current and reflect changes in the facility, the work and the hazards as they are analyzed in the documented safety analysis. In addition, DOE expects a contractor to maintain technical safety requirements, and other hazard controls as appropriate, as controlled documents with an authorized users list.

6. Table 3 sets forth DOE's expectations concerning acceptable technical safety requirements.

TABLE 3

As appropriate for a particular DOE nuclear facility, the section of the technical safety requirements on:	Will provide information on:
(1) Safety limits	The limits on process variables associated with those safety class physical barriers, generally passive, that are necessary for the intended facility function and that are required to guard against the uncontrolled release of radioactive materials. The safety limit section describes, as precisely as possible, the parameters being limited, states the limit in measurable units (pressure, temperature, flow, etc.), and indicates the applicability of the limit. The safety limit section also describes the actions to be taken in the event that the safety limit is exceeded. These actions should first place the facility in the safe, stable condition attainable, including total shutdown (except where such action might reduce the margin of safety) or should verify that the facility already is safe and stable and will remain so. The technical safety requirement should state that the contractor must obtain DOE authorization to restart the nuclear facility following a violation of a safety limit. The safety limit section also establishes the steps and time limits to correct the out-of-specification condition.
(2) Operating limits	Those limits which are required to ensure the safe operation of a nuclear facility. The operating limits section may include subsections on limiting control settings and limiting conditions for operation.
(3) Limiting control settings	The settings on safety systems that control process variables to prevent exceeding a safety limit. The limited control settings section normally contains the settings for automatic alarms and for the automatic or non-automatic initiation of protective actions related to those variables associated with the function of safety class structures, systems, or components if the safety analysis shows that they are relied upon to mitigate or prevent an accident. The limited control settings section also identifies the protective actions to be taken at the specific settings chosen in order to correct a situation automatically or manually such that the related safety limit is not exceeded. Protective actions may include maintaining the variables within the requirements and repairing the automatic device promptly or shutting down the affected part of the process and, if required, the entire facility.
(4) Limiting conditions for operations	The limits that represent the lowest functional capability or performance level of safety structures, systems, and components required to perform an activity safely. The limiting conditions for operation section describes, as precisely as possible, the lowest functional capability or performance level of equipment required for continued safe operation of the facility. The limiting conditions for operation section also states the action to be taken to address a condition not meeting the limiting conditions for operation section. Normally this simply provides for the adverse condition being corrected in a certain time frame and for further action if this is impossible.
(5) Surveillance requirements	Requirements relating to test, calibration, or inspection to assure that the necessary operability and quality of safety structures, systems, and components is maintained; that facility operation is within safety limits; and that limiting control settings and limiting conditions for operation are met. If a required surveillance is not successfully completed, the contractor is expected to assume the systems or components involved are inoperable and take the actions defined by the technical safety requirement until the systems or components can be shown to be operable. If, however, a required surveillance is not performed within its required frequency, the contractor is allowed to perform the surveillance within 24 hours or the original frequency, whichever is smaller, and confirm operability.

TABLE 3—Continued

As appropriate for a particular DOE nuclear facility, the section of the technical safety requirements on:	Will provide information on:
(6) Administrative controls	Organization and management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility consistent with the technical safety requirement. In general, the administrative controls section addresses (i) the requirements associated with administrative controls (including those for reporting violations of the technical safety requirement); (ii) the staffing requirements for facility positions important to safe conduct of the facility; and (iii) the commitments to the safety management programs identified in the documented safety analysis as necessary components of the safety basis for the facility.
(7) Use and application provisions	The basic instructions for applying the safety restrictions contained in a technical safety requirement. The use and application section includes definitions of terms, operating modes, logical connectors, completion times, and frequency notations.
(8) Design features	Design features of the facility that, if altered or modified, would have a significant effect on safe operation.
(9) Bases appendix	The reasons for the safety limits, operating limits, and associated surveillance requirements in the technical safety requirements. The statements for each limit or requirement shows how the numeric value, the condition, or the surveillance fulfills the purpose derived from the safety documentation. The primary purpose for describing the basis of each limit or requirement is to ensure that any future changes to the limit or requirement is done with full knowledge of the original intent or purpose of the limit or requirement.

H. Unreviewed Safety Questions

1. The USQ process is an important tool to evaluate whether changes affect the safety basis. A contractor must use the USQ process to ensure that the safety basis for a DOE nuclear facility is not undermined by changes in the facility, the work performed, the associated hazards, or other factors that support the adequacy of the safety basis.

2. The USQ process permits a contractor to make physical and procedural changes to a nuclear facility and to conduct tests and experiments without prior approval, provided these changes do not cause a USQ. The USQ process provides a contractor with the flexibility needed to conduct day-to-day operations by requiring only those changes and tests with a potential to impact the safety basis (and therefore the safety of the nuclear facility) be approved by DOE. This allows DOE to focus its review on those changes significant to safety. The USQ process helps keep the safety basis current by ensuring appropriate review of and response to situations that might adversely affect the safety basis.

3. DOE Guide 424.1–1B Chg 2, Implementation Guide for Use in Addressing Unreviewed Safety Question Requirements, or successor document provides DOE's expectations for a USQ process. The contractor must obtain DOE approval of its procedure used to implement the USQ process. The contractor is allowed to make editorial and format changes to its USQ procedure while maintaining DOE approval.

I. Functions and Responsibilities

1. The DOE Management Official for a DOE nuclear facility (that is, the Assistant Secretary, the Assistant Administrator, or the Office Director who is primarily responsible for the management of the facility) has primary responsibility within DOE for ensuring that the safety basis for the facility is adequate and complies with the safety basis requirements of Part 830. The DOE Management Official is responsible for ensuring the timely and proper—

(i) Review of all safety basis documents submitted to DOE; and

(ii) Preparation of a safety evaluation report concerning the safety basis for a facility.

2. DOE will maintain a public list on the internet that provides the status of the safety basis for each Hazard Category 1, 2, or 3 DOE nuclear facility and, to the extent practicable, provides information on how to obtain a copy of the safety basis and related documents for a facility.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2020–0052]

RIN 3245–AH59

DEPARTMENT OF THE TREASURY

RIN 1505–AC71

Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules

AGENCY: U.S. Small Business Administration; Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of Sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the **Federal Register** on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Subsequently, SBA and the Department of the Treasury (Treasury) issued additional interim final rules implementing the Paycheck Protection Program (PPP). On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) was signed into law, amending the CARES Act. This interim final rule revises interim final rules posted on SBA's and the Department of the Treasury's websites on May 22, 2020 (published on June 1, 2020, in the **Federal Register**) and June 22, 2020 (published on June 26, 2020, in the **Federal Register**), by providing additional guidance concerning the forgiveness and loan review processes for PPP loans of $50,000 or less and, for PPP loans of all sizes, lender responsibilities with respect to the review of borrower documentation of eligible costs for forgiveness in excess of a borrower's PPP loan amount.

DATES:

Effective date: The provisions in this interim final rule are effective October 14, 2020.

Comment date: Comments must be received on or before November 18, 2020.

ADDRESSES: You may submit comments, identified by docket number SBA–2020–0052, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please

send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP).

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116–142), which changed provisions of the PPP relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. On July 4, 2020, the President signed into law S. 4116, which reauthorized lending under the PPP through August 8, 2020 (Pub. L. 116–147).

As described below, this interim final rule provides additional guidance concerning the forgiveness and loan review processes for PPP loans of $50,000 or less and, for PPP loans of all sizes, lender responsibilities with respect to the review of borrower documentation of eligible costs for forgiveness in excess of a borrower's PPP loan amount.

Two provisions of this interim final rule are an exercise of rulemaking authority by SBA jointly with Treasury: (1) The *de minimis* exemption from the full-time equivalent (FTE) employee reduction penalty for PPP loans of $50,000 or less, and (2) the *de minimis* exemption from the employee salary and wages reduction penalty for PPP loans of $50,000 or less. Otherwise, all provisions in this rule are an exercise of rulemaking authority by SBA alone.

II. Comments and Immediate Effective Date

This interim final rule is effective without advance notice and public comment because Section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the grounds that it would be contrary to the public interest. Specifically, advance public notice and comment would defeat the purpose of this interim final rule given that SBA began accepting lender loan forgiveness submissions on August 10, 2020. These same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act (APA). *See* 5 U.S.C. 553(b)(B). Although this interim final rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule, including Section III below. These comments must be submitted on or before November 18, 2020. The SBA and Treasury will consider these comments; comments received on the two interim final rules amended by this interim final rule that were posted on SBA's website on May 22, 2020 and published on June 1, 2020, in the **Federal Register**; and the interim final rule amended by this interim final rule that was posted on SBA's website on June 22, 2020 and published on June 26, 2020.

III. Paycheck Protection Program—Additional Revisions to Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures and Related Borrower and Lender Responsibilities Interim Final Rule

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the ''Paycheck Protection Program.'' Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness.

SBA has previously issued comprehensive regulations and guidance on the loan forgiveness provisions in the CARES Act. As relevant here, on May 22, 2020, SBA and Treasury jointly posted an additional interim final rule on loan forgiveness (85 FR 33004) (First Loan Forgiveness Rule). The SBA also posted an interim final rule on May 22, 2020 on SBA loan review procedures and related borrower and lender responsibilities (85 FR 33010) (First Loan Review Rule). On June 22, 2020, SBA and Treasury jointly posted an interim final rule, Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules (85 FR 38304), revising the First Loan Forgiveness Rule and the First Loan Review Rule to incorporate Flexibility Act amendments. On August 4 and 11, 2020, SBA posted Frequently Asked Questions on PPP Loan Forgiveness.

The purpose of this interim final rule is to simplify further (i) the forgiveness and loan review processes for PPP loans of $50,000 or less, and (ii) for PPP loans of all sizes, lender responsibilities with respect to the review of borrower documentation of eligible costs for forgiveness in excess of a borrower's PPP loan amount.

In connection with this rule, SBA is issuing an alternative Loan Forgiveness Application, SBA Form 3508S, for use by PPP borrowers applying for loan forgiveness on PPP loans with a total loan amount of $50,000 or less, except for those borrowers that together with their affiliates [1] received loans totaling $2 million or greater. The Administrator of SBA (Administrator) and the Secretary of the Treasury (Secretary) have concluded that this form strikes an appropriate balance between the need for simplification in the forgiveness process with the responsibility to protect the integrity of the program and safeguard taxpayer funds.

1. Changes to the Loan Forgiveness Rules

a. Alternative Loan Forgiveness Application

Because SBA is issuing an alternative Loan Forgiveness Application, SBA

[1] *See* 85 FR 20817 (April 15, 2020) regarding application of SBA's affiliation rules and the exemption of otherwise qualified faith-based organizations from SBA's affiliation rules.

Form 3508S, the first parenthetical in the first sentence of Part III.2.a and the parenthetical in the first sentence of Part III.6 of the First Loan Forgiveness Rule, as revised by Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, are revised to read as follows: ''(SBA Form 3508, 3508EZ, 3508S, as applicable, or lender equivalent)''.

b. Reductions to Loan Forgiveness Amount

A borrower of a PPP loan of $50,000 or less, other than any borrower that together with its affiliates received loans totaling $2 million or greater, may use SBA Form 3508S (or lender's equivalent form) to apply for loan forgiveness. A borrower that uses SBA Form 3508S (or lender's equivalent form) is exempt from any reductions in the borrower's loan forgiveness amount based on reductions in full-time equivalent (FTE) employees (section 1106(d)(2) of the CARES Act) or reductions in employee salary or wages (section 1106(d)(3) of the CARES Act) that would otherwise apply. As such, Part III.5 of the First Loan Forgiveness Rule, as revised by Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, does not apply to borrowers of loans of $50,000 or less that use SBA Form 3508S (or lender's equivalent form) to apply for loan forgiveness.

The Administrator and the Secretary determined that these exemptions are an appropriate exercise of their joint rulemaking authority to grant *de minimis* exemptions under section 1106(d)(6) of the CARES Act. The Administrator and the Secretary believe that the additional exemptions set forth above are consistent with the purposes of the CARES Act, including to provide much-needed financial assistance to a broad range of small businesses, and provide borrowers appropriate flexibility in the current economic climate. The Administrator and the Secretary have determined that these exemptions are *de minimis.* The purpose of the PPP is to provide financial assistance to small businesses and their employees, and the requirements of section 1106(d) focus on the number of employees and compensation. Consequently, in this context, both the aggregate dollar amount of affected loans relative to the aggregate dollar amount of all PPP loans and the number of affected employees are reasonable considerations in assessing whether an exemption is *de minimis.* There are approximately 3.57 million outstanding PPP loans of $50,000 or less, totaling approximately $62 billion of the $525 billion in PPP loans. Approximately 1.71 million PPP loans of $50,000 or less were made to businesses that reported having zero employees (presumably not counting the owner as an employee) or one employee. To the extent that these businesses have no employees other than the owner (*i.e.,* all businesses that reported having zero employees and, in SBA's judgment, the majority of businesses that reported having one employee), they are not affected by these exemptions. As a result, based on available data, we estimate that the outstanding PPP loans of the relevant set of potentially affected borrowers (businesses with at least one employee other than the owner) total approximately $49 billion, or 9 percent of the overall PPP loan amount. Within this population of potentially affected loans, SBA believes that most borrowers would not be affected by the loan forgiveness reduction requirements because (1) the borrowers did not reduce FTE employees or reduce employee salaries or wages, or (2) the borrowers would qualify for one of the existing exemptions from loan forgiveness amount reductions.[2] Excluding such borrowers, the aggregate dollar amount of PPP funds affected by these exemptions relative to the aggregate dollar amount of all PPP funds is *de minimis.*

2. Changes to the Loan Review Rules

a. Alternative Loan Forgiveness Application

Because SBA is issuing another alternative Loan Forgiveness Application, SBA Form 3508S, each reference to ''SBA Form 3508, 3508EZ, or lender's equivalent form'' in Part III.1 of the First Loan Review Rule, as revised by the Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, is replaced with ''SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form''.

b. The Loan Forgiveness Process for Lenders

As noted above, SBA is issuing another alternative Loan Forgiveness Application, SBA Form 3508S. This necessitates several revisions to Part III.2 of the First Loan Review Rule, as revised by the Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules.

The following text is added as a new paragraph at the end of Part III.2.a (''What should a lender review?''):

When a borrower submits SBA Form 3508S or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508S or lender's equivalent form.

ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508S or lender's equivalent form.

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application.

The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule [3] indicates, lenders may rely on borrower representations. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

In Part III.2.b., each reference to ''SBA Form 3508EZ or lender's equivalent form'' is replaced with ''SBA Form 3508EZ, 3508S, or lender's equivalent form.''

In Part III.2.c., each reference to ''SBA Form 3508, 3508EZ or lender's equivalent form'' is replaced with ''SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form.''

c. Borrower Submission of Excess Costs

In some cases, a borrower may submit to a lender documentation of eligible payroll and nonpayroll costs that exceed the amount of the borrower's PPP loan.

[2] *See* 85 FR 38304, 38308 (''Borrowers are exempted from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the covered period if the borrower is able to document in good faith the following: (1) An inability to rehire individuals who were employees of the borrower on February 15, 2020; and (2) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020. . . . Borrowers are also exempted from the loan forgiveness reduction arising from a reduction in the number of FTE employees during the covered period if the borrower is able to document in good faith an inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention (CDC), or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19 . . . .'').

[3] 85 FR 20811, 20815–20816 (April 15, 2020).

To address this situation, the following text is added as a new paragraph d. at the end of Part III.2:

d. What should a lender do if a borrower submits documentation of eligible costs that exceed a borrower's PPP loan amount?

The amount of loan forgiveness that a borrower may receive cannot exceed the principal amount of the PPP loan. Whether a borrower submits SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form, a lender should confirm receipt of the documentation the borrower is required to submit to aid in verifying payroll and nonpayroll costs, and, if applicable (for SBA Form 3508, 3508EZ, or lender's equivalent form), confirm the borrower's calculations on the borrower's Loan Forgiveness Application, up to the amount required to reach the requested Forgiveness Amount.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in Section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA and Treasury have determined that this rule 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA and Treasury have determined that this rule modifies an existing information collection. This rule reduces the burden associated with lender review of borrower documentation of eligible costs for forgiveness. Additionally, SBA has developed a second streamlined Paycheck Protection Program—PPP Loan Forgiveness Application Form 3508S (SBA Form 3508S), which is available for borrowers meeting criteria described in the instructions accompanying the form. SBA has obtained Office of Management and Budget (OMB) approval of the modification to the existing information collection, which is currently approved as an emergency request under OMB Control Number 3245–0407 until October 31, 2020.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to Section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for small government jurisdictions with a population of less than 50,000, neither State nor local governments are ''small entities.''

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.1. p.9.* Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator Small Business Administration.

Michael Faulkender,

Assistant Secretary for Economic Policy Department of the Treasury.

[FR Doc. 2020–23091 Filed 10–14–20; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2019–D–0725]

The Declaration of Allulose and Calories From Allulose on Nutrition and Supplement Facts Labels; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry entitled ''The

Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels.'' The guidance describes FDA's views on the declaration of allulose on Nutrition Facts and Supplement Facts labels and the caloric content of allulose. The guidance also announces our intent to exercise enforcement discretion for the exclusion of allulose from the amount of Total Sugars and Added Sugars declared on the Nutrition Facts and Supplement Facts label and use of a general factor of 0.4 calories per gram (kcal/g) for allulose when calculating declarations on Nutrition and Supplement Facts labels.

DATES: The announcement of the guidance is published in the **Federal Register** on October 19, 2020.

ADDRESSES: You may submit either electronic or written comments on FDA guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–0725 for ''The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Blakeley Fitzpatrick, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels.'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of April 18, 2019 (84 FR 16272), we published a notice announcing the availability of a draft guidance for industry entitled ''The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels.'' The draft guidance: (1) Described our tentative views on the declaration of allulose on Nutrition Facts and Supplement Facts labels and on the caloric content of allulose; and (2) announced our tentative intent to exercise enforcement discretion for the exclusion of allulose from the amount of Total Sugars and Added Sugars declared on the label and use of a general factor of 0.4 kcal/g for allulose when calculating declarations on Nutrition and Supplement Facts labels pending review of the issues in a rulemaking.

The draft guidance gave interested parties an opportunity to submit comments by June 17, 2019, for us to consider before beginning work on the final version of the guidance. We received approximately 30 comments from industry, health professionals, consumer advocacy groups, scientists, trade associations, and consumers. We are finalizing the positions in the draft guidance and have made technical corrections and editorial changes throughout the guidance to improve clarity. We also added language clarifying that allulose must still be declared in the ingredient statement

even if it is excluded from certain label declarations. Finally, we reorganized the section detailing our consideration of allulose as a sugar.

The guidance announced in this notice finalizes the draft guidance with respect to: (1) Our views on the declaration of allulose on Nutrition Facts and Supplement Facts labels and on the caloric content of allulose; and (2) our intent to exercise enforcement discretion for the exclusion of allulose from the amount of Total Sugars and Added Sugars declared on the label and use of a general factor of 0.4 kcal/g for allulose when calculating declarations on Nutrition and Supplement Facts labels pending review of the issues in a rulemaking.

II. Paperwork Reduction Act of 1995

This guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required.

However, this guidance refers to previously approved FDA collections of information. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 101 have been approved under OMB control number 0910–0381.

II. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov*. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: October 9, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22901 Filed 10–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9918]

RIN 1545–BO87

Effect of Section 67(g) on Trusts and Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations clarifying that the following deductions allowed to an estate or non-grantor trust are not miscellaneous itemized deductions: Costs paid or incurred in connection with the administration of an estate or non-grantor trust that would not have been incurred if the property were not held in the estate or trust, the personal exemption of an estate or non-grantor trust, the distribution deduction for trusts distributing current income, and the distribution deduction for estates and trusts accumulating income. Therefore, these deductions are not affected by the suspension of the deductibility of miscellaneous itemized deductions for taxable years beginning after December 31, 2017, and before January 1, 2026. The final regulations also provide guidance on determining the character, amount, and allocation of deductions in excess of gross income succeeded to by a beneficiary on the termination of an estate or non-grantor trust. The final regulations affect estates, non-grantor trusts (including the S portion of an electing small business trust), and their beneficiaries.

DATES:

Effective date: These regulations are effective on October 19, 2020.

Applicability dates: For dates of applicability, see §§ 1.67–4(d), 1.642(h)–2(f) and 1.642(h)–5(c).

FOR FURTHER INFORMATION CONTACT: Margaret Burow at (202) 317–5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to Income Tax Regulations (26 CFR part 1) under sections 67 and 642 of the Internal Revenue Code (Code). On May 11, 2020, the Department of Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–113295–18) in the **Federal Register** (85 FR 27693) containing proposed regulations under sections 67 and 642(h) (proposed regulations). The Summary of Comments and Explanation of Revisions section of this preamble summarizes the provisions of sections 67 and 642(h) and the provisions of the proposed regulations, which are explained in greater detail in the preamble to the proposed regulations.

On July 17, 2020, the Treasury Department and the IRS published in the **Federal Register** (85 FR 43512) a notice of public hearing on the proposed regulations scheduled for August 12, 2020. The Treasury Department and the IRS received no requests to speak at a hearing in response to that notice. On August 5, 2020, the Treasury Department and the IRS published in the **Federal Register** (85 FR 47323) a cancellation of the notice of public hearing.

The Treasury Department and the IRS received written and electronic comments in response to the proposed regulations. All comments were considered and are available at *www.regulations.gov* or upon request. After full consideration of the comments received, this Treasury decision adopts the proposed regulations with modifications described in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

Most of the comments addressing the proposed regulations are summarized in this Summary of Comments and Explanation of Revisions. Comments merely summarizing or interpreting the proposed regulations or recommending statutory revisions are not discussed in this preamble. The Treasury Department and the IRS continue to study comments on issues related to sections 67 and 642(h) that are beyond the scope of these regulations, which may be discussed in future guidance if guidance on those issues is published. The scope of the proposed regulations and these regulations is limited to the effect of section 67(g) on the deductibility of certain expenses described in section 67(b) and (e) that are incurred by estates and non-grantor trusts and the treatment of excess deductions on termination of an estate or trust under section 642(h). This Summary of Comments and Explanation of Revisions also describes each of the final rules contained in this document.

A. Section 67

Section 67(g) was added to the Code on December 22, 2017, by section 11045(a) of Public Law 115–97, 131 Stat. 2054, 2088 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Section 67(g) prohibits individual taxpayers from claiming miscellaneous itemized deductions for any taxable year beginning after December 31, 2017, and before January 1, 2026. Prior to the TCJA, miscellaneous itemized deductions were allowable for any taxable year only to the extent that the sum of such deductions exceeded two percent of adjusted gross income. See section 67(a). Section 67(b) defines miscellaneous itemized deductions as itemized deductions other than those listed in section 67(b)(1) through (12).

Section 67(e) provides that, for purposes of section 67, an estate or trust computes its adjusted gross income in the same manner as that of an individual, except that the following additional deductions are treated as allowable in arriving at adjusted gross income: (1) The deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such estate or trust, and (2) deductions allowable under section 642(b) (concerning the personal exemption of an estate or non-grantor trust), section 651 (concerning the deduction for trusts distributing current income), and section 661 (concerning the deduction for estates and trusts accumulating income). Accordingly, section 67(e) removes the deductions described in section 67(e)(1) and (2) from the definition of itemized deductions under section 63(d), and thus from the definition of miscellaneous itemized deductions under section 67(b), and treats them as deductions allowable in arriving at adjusted gross income under section 62(a). Section 67(e) further provides regulatory authority to make appropriate adjustments in the application of part I of subchapter J of chapter 1 of the Code to take into account the provisions of section 67.

The proposed regulations under § 1.67–4 clarify that expenses described in section 67(e) remain deductible in determining the adjusted gross income of an estate or non-grantor trust during the taxable years in which section 67(g) applies. Accordingly, section 67(g) does not deny an estate or non-grantor trust (including the S portion of an electing small business trust) a deduction for expenses described in section 67(e)(1) and (2) because such deductions are allowable in arriving at adjusted gross income and are not miscellaneous itemized deductions under section 67(b). Commenters agreed with the proposed amendments. These regulations adopt the proposed regulations under § 1.67–4 without modification.

Two commenters requested that the regulations address the treatment of deductions described in section 67(e)(1) and (2) in determining an estate or non-grantor trust's income for alternative minimum tax (AMT) purposes. The commenters suggested that such deductions are allowable as deductible in computing the AMT. The treatment of deductions described in section 67(e) for purposes of determining the AMT is outside the scope of these regulations concerning the effects of section 67(g); therefore, these regulations do not address the AMT. Further, no conclusions should be drawn from the absence of a discussion of the AMT in these regulations regarding the treatment of deductions described in section 67(e) for purposes of determining the AMT.

One commenter suggested that the Treasury Department and the IRS exercise their regulatory authority under section 67(e) to exempt cemetery trusts under section 642(i) and qualified funeral trusts (QFTs) under section 685 from the application of section 67(g). The commenter stated that the primary type of expense incurred by these trusts is investment advisory expenses, the tax treatment of which differs under the Code from management expense. That is, trust management expenses generally are allowable in computing adjusted gross income under section 67(e)(1), while trust investment advisory expenses are miscellaneous itemized deductions. See § 1.67–4(b)(4). The commenter asserted that it was not the intent of Congress to disallow investment advisory expenses incurred by cemetery and funeral trusts when Congress enacted section 67(g).

The commenter suggested that exercising the regulatory authority under section 67(e) in this manner would be consistent with the exercise of regulatory authority under section 1411 to exempt section 642(i) cemetery perpetual care funds and QFTs. See § 1.1411–3(b)(1) (providing that certain types of trusts, including section 642(i) cemetery perpetual care funds, are excepted from the net investment income tax) and § 1.1411–3(b)(2) (providing a special rule for QFTs that, for purposes of calculating any tax under section 1411, section 1411 and the regulations thereunder are applied to each QFT by treating each beneficiary's interest in the trust as a separate trust). As stated in the preamble to TD 9644 (78 FR 72393), the Treasury Department and the IRS exercised their regulatory authority under section 1411 to exclude cemetery trusts from the net investment income tax because, by benefiting an operating company, such trusts are considered similar to the business trusts that are excluded from the operation of section 1411. The preamble also states that QFTs are not excluded from the application of the net income investment tax, but that the section 1411 tax is calculated consistent with the taxation of QFTs under chapter 1. The commenter noted that they advocated the treatment of each beneficiary's interest in the QFT as a separate trust because such treatment reduces the likelihood of the QFT beneficiaries being subject to the net investment income tax. The Treasury Department and the IRS continue to consider these comments but providing an exemption for cemetery and funeral trusts under section 67(g) is outside the scope of these regulations.

B. Section 642(h)

1. In General

Section 642(h) provides that if, on the termination of an estate or trust, the estate or trust has: (1) A net operating loss carryover under section 172 or a capital loss carryover under section 1212, or (2) for the last taxable year of the estate or trust, deductions (other than the deductions allowed under section 642(b) (relating to the personal exemption) or section 642(c) (relating to charitable contributions)) in excess of gross income for such year, then such carryover or excess will be allowed as a deduction, in accordance with the regulations prescribed by the Secretary of the Treasury or his delegate (Secretary), to the beneficiaries succeeding to the property of the estate or trust.

Section 1.642(h)–2(a), as articulated in the proposed regulations and these final regulations, provides that if, on termination of an estate or trust, the estate or trust has for its last taxable year deductions (other than the deductions allowed under section 642(b) or section 642(c)) in excess of gross income, the excess deductions are allowed under section 642(h)(2) as items of deduction to the beneficiaries succeeding to the property of the terminated estate or trust.

2. Character and Amount of Excess Deductions

Section 1.642(h)–2(b)(1) of the proposed regulations provides that each deduction comprising the excess deductions under section 642(h)(2) retains, in the hands of the beneficiary, its character (specifically, as allowable in arriving at adjusted gross income, as a non-miscellaneous itemized deduction, or as a miscellaneous itemized deduction) while in the estate or trust. The character of these deductions does not change when succeeded to by a beneficiary on termination of the estate or trust. Furthermore, an item of deduction succeeded to by a beneficiary remains subject to any limitation applicable under the Code in the computation of the beneficiary's tax liability.

One commenter noted that section 642(h) states that excess deductions on termination of an estate or trust are to

be ''allowed as a deduction, in accordance with regulations prescribed by the Secretary'' and that there is no express authority to treat excess deductions as miscellaneous or non-miscellaneous itemized deductions (or tax preference items for AMT purposes). The Treasury Department and the IRS disagree with this comment. The characterization of these excess deductions as a single miscellaneous itemized deduction in the current regulations was made before the enactment of section 67(g) and served as an administrative convenience. Making a change to that characterization is now appropriate to reflect the temporary disallowance of miscellaneous itemized deductions under section 67(g) since the regulations were written and is a proper exercise of the Secretary's specific grant of regulatory authority in section 642(h).

Another commenter requested that non-miscellaneous itemized deductions included in excess deductions be fully deductible by the beneficiary and not subject to a second level of limitation applicable on the beneficiary's return, because the amounts already would have been subject to limitation on the return of the estate or trust. The commenter provided an example of a terminated trust that paid $25,000 of state income tax, for which the trust is limited to a $10,000 deduction under section 164(b)(6)(B) for taxable years beginning after December 31, 2017, and before January 1, 2026. In the commenter's example, the entire amount of the allowable $10,000 deduction was passed through to the beneficiary as an excess deduction on termination of the trust. The excess of state income tax over the $10,000 limitation ($15,000) would not pass through as an excess deduction to the beneficiaries in this circumstance because the excess amount was not deductible to the trust. Excess state income tax on termination of the estate or trust may, however, pass through to a beneficiary if the estate or trust had insufficient income to absorb the entire $10,000 of state income tax deduction. In that circumstance, the commenter opined that the limitation under section 164(b)(6)(B), having already been applied at the trust level, should not again be applied at the beneficiary level. The Treasury Department and the IRS carefully considered the comment but determined that beneficiaries remain subject to the limitation in section 164(b)(6)(B). The Treasury Department and the IRS found no authority to exempt such items from the application of any limitations applicable to the beneficiary under the Code. The excess deductions retain their character in the hands of the beneficiary on termination of the trust, and all applicable limitations apply to all of the beneficiary's items of that character, regardless of their origin.

One commenter noted that, under § 1.641(c)–1(j), if an electing small business trust (ESBT) election terminates or is revoked and the S portion has a net operating loss or capital loss carryover or deductions in excess of gross income, then any such loss, carryover or excess deductions are allowed as a deduction, in accordance with the regulations under section 642(h), to the trust or to the beneficiaries succeeding to the property of the trust if the entire trust terminates. However, the commenter also noted that under the TCJA, section 641(c)(2)(E) was amended to provide that ESBT charitable contributions are deductible under section 170, rather than under section 642(c), so that, unlike other trust charitable deductions, an ESBT's charitable deduction could constitute part of the excess deductions on termination of the trust. The commenter stated that neither the legislative history nor the explanation of the staff of the Joint Committee on Taxation addressed whether this result was intended. The Treasury Department and the IRS note that charitable contribution deductions under both sections 170 and 642(c) are non-miscellaneous itemized deductions under sections 63(d) and 67(b)(4) to the estate or trust and maintain that such character is retained in the hands of the beneficiary in these regulations. Although the Treasury Department and the IRS continue to consider the application of section 170 to ESBT charitable contributions under section 641(c)(2)(E), this issue is outside the scope of these regulations.

Another commenter requested clarification of whether an excess deduction on termination of a trust or estate that is allowed in determining the net investment income under section 1411 of the estate or trust remains deductible in the hands of the beneficiary in determining the net investment income of the beneficiary under section 1411. These final regulations provide that each excess deduction retains its separate character as a section 67(e) deduction, non-miscellaneous itemized deduction, or miscellaneous itemized deduction in the hands of the beneficiary. Whether a deduction retains its character as allowable in computing the net investment income of the beneficiary, however, is outside the scope of these regulations.

3. Reporting of Excess Deductions

Section 1.642(h)–2(b)(1) of the proposed regulations provides that an item of deduction succeeded to by a beneficiary remains subject to any additional applicable limitation under the Code and must be separately stated if it could be so limited, as provided in the instructions to Form 1041, *U.S. Income Tax Return for Estates and Trusts,* and the Schedule K–1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credit, etc.* Commenters requested that the Treasury Department and the IRS provide guidance on how the excess deductions are to be reported by both the terminated estate or trust and by its beneficiaries. The Treasury Department and the IRS released instructions for beneficiaries that chose to claim excess deductions on Form 1040 in the 2019 or 2018 taxable year based on the proposed regulations. In addition, the Treasury Department and the IRS plan to update the instructions for Form 1041, Schedule K–1 (Form 1041), and Form 1040, *U.S. Individual Income Tax Return,* for the 2020 and subsequent tax years to provide for the reporting of excess deductions that are section 67(e) expenses or non-miscellaneous itemized deductions.

The Treasury Department and the IRS are aware that the income tax laws of some U.S. states do not conform to the Code with respect to section 67(g), such that beneficiaries may need information on miscellaneous itemized deductions of a terminated estate or trust. However, because miscellaneous itemized deductions are currently not allowed for Federal income tax purposes, that information is not needed for Federal income tax purposes. Therefore, it would not be appropriate to modify Federal income tax forms to require or accommodate the collection of such information while this deduction is suspended. Estates, trusts, and beneficiaries are advised to consult the relevant state taxing authority for information about deducting miscellaneous itemized expenses on their state tax returns.

4. Determinations of Deductions in Year of Termination of the Trust

Section 1.642(h)–2(b)(2) of the proposed regulations provides that the provisions of § 1.652(b)–3 are used to allocate each item of deduction among the classes of income in the year of termination for purposes of determining the character and amount of the excess deductions under section 642(h)(2). Accordingly, the amount of each separate deduction remaining after application of § 1.652(b)–3 comprises

the excess deductions available to the beneficiaries succeeding to the property of the estate or trust as provided under section 642(h)(2). In addition, as previously explained, an item of deduction succeeded to by a beneficiary remains subject to any additional applicable limitation under the Code. Furthermore, § 1.642(h)–2(c) of the proposed regulations provides that excess deductions are allowable only in the taxable year of the beneficiary in which or with which the estate or trust terminates. That is, excess deductions of a terminated estate or trust may not carry over to a subsequent year of the beneficiary.

One commenter requested that these regulations provide an ordering rule clarifying whether excess deductions on termination of a trust allowed as a deduction to the beneficiary are claimed before, after, or ratably with the beneficiary's other deductions, particularly when the amount of the excess deductions and other deductions exceed the beneficiary's gross income. These final regulations clarify that beneficiaries may claim all or part of the excess deductions under section 642(h)(2) before, after, or together with the same character of deductions separately allowable to the beneficiary under the Code.

That commenter also requested that the final regulations include an exception for investment interest expense under section 163(d) from the general rule that excess deductions on termination of a trust or estate may be claimed only in the beneficiary's taxable year during which the trust or estate terminated. That section permits the carryforward of investment interest under section 163(d)(2) to the taxpayer's subsequent taxable years if the taxpayer is unable to deduct the investment interest in the current taxable year. The commenter stated that the disallowance of the carryover of section 642(h)(2) excess deductions should not apply to those excess deductions that are no longer treated as miscellaneous itemized deductions under the proposed regulations, and that carryover should be permitted to the extent otherwise permitted under the Code. The preamble to the proposed regulations states that addressing suspended deductions under section 163(d) is beyond the scope of the regulations and the same is true of these final regulations.

A commenter requested that the amount of a beneficiary's net operating loss carryover to a later taxable year under section 172 should include all of the beneficiary's section 642(h)(2) excess deductions that are section 67(e) deductions, as deductions that are attributable to the beneficiary's trade or business and thus deductions attributable to a trade or business under section 172(d)(4). Section 642(h) makes it clear that a net operating loss carryover under paragraph (1) of that section is separate and distinct from the excess deductions on termination described in paragraph (2) of that section. Furthermore, § 1.642(h)–2(d) provides that a deduction based upon a net operating loss carryover generally will not be allowed to beneficiaries under both paragraphs (1) and (2) of section 642(h). Therefore, an excess deduction allowable to the beneficiary under section 642(h)(2) is not a net operating loss carryover succeeded to by the beneficiary under section 642(h)(1) and (with one exception) a net operating loss carryover is not an excess deduction on termination. Moreover, these regulations provide that it is the character of the excess deductions as section 67(e) deductions, non-miscellaneous itemized deductions, and miscellaneous itemized deductions, and not the character of a deduction as attributable to a trade or business, that is retained in the hands of the beneficiary. Thus, whether section 642(h)(2) excess deductions that are section 67(e) deductions may be included in a beneficiary's net operating loss carryovers under section 172, separate from those it succeeds to from a terminated estate or trust, is beyond the scope of these regulations. Because § 1.642(h)–2(a) is clear that excess deductions on termination of an estate or trust are not carried over to future years and that such deductions are separate from a net operating loss carryover from the estate or trust, the Treasury Department and the IRS do not adopt this comment.

6. Example 1

Section 1.642(h)–5(a), *Example 1,* of the proposed regulations (*Example 1*) updates an existing example illustrating computations under section 642(h) when there is a net operating loss. Section 1.642–5(a)(2)(ii) of *Example 1* explains that the beneficiaries of the trust cannot carry back any of the net operating loss of the terminating estate that was made available to them under section 642(h)(1).

Two commenters requested that *Example 1* be revised to take into account the amendments to section 172(b)(1)(D) under sec. 2302(b) of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (2020) (CARES Act), by allowing a beneficiary to carry back the net operating loss carryover the beneficiary succeeds to under section 642(h)(1) for net operating losses arising in taxable years beginning after December 31, 2017, and before January 1, 2021. Under section 2303 of the CARES Act, net operating losses arising in taxable years beginning after December 31, 2017, and before January 1, 2021, generally may be carried back five years before being carried forward. One of these commenters further requested confirmation that a beneficiary is allowed a carryback of the net operating loss under section 642(h)(1) for net operating losses of an estate or trust arising in taxable years ending before January 1, 2018, to the extent the beneficiary succeeds to a net operating loss carryover attributable to those net operating losses on a termination of the estate or trust between January 1, 2018, and December 31, 2020.

Unless otherwise provided under the Code, a net operating loss incurred by a taxpayer may only be used as a deduction by that taxpayer and cannot be transferred to another taxpayer for use by that other taxpayer. *Calvin* v. *U.S.* 354 F.2d 202 (10th Cir. 1965), *Mellott* v. *U.S.,* 257 F.2d 798 (3d Cir. 1958). As an exception to this general principle, section 642(h) provides that if, on termination of an estate or trust, the estate or trust has a net operating loss carryover under section 172, then such carryover is allowed as a deduction, in accordance with the regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust. Section 1.642(h)–1(a) provides that if, on the termination of an estate or trust, a net operating loss carryover under section 172 would be allowable to the estate or trust in a taxable year subsequent to the taxable year of termination but for the termination, a carryover is allowed under section 642(h)(1) to the beneficiaries succeeding to the property of the estate or trust. In addition, § 1.642(h)–1(b) provides that the first taxable year of the beneficiary to which the net operating loss will be carried over is the taxable year of the beneficiary in which or with which the estate or trust terminates.

Section 642(h)(1) provides a specific rule that allows the beneficiary to succeed to a net operating loss carryover of the estate or trust and deduct the amount of the net operating loss over the remaining carryover period that would have been allowable to the estate or trust but for the termination of the estate or trust. The phrase in section 642(h)(1) ''the estate or trust has a net operating loss *carryover*'' means that the estate or trust incurred a net

operating loss and either already carried it back to the earliest allowable year under section 172 or elected to waive the carryback period under section 172(b)(3), and now is limited to carrying over the remaining net operating loss. Accordingly, because the net operating loss is a carryover for the estate or trust, the beneficiary succeeding to that net operating loss may, under section 642(h)(1), only carry it forward.

The CARES Act amendments to section 172(b) mentioned by the commenters allow taxpayers a five-year carryback of certain net operating losses incurred by that taxpayer. The CARES Act amendments do not change the result that a beneficiary succeeding to the net operating loss carryover of a terminated estate or trust may only carryover that net operating loss in the same manner as the terminated estate or trust, but for the termination. Consequently, the Treasury Department and the IRS do not adopt these comments and add a citation to § 1.642(h)–1 to reference the rule that a beneficiary that succeeds to a net operating loss carryover of a terminated estate or trust may only carry forward the net operating loss.

7. Example 2

Section § 1.642(h)–5(b), *Example 2,* of the proposed regulations (*Example 2*) demonstrates computations under section 642(h)(2). The expenses in *Example 2* include rental real estate taxes in an attempt to illustrate a deduction subject to limitation under section 164(b)(6) to the beneficiary that must be separately stated as provided in § 1.642(h)–2(b)(1).

Multiple commenters noted that *Example 2* raises several issues that could be potentially relevant to that example, such as whether the decedent was in a trade or business and the application of section 469 to estates and trusts. To avoid these issues, which are extraneous to the point being illustrated, one commenter suggested that the example be revised so that the entire amount of real estate expenses on rental property equals the amount of rental income. The Treasury Department and the IRS did not intend to raise such issues in the example and consider both issues to be outside the scope of these regulations. Accordingly, the Treasury Department and the IRS adopt the suggestion by the commenter and modify *Example 2* to avoid these issues by having rental real estate expenses entirely offset rental income with no unused deduction.

Commenters also noted that *Example 2* does not properly allocate rental real estate expenses because the example characterizes the rental real estate taxes as itemized deductions. These commenters asserted that real estate taxes on property held for the production of rental income are not itemized deductions but instead are allowed in computing gross income and cited to section 62(a)(4) as providing that ordinary and necessary expenses paid or incurred during the taxable year for the management, conservation, or maintenance of property held for the production of income under section 212(2) that are attributable to property held for the production of rents are deductible as above-the-line deductions in arriving at adjusted gross income. One commenter suggested that, if the goal of *Example 2* is to illustrate state and local taxes passing through to the beneficiary, then the example should include state income taxes rather than real estate taxes on rental real estate. The Treasury Department and the IRS have revised this example in the final regulations to include personal property tax paid by the trust rather than taxes attributable to rental real estate.

Lastly, commenters noted that *Example 2* does not demonstrate the broad range of trustee discretion in § 1.652(b)–3(b) and (d) for deductions that are not directly attributable to a class of income, or deductions that are, but which exceed such class of income, respectively. In response to these comments, the Treasury Department and the IRS have modified *Example 2* to illustrate the application of trustee discretion as found in § 1.652(b)–3(b) and (d).

C. Applicability Dates

The proposed regulations provide that the changes to §§ 1.67–4, 1.642(h)–2, and 1.642(h)–5 apply to taxable years beginning after the date the regulations are published as final. The preamble to the proposed regulations explains that estates, non-grantor trusts, and their beneficiaries may rely on the proposed regulations under section 67 for taxable years beginning after December 31, 2017, and on or before the date these regulations are published as final. Taxpayers may also rely on the proposed regulations under section 642(h) for taxable years of beneficiaries beginning after December 31, 2017, and on or before the date the regulations are published as final, in which an estate or trust terminates.

One commenter requested that § 1.642(h)–2 of the proposed regulations be applied retroactively not only to taxable years beginning after December 31, 2017, but to all open years. The commenter asserted that the existing regulation treating excess deductions on termination of an estate as a miscellaneous itemized deduction was in error. As an example, the commenter argues that the current regulations mistakenly describe section 67(e) expenses as an exception to the rules applicable to miscellaneous itemized deductions, and therefore requested that the final regulations be applicable to all open years. The Treasury Department and the IRS have the authority to treat an excess deduction on termination of an estate or trust as a single miscellaneous itemized deduction. See section 642(h). The suspension under section 67(g) of miscellaneous itemized deductions caused the Treasury Department and the IRS to reconsider the treatment of excess deductions under section 642(h)(2) because the Treasury Department and the IRS do not interpret section 67(g) as suspending such deductions allowable under section 642(h)(2). The Treasury Department and the IRS interpret section 67(g) as not disallowing excess deductions succeeded to beneficiaries from terminated estates and trusts under section 642(h)(2). Therefore, taxpayers may rely on these regulations as of the effective date of section 67(g), but not for earlier periods.

The final regulations apply to taxable years beginning after October 19, 2020. Pursuant to section 7805(b)(7), taxpayers may choose to apply the amendments to § 1.67–4 and §§ 1.642(h)–2 and 1.642(h)–5 set forth in this Treasury decision to taxable years beginning after December 31, 2017, and on or before October 19, 2020.

Special Analysis

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 review of tax regulations. Therefore, a regulatory impact assessment is not required.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time necessary to report the required information will be minimal in that it requires fiduciaries of estates and trusts to provide on the Schedule K–1 (Form 1041) issued to beneficiaries information that is already maintained and reported to the IRS on Form 1041. Moreover, it should take an estate or trust no more than 2 hours to satisfy the information requirement in these regulations. Accordingly, the

Secretary certifies that the rule 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 that preceded these regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comments were received.

Paperwork Reduction Act (PRA)

The collection of information related to these regulations under section 642(h) is reported on Schedule K–1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credits, etc.,* and has been reviewed in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and approved by the Office of Management and Budget under control number 1545–0092.

The collection of information in these regulations is in § 1.642(h)–2(b)(1). The IRS requires this information to ensure that excess deductions on an estate's or trust's termination that are subject to additional applicable limitations retain their character when taken into account by beneficiaries on their returns. The respondents will be estates, trusts, and their fiduciaries.

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

Drafting Information

The principal author of these regulations is Margaret Burow of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS, however, participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 is amended by adding entries for §§ 1.67–4, 1.642(h)–2, and 1.642(h)–5 in numerical order to read in part as follows:

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

Section 1.67–4 also issued under 26 U.S.C. 67(e).

* * * * *

Section 1.642(h)–2 also issued under 26 U.S.C. 642(h).

Section 1.642(h)–5 also issued under 26 U.S.C. 642(h).

* * * * *

■ **Par. 2.** Section 1.67–4 is amended by revising paragraph (a) and the heading of paragraph (d) and adding two sentences to the end of paragraph (d) to read as follows:

§ 1.67–4 Costs paid or incurred by estates or non-grantor trusts.

(a) *Deductions*—(1) *Section 67(e) deductions*—(i) *In general.* An estate or trust (including the S portion of an electing small business trust) not described in § 1.67–2T(g)(1)(i) (a non-grantor trust) must compute its adjusted gross income in the same manner as an individual, except that the following deductions (section 67(e) deductions) are allowed in arriving at adjusted gross income:

(A) Costs that are paid or incurred in connection with the administration of the estate or trust that would not have been incurred if the property were not held in such estate or trust; and

(B) Deductions allowable under section 642(b) (relating to the personal exemption) and sections 651 and 661 (relating to distributions).

(ii) *Not disallowed under section 67(g).* Section 67(e) deductions are not itemized deductions under section 63(d) and are not miscellaneous itemized deductions under section 67(b). Therefore, section 67(e) deductions are not disallowed under section 67(g).

(2) *Deductions subject to 2-percent floor.* A cost is not a section 67(e) deduction and thus is subject to both the 2-percent floor in section 67(a) and section 67(g) to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust (including the S portion of an electing small business trust), and commonly or customarily would be incurred by a hypothetical individual holding the same property.

* * * * *

(d) *Applicability date.* * * * Paragraph (a) of this section applies to taxable years beginning after October 19, 2020. Taxpayers may choose to apply paragraph (a) of this section to taxable years beginning after December 31, 2017, and on or before October 19, 2020.

■ **Par. 3.** Section 1.642(h)–2 is amended by:

■ 1. Revising paragraph (a).

■ 2. Redesignating paragraph (b) as paragraph (d) and adding a heading for newly redesignated paragraph (d).

■ 3. Redesignating paragraph (c) as paragraph (e) and adding a heading for newly redesignated paragraph (e).

■ 4. Adding new paragraphs (b) and (c) and paragraph (f).

The revisions and additions read as follows:

§ 1.642(h)–2 Excess deductions on termination of an estate or trust.

(a) *Excess deductions*—(1) *In general.* If, on the termination of an estate or trust, the estate or trust has for its last taxable year deductions (other than the deductions allowed under section 642(b) (relating to the personal exemption) or section 642(c) (relating to charitable contributions)) in excess of gross income, the excess deductions as determined under paragraph (b) of this section are allowed under section 642(h)(2) as items of deduction to the beneficiaries succeeding to the property of the estate or trust.

(2) *Treatment by beneficiary.* A beneficiary may claim all or part of the amount of the deductions provided for in paragraph (a) of this section, as determined after application of paragraph (b) of this section, before, after, or together with the same character of deductions separately allowable to the beneficiary under the Internal Revenue Code for the beneficiary's taxable year during which the estate or trust terminated as provided in paragraph (c) of this section.

(b) *Character and amount of excess deductions*—(1) *Character.* The character and amount of the excess deductions on termination of an estate or trust will be determined as provided in this paragraph (b). Each deduction comprising the excess deductions under section 642(h)(2) retains, in the hands of the beneficiary, its character (specifically, as allowable in arriving at adjusted gross income, as a non-miscellaneous itemized deduction, or as a miscellaneous itemized deduction) while in the estate or trust. An item of deduction succeeded to by a beneficiary remains subject to any additional applicable limitation under the Internal Revenue Code and must be separately stated if it could be so limited, as provided in the instructions to Form 1041, *U.S. Income Tax Return for Estates and Trusts,* and the Schedule K–1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credit, etc.,* or successor forms.

(2) *Amount.* The amount of the excess deductions in the final year is determined as follows:

(i) Each deduction directly attributable to a class of income is allocated in accordance with the provisions in § 1.652(b)–3(a);

(ii) To the extent of any remaining income after application of paragraph (b)(2)(i) of this section, deductions are allocated in accordance with the provisions in § 1.652(b)–3(b) and (d); and

(iii) Deductions remaining after the application of paragraph (b)(2)(i) and (ii) of this section comprise the excess deductions on termination of the estate or trust. These deductions are allocated to the beneficiaries succeeding to the property of the estate of or trust in accordance with § 1.642(h)–4.

(c) *Year of termination*—(1) *In general.* The deductions provided for in paragraph (a) of this section are allowable only in the taxable year of the beneficiary in which or with which the estate or trust terminates, whether the year of termination of the estate or trust is of normal duration or is a short taxable year.

(2) *Example.* Assume that a trust distributes all its assets to B and terminates on December 31, Year X. As of that date, it has excess deductions of $18,000, all characterized as allowable in arriving at adjusted gross income under section 67(e). B, who reports on the calendar year basis, could claim the $18,000 as a deduction allowable in arriving at B's adjusted gross income for Year X. However, if the deduction (when added to other allowable deductions that B claims for the year) exceeds B's gross income, the excess may not be carried over to any year subsequent to Year X.

(d) *Net operating loss carryovers.* * * *

(e) *Items included in net operating loss or capital loss carryovers.* * * *

(f) *Applicability date.* Paragraphs (a) through (c) of this section apply to taxable years beginning after October 19, 2020. The rules applicable to taxable years beginning on or before October 19, 2020 are contained in § 1.642(h)-2 as in effect prior to October 19, 2020 (see 26 CFR part 1 revised as of April 1, 2020). Taxpayers may choose to apply paragraphs (a) through (c) of this section to taxable years beginning after December 31, 2017, and on or before October 19, 2020.

■ **Par. 4.** Section 1.642(h)–5 is revised to read as follows:

§ 1.642(h)–5 Examples.

Paragraphs (a) and (b) of this section (*Examples 1* and *2*) illustrate the application of section 642(h).

(a) *Example 1: Computations under section 642(h) when an estate has a net operating loss*—(1) *Facts.* On January 31, 2020, A dies leaving a will that provides for the distribution of all of A's estate equally to B and an existing trust for C. The period of administration of the estate terminates on December 31, 2020, at which time all the property of the estate is distributed to B and the trust. For tax purposes, B and the trust report income on a calendar year basis. During the period of administration, the estate has the following items of income and deductions:

TABLE 1 TO PARAGRAPH (a)(1)

Income:	
Taxable interest	$2,500
Business income	3,000
Total income	5,500

TABLE 2 TO PARAGRAPH (a)(1)

Deductions:	
Business expenses (including administrative expense allocable to business income)	5,000
Administrative expenses not allocable to business income that would not have been incurred if property had not been held in a trust or estate (section 67(e) deductions)	9,800
Total deductions	14,800

(2) *Computation of net operating loss.* (i) The amount of the net operating loss carryover is computed as follows:

TABLE 3 TO PARAGRAPH (a)(2)(i)

Gross income	$5,500
Total deductions	14,800
Less adjustment under section 172(d)(4) (allowable non-business expenses ($9,800) limited to non-business income ($2,500))	7,300
Deductions as adjusted	7,500
Net operating loss	2,000

(ii) Under section 642(h)(1), B and the trust are each allocated $1,000 of the $2,000 unused net operating loss carryover of the terminated estate in 2020, with the allowance of any net operating loss carryover to B and the trust determined under section 172. Neither B nor the trust can carry back any of the net operating loss of A's estate made available to them under section 642(h)(1). *See* § 1.642(h)–1(b).

(3) *Section 642(h)(2) excess deductions.* The $7,300 of non-business deductions not taken into account in

determining the net operating loss of the estate are excess deductions on termination of the estate under section 642(h)(2). Under § 1.642(h)–2(b)(1), such deductions retain their character as section 67(e) deductions. Under § 1.642(h)–4, B and the trust each are allocated $3,650 of excess deductions based on B's and the trust's respective shares of the burden of each cost.

(4) *Consequences for C.* The net operating loss carryover and excess deductions are not allowable directly to C, the trust beneficiary. To the extent the distributable net income of the trust is reduced by the net operating loss carryover and excess deductions, however, C may receive an indirect benefit from the carryover and excess deductions.

(b) *Example 2: Computations under section 642(h)(2)*—(1) *Facts.* D dies in 2019 leaving an estate of which the residuary legatees are E (75%) and F (25%). The estate's income and deductions in its final year are as follows:

TABLE 4 TO PARAGRAPH (b)(1)

Income:	
Dividends	$3,000
Taxable Interest	500
Rent	2,000
Capital Gain	1,000
Total Income	6,500

TABLE 5 TO PARAGRAPH (b)(1)

Deductions:	
Section 62(a)(4) deductions:	
Rental real estate expenses	2,000
Section 67(e) deductions:	
Probate fees	1,500
Estate tax preparation fees	8,000
Legal fees	2,500
Total Section 67(e) deductions	12,000
Non-miscellaneous itemized deductions:	
Personal property taxes	3,500
Total deductions	17,500

(2) *Determination of character.* Pursuant to § 1.642(h)–2(b)(2), the character and amount of the excess deductions is determined by allocating the deductions among the estate's items of income as provided under § 1.652(b)–3. Under § 1.652(b)–3(a), the $2,000 of rental real estate expenses is allocated to the $2,000 of rental income. In the exercise of the executor's discretion pursuant to § 1.652(b)–3(b), D's executor allocates $3,500 of personal property taxes and $1,000 of section 67(e) deductions to the remaining income. As a result, the excess deductions on termination of the estate are $11,000, all consisting of section 67(e) deductions.

(3) *Allocations among beneficiaries.* Pursuant to § 1.642(h)–4, the excess deductions are allocated in accordance with E's (75 percent) and F's (25 percent) interests in the residuary estate. E's share of the excess deductions is $8,250, all consisting of section 67(e) deductions. F's share of the excess deductions is $2,750, also all consisting of section 67(e) deductions.

(4) *Separate statement.* If the executor instead allocated $4,500 of section 67(e) deductions to the remaining income of the estate, the excess deductions on termination of the estate would be $11,000, consisting of $7,500 of section 67(e) deductions and $3,500 of personal property taxes. The non-miscellaneous itemized deduction for personal property taxes may be subject to limitation on the returns of both B and C's trust under section 164(b)(6)(B) and would have to be separately stated as provided in § 1.642(h)–2(b)(1).

(c) *Applicability date.* This section is applicable to taxable years beginning after October 19, 2020. Taxpayers may choose to apply this section to taxable years beginning after December 31, 2017, and on or before October 19, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 16, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–21162 Filed 10–16–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[Docket No. BOP–1172–F]

RIN 1120–AB72

Inmate Discipline Program: New Prohibited Act Code for Pressuring Inmates for Legal Documents.

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) adds a new code to the list of prohibited act codes in the inmate discipline regulations which will clarify that the Bureau may discipline inmates for pressuring or otherwise intimidating other inmates into producing copies of their own legal documents, such as pre-sentence reports (PSRs), or statement of reasons (SORs).

DATES: This rule is effective November 18, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah N. Qureshi, Rules Unit, Office of

General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau adds a new prohibited act code, 231, to *Table 1—Prohibited Acts and Available Sanctions* in the inmate discipline regulations at 28 CFR 541.3, which will clarify that inmates may be disciplined for pressuring or otherwise intimidating other inmates into producing copies of their own legal documents, such as pre-sentence reports (PSRs), statement of reasons (SORs), or other such documents.

The Bureau has found that inmates, or inmate groups, frequently pressure other inmates for copies of their PSRs, SORs, or other similar sentencing documents from criminal judgments, to learn if they are informants, gang members, have financial resources, to find others involved in offenses, to prove affiliations, etc. Some inmates who produced, or refused to produce, the documents were threatened, assaulted, and/or sought protective custody, all of which jeopardized the Bureau's ability to safely manage its institutions. The problem of threats and assaults on inmates arising from possession of an inmate's presentence investigative reports, statements of reasons, or other similar sentencing documents from criminal judgments has been acknowledged by the Administrative Office of U.S. Courts and in case law. *See, e.g., United States* v. *Antonelli,* 371 F.3d 360, 361 (7th Cir. 2004); *Harrison* v. *Lappin,* 510 F.Supp.2d 153 (DC Cir. 2007); *Delgado* v. *Bureau of Prisons,* 2007 WL 2471573 (E.D.Tex.); *Martinez* v. *Bureau of Prisons,* 444 F.3d 620, 370 U.S.App.D.C. 275 (DC Cir. 2006); *Sample* v. *Watts,* 100 Fed.Appx. 317, 2004 WL 1255359 (C.A.5 (Tex.).

The Bureau of Prisons (Bureau) published a proposed rule on this subject on November 19, 2019 (84 FR 63830). The comment period closed on January 21, 2020. We received fifteen comments during the comment period. While several were in support of the general premise of the proposed rule, commenters raised similar concerns and questions in their comments, which we address below.

The rule limits inmates' right to meaningful access to courts. Fourteen of the fifteen commenters raised a version of this issue: The prohibited act code, as proposed, appears to curtail the ability of inmates to assist other inmates with preparation of legal documents, as allowed by 28 CFR part 543, specifically §§ 543.10 and 543.11.

As we stated in the proposed rule, the Bureau has found that inmates, or inmate groups, pressure other inmates for copies of their PSRs, SORs, or other similar sentencing documents from criminal judgments, to learn if they are informants, gang members, have financial resources, or to learn of others involved in the offense, etc. Some inmates who produced, or refused to produce, the documents were threatened, assaulted, and/or sought protective custody, all of which jeopardized the Bureau's ability to effectively and safely manage its institutions. The defense bar, federal sentencing courts, and the Bureau identified this issue as one of concern that required attention/action.

In *Dept. of Justice* v. *Julian,* 486 U.S. 1 (1988), the U.S. Supreme Court decided the government was obligated to provide inmates access to their own pre-sentence investigation reports under the Freedom of Information Act (FOIA). By continuing to provide inmates reasonable access to review their PSRs, SORs, or other similar sentencing documents from criminal judgments at the facilities at which they are located, the Bureau's obligation under the FOIA is satisfied. The *Julian* decision did not mandate that inmates be permitted to obtain and possess copies of these documents contrary to legitimate penological interests, *i.e.,* the safety and security of Bureau institutions, inmates, staff, and the public.

The Bureau's regulation in volume 28 of the Code of Federal Regulations, section 543.10, indicates that the Bureau affords inmates ''reasonable access to legal materials'' in order to prepare legal documents. Section 543.11(d)(1) authorizes inmates to receive legal materials from outside the institution, including the inmate's ''pleadings and documents (such as a pre-sentence report) that have been filed in court or with another judicial or administrative body, drafts of pleadings to be submitted by the inmate to a court or with other judicial or administrative body which contain the inmate's name and/or case caption prominently displayed on the first page, documents pertaining to an inmate's administrative case.'' Subparagraph (d)(2) further allows inmates to ''possess those legal materials which are necessary for the inmate's own legal actions. Staff may also allow an inmate to possess the legal materials of another inmate subject to the limitations of paragraph (f)(2) of this section.''

Notably, however, commenters do not mention the limitations of § 543.11(f)(2) in existence prior to the proposed rule, which provide that an assisting inmate may possess another inmate's legal materials, while assisting the other inmate, in the institution's main law library or in other locations designated by the Warden, but may not remove another inmate's legal materials, including copies, from the designated location. The new prohibited act does not alter or curtail the ability of an assisting inmate to view another inmate's legal materials for the purposes of assisting that inmate in an authorized location.

Additionally, under § 543.11(f)(2)(i), an assisting inmate is also permitted to make handwritten notes and drafts of pleadings, and even to remove those notes from the authorized location, as long as the notes do not contain a case caption, document title, or the name of any inmate.

Finally, § 543.11(f)(4) indicates that limitations on inmate assistance to other inmates may be imposed in the interest of institution security, good order, or discipline. This rulemaking is a practical limitation for reasons of security on the scope of inmate assistance to other inmates. While this rule does not prohibit such inmate assistance, inmates may find that firmer adherence to the letter of the regulations has become necessary due to greater attention to incidences of inmate harassment and intimidation.

However, because commenters found the language of the prohibited act code to be unclear and overbroad, the Bureau now alters code 231 as set forth in the rule to provide that the conduct to be prohibited is, in fact, *unauthorized* conduct, not the authorized inmate assistance rendered by one inmate to another inmate in a location authorized by the Warden and performed as required in 28 CFR part 542.

Staff awareness and/or abuses of the prohibited act code sanctions. Two commenters asked how staff would be made aware of prohibited act conduct and what action they would take upon being made aware of it. Another was concerned that staff would take ''discipline as physical punishment'' and warned that ''it must be made very clear to any guard or authority figure in a prison what kind of discipline the inmate is to receive as well as clear justification for it.'' Three more commenters expressed concerns regarding the potential for staff to impose immediate and direct discipline for perceived violations of this prohibited act code.

To respond to these concerns, we first suggest to these and any other inmates with grievances relating to staff abuse to locate appropriate staff members or medical professionals in their facilities and report such behavior, and also to make use of the Administrative Remedy

Procedures process in 28 CFR part 542. Inmates may electronically send requests to different departments within the institution and use the Request to Staff service to report misconduct directly to the Office of Inspector General (OIG). These emails are anonymous and not retained or traceable in the inmate email system.

However, the Bureau is committed to ensuring the safety and security of all inmates in our population, our staff, and the public. Staff are trained and expected to conduct themselves professionally, including the humane and courteous treatment of those in our custody. Bureau staff are trained to stay mindful of the agency's core values of correctional excellence, respect and integrity. At the outset of their employment, staff are instructed that they must adhere to the principles of ethical conduct in the Basic Obligations of Public Service at 5 CFR 2635.101; Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635; the Department of Justice's Supplemental Ethics Regulations at 5 CFR part 3801; the criminal conflict of interest statutes at 18 U.S.C. 201, 202, 203, 205, 207, 208, and 209; and the Bureau of Prisons Standards of Employee Conduct in Bureau of Prisons Program Statement 3420.11. The Bureau of Prisons provides ethics training to all new employees both when they begin employment and annually thereafter.

Secondly, before any sanctions may be imposed for violation of prohibited acts, current regulations in 28 CFR part 541 describe the required process which must be undertaken, including the following:

- Issuing an incident report to the inmate describing the prohibited act the inmate is charged with, ordinarily within 24 hours of becoming aware of the inmate's involvement in the prohibited act conduct;
- Investigating the incident reported;
- Informing the inmate of the charges against him/her and of his/her rights during the process;
- Taking an inmate statement of explanation of the incident, including requests for witnesses or other evidence; and
- Referring the incident report to the Disciplinary Hearing Officer (DHO) for a hearing.

When an incident report is referred to a DHO for a hearing, Bureau regulations explain that inmates again receive written notice of the charges against them at least 24 hours prior to the hearing unless they waive that requirement, and are entitled to a staff representative, to make a statement and present evidence on their own behalf, and to present witnesses with relevant information.

After the DHO hearing, inmates will receive a written copy of the DHO's decision which must document whether the inmate was advised of his/her rights during the DHO process, what evidence the DHO relied on to make the decision reached, what decision was reached, that sanction was imposed, and the reasons for the sanctions imposed. The inmate is also advised that he/she may appeal the DHO's action through the Administrative Remedy Program (28 CFR part 542, subpart B).

This process provides multiple checks and balances to deter or prevent staff abuse by allowing inmates several opportunities to speak on their own behalf or present evidence and witnesses. Staff must also carefully document their observation of prohibited acts and cannot immediately or directly impose sanctions upon inmates, but must instead refer incident reports to DHOs for hearings, in the case of 200-level prohibited acts, before sanctions may be imposed.

Sanctions. Eight commenters asked for more detail regarding the possible sanctions that might be imposed for violation of the prohibited act code. The sanctions can be found in current regulations at 28 CFR part 541. However, we summarize them below.

The rule adds a new prohibited act code 231, which is in the High Severity Level Offenses category. If an inmate is found to have committed a prohibited act after a properly conducted DHO hearing the DHO may impose a sanction as listed in 28 CFR 541.3(b), Table 1, Prohibited Acts and Available Sanctions. Therefore, for violation of new prohibited act code 231, a code in the High Severity Level category, a DHO may:

- Recommend parole date rescission or retardation;
- Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended);
- Disallow ordinarily between 25% and 50% (14–27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended);
- Impose disciplinary segregation (up to 6 months);
- Require monetary restitution;
- Impose a monetary fine;
- Revoke privileges (*e.g.,* visiting, telephone, commissary, movies, recreation);
- Require a change in housing (quarters);
- Remove an inmate from a program, job and/or group activity; impound an inmate's personal property,
- Confiscate contraband,
- Restrict an inmate to quarters; or
- Impose extra duty.

This prohibited act code should be moved to a greater severity level. Commenters suggested that the prohibited conduct described by this rule was sufficiently egregious to warrant upgrading its severity level and therefore upgrading the severity of potential sanctions that may be imposed for violation. Several current or former inmates commented regarding ''organized gangs and other predatory groups who formally assign members to vet individuals'' and ''use information for financial extortion for protection,'' indicating that the proposed severity level would ''have little impact and minimal deterrence'' on this conduct.

While the Bureau appreciates the position of these commenters, the severity level determination was chosen based on the nature of the offense conduct. In this case, the new prohibited act code includes ''requesting, demanding, pressuring, or otherwise intentionally creating a situation'' causing an inmate to produce documents for any unauthorized purpose to another inmate. The Greatest Severity Level category includes prohibited acts such as escape, killing, arson, etc., which are generally considered more threatening to institution safety, security and good order than actions including ''requesting, demanding, pressuring'' or ''creating a situation'' causing production of documents for unauthorized purposes. While the activity contemplated is clearly enough of an issue to warrant the creation of a High Severity Prohibited Act, in the correctional expertise of the Bureau of Prisons, it does not rise to the level necessary for inclusion in the Greatest Severity Level Category.

The intent of the severity scale at its inception was to ''ensure a greater consistency of use of discipline throughout the Federal Prison System'' and alleviate prior ''concern that the disciplinary system allowed for a variety of interpretation on the degree of severity of the prohibited act and on sanctions that could be imposed.'' (*See* 44 FR 23174, April 18, 1979.) In a later final rule in 1982, the Bureau reflected that the inmate disciplinary procedures are ''not intended to be either a judicial

process or to have the wide gradations of offenses and punishments available to the judiciary'' but instead that the ''purpose of the disciplinary process is to help inmates live in a safe and orderly environment.'' (*See* 47 FR 35920, August 17, 1982.) Therefore, the guiding factor when determining the severity levels of prohibited act codes has been ''the impact on institution security and good order.''

In determining the severity level of the new prohibited act code 231, the Bureau compared the impact of the prohibited conduct upon the safety, security and good order of the facility with that which might be generated from violation of codes in each Severity Level category, and determined that it would fit best in the High Severity Level offenses category in terms of seriousness of the offense and threat generated.

Prohibited documents should include institutional disciplinary history, and prohibited conduct should include accessing law library resources or community resources to find information regarding other inmates. For similar reasons, these commenters also suggested that the code conduct be expanded from possession of inmate court documents to inmate conduct violation (institution disciplinary) history as well, and suggested that if inmates have need to see their paperwork for legal representation purposes that the paperwork be sent directly from court systems to Wardens, who should permit inmate viewing, but not possession. Inmate commenters also strongly recommended either disallowing or disciplining inmate access to court documents of fellow inmates via the inmate law library or community channels, and which they noted has been a way for some inmates to discover conviction information about fellow inmates.

The Bureau must balance the inmate's ability to prepare, review, and analyze his/her own case and access courts against the security concerns sought to be managed by this regulation. In conducting this balance, the Bureau finds it necessary to permit inmates to retain the ability to access the inmate law library to satisfy the inmate's need to prepare his/her case and access courts. With regard to prohibiting inmate access to documents received through community channels, the Bureau's regulations regarding incoming publications (28 CFR part 540, subpart F), correspondence (Subpart B), visiting (Subpart D), and telephone (Subpart I), address these issues and the Bureau continues to adhere to these regulations.

The Bureau holds inmates accountable for threatening and coercive behavior under existing provisions of the disciplinary code. New prohibited act code 231, however, will clarify that this specific behavior may result in sanctions. The defense bar, federal sentencing courts and the Bureau identified this issue as one of concern that requires heightened disciplinary attention. We therefore add the aforementioned code provision, with the aforementioned changes to the proposed rule published on November 19, 2019 (84 FR 63830), to underscore the severity of the conduct described.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic effects of this regulation are limited to the Bureau's appropriated funds. It takes an average of 7.5 hours of staff time to process an incident report. One of the expected outcomes of this clarifying regulation is that inmates may be deterred from engaging in the prohibited behavior because violations are better defined. This expected outcome would save staff resources required to process incident reports. At this time, however, the Bureau cannot estimate precisely how many incidents will be avoided or the monetary value of the resulting cost/resource savings. Further, the Bureau would expect any anticipated savings generated by this rule to have minimal effect on the economy.

Executive Order 13132

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities. This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This regulation 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 541

Prisoners.

Michael Carvajal

Director, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 541 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

■ 1. The authority citation for part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

SUBPART A—GENERAL

■ 2. Amend § 541.3 by adding an entry 231 under ''High Severity Level Prohibited Acts'' in Table 1—Prohibited Acts and Available Sanctions in numeric order to read as follows:

§ 541.3 Prohibited acts and available sanctions

* * * * *

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS

*	*	*	*	*	*	*
High Severity Level Prohibited Acts						
*	*	*	*	*	*	*
231	Requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce or display his/her own court documents for any unauthorized purpose to another inmate.					
*	*	*	*	*	*	*

* * * * *

[FR Doc. 2020–21486 Filed 10–16–20; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[EPA–HQ–OA–2020–0128, FRL–10014–91–OP]

RIN 2010–AA13

EPA Guidance; Administrative Procedures for Issuance and Public Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes the procedures and requirements for how the U.S. Environmental Protection Agency (EPA) will manage the issuance of guidance documents consistent with the Executive Order 13891 entitled ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' Specifically, consistent with the Executive Order, this regulation provides a definition of guidance documents for the purposes of this rule, establishes general requirements and procedures for certain guidance documents issued by the EPA and incorporates additional requirements for guidance documents determined to be significant guidance. This regulation, consistent with the Executive Order, also provides procedures for the public to petition for the modification or withdrawal of active guidance documents as defined by this rule or to petition for the reinstatement of a rescinded guidance document. This regulation is intended to increase the transparency of the EPA's guidance practices and improve the process used to manage EPA guidance documents.

DATES: This final rule is effective on November 18, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OA–2020–0128. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 *https://www.regulations.gov.* For information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sharon Cooperstein, Policy and Regulatory Analysis Division, Office of Regulatory Policy and Management (Mail Code 1803A), Environmental Protection Agency, 1200 Pennsylvania Avenue Northwest, Washington, DC 20460; telephone number: 202–564–7051; email address: *cooperstein.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This is a rule of Agency procedure and practice. The provisions only apply to the EPA and do not regulate any external entities.

B. What action is the Agency taking?

After considering the public comments received on the proposal, the EPA is finalizing procedures that the Agency will use to issue guidance documents as defined in this regulation. These new procedures satisfy the requirements of Executive Order (E.O.) 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (84 FR 55237, October 15, 2019), which directs Federal agencies to develop regulations to set forth processes and procedures for issuing guidance documents.

Specifically, consistent with the E.O., this regulation provides that the EPA will use an online portal (the EPA Guidance Portal) to identify EPA guidance documents for the public and will establish: Definitions of ''guidance document,'' ''significant guidance document,'' and other key terms; standard elements for all guidance documents; additional requirements for significant guidance documents; procedures for the EPA to enable the public to comment on draft significant guidance documents; and procedures for the public to petition the Agency for modification or withdrawal of guidance documents.

In this final rule, the EPA has revised some of the proposed requirements in response to public comments. Most notably, the EPA is adding the opportunity for the public to petition the Agency to reinstate guidance documents that were rescinded. In addition, the EPA will make information publicly available regarding petitions received pursuant to the petition procedures. To provide additional clarity, the final regulatory text includes new definitions of ''active guidance document'' and ''rescinded guidance document.'' Other minor edits to the regulatory text are also being finalized to increase clarity.

C. What is the Agency's authority for taking this action?

The EPA is authorized to promulgate this rule under its housekeeping authority. The Federal Housekeeping Statute provides that ''[t]he head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.'' 5 U.S.C. 301. The EPA gained housekeeping authority through the Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970), which ''convey[s] to the [EPA] Administrator all of the housekeeping authority available to other department heads under section 301'' and demonstrates that ''Congress has vested the Administrator with the authority to run EPA, to exercise its functions, and to

issue regulations incidental to the performance of those functions.'' [1]

Consistent with the proposal, the EPA considers this action a rule of agency organization, procedure, or practice that lacks the force and effect of law. The EPA determined, as a matter of good government, to seek comment from the public. The Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A), provides that an agency may issue interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice without providing notice and an opportunity for public comment.

The EPA received multiple public comments regarding the legal authority for this regulation. Several commenters expressed their concerns regarding the EPA citing the Federal Housekeeping Statute as the legal authority for the proposed rulemaking. For example, some commenters state that the Federal Housekeeping Statute does not confer any authority on the EPA to promulgate regulations because the EPA is not an ''executive department'' within the meaning of the statute. Even if the Federal Housekeeping Statute confers authority on the EPA, the commenters claim that this rulemaking exceeds the ''day-to-day office housekeeping'' authorized by the statute. These commenters disagree with the EPA that this rule is a procedural matter of ''internal management'' and claim that it is a substantive regulation that creates public rights and agency obligations. Further, the commenters state that opening the proposed rule to public comment contradicts the EPA's claims that the rule is ''internal management'' with no substantive effect.

The EPA disagrees with these commenters. As the Supreme Court discussed in *Chrysler Corp* v. *Brown,* the intended purpose of 5 U.S.C. 301was to grant early Executive departments the authority ''to govern internal departmental affairs.'' *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 309 (1979). As the Supreme Court further notes, section 301 authorizes ''what the [Administrative Procedure Act] terms 'rules of agency organization, procedure or practice' as opposed to substantive rules.'' *Id. at 310.*

The EPA is not one of the 15 ''Executive Departments'' listed at 5 U.S.C. 101. However, the EPA gained housekeeping authority through the Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970). The Reorganization Plan created the EPA, established the Administrator as ''head of the agency[,]'' and transferred functions and authorities of various agencies and Executive departments to the EPA. Section 2(a)(1)–(8) of the Reorganization Plan transferred to the EPA functions previously vested in several agencies and executive departments including the Departments of Interior and Agriculture. Section 2(a)(9) also transferred so much of the functions of the transferor officers and agencies ''as is incidental to or necessary for the performance by or under the Administrator of the functions transferred.'' The Federal Housekeeping Statute was existing law at the time the Reorganization Plan was enacted. Accordingly, the concomitant federal housekeeping authority to issue procedural rules was transferred to the EPA.

The Office of Legal Counsel has opined that the Reorganization Plan ''convey[s] to the [EPA] Administrator all of the housekeeping authority available to other department heads under section 301'' and demonstrates that ''Congress has vested the Administrator with the authority to run EPA, to exercise its functions, and to issue regulations incidental to the performance of those functions.'' [2]

Courts have recognized the EPA to be an agency with section 301 housekeeping authority. The U.S. Court of Appeals for the Second Circuit, in *EPA* v. *General Elec. Co.,* 197 F.3d 592, 595 (2d Cir. 1999), found that ''the Federal Housekeeping Statute, 5 U.S.C. 301, authorizes government agencies such as the EPA to adopt regulations regarding 'the custody, use, and preservation of [agency] records, papers, and property.' '' The Fourth Circuit Court of Appeals, in *Boron Oil Co.* v. *Downie,* 873 F.2d 67, 69 (4th Cir. 1989), held that the district court exceeded its jurisdiction where it compelled testimony by an Agency employee in a state court action to which the government was not a party, contrary to duly promulgated EPA regulations, which the EPA argued were authorized by section 301. Although the court assumed the EPA derived its housekeeping authority from 5 U.S.C. 301, these cases nonetheless recognized that the EPA had federal housekeeping authority. Indeed, if the EPA did not possess federal housekeeping authority, the EPA would not be able to carry out its daily functions, which would in turn preclude the EPA from exercising its duties as a federal regulatory agency. The same would hold true for other regulatory agencies that are not listed as an Executive department under 5 U.S.C. 101.

II. Background and Purpose

On October 9, 2019, the President signed E.O. 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' E.O. 13891 directs Federal agencies to finalize regulations that ''set forth processes and procedures for issuing guidance documents.'' [3] E.O. 13891 notes that ''Americans deserve an open and fair regulatory process that imposes new obligations on the public only when consistent with applicable law and after an agency follows appropriate procedures.'' [4] A central principle of E.O. 13891 is that guidance documents should clarify existing obligations only; they should not be a vehicle for implementing new, binding requirements on the public. E.O. 13891 recognizes that these documents, when designated as significant guidance documents, could benefit from public input prior to issuance. On October 31, 2019, the White House Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) issued a memorandum to Federal agencies outlining how to implement E.O. 13891.[5]

On May 22, 2020, consistent with E.O. 13891 and OMB's implementing memorandum, the EPA proposed new procedures for developing and issuing guidance documents as defined in the proposed rule, and establishing a petition process for public requests to modify or withdraw an active guidance document.[6] The purpose of this action is to ensure that the EPA's guidance documents are:

- Developed with appropriate review;
- Accessible and transparent to the public; and,
- Benefit from public participation in the development of significant guidance documents.

Implementing these procedures will lead to enhanced transparency and help to ensure that guidance documents are not improperly treated as legally binding requirements by the EPA or by the regulated community. Moreover, this regulation defines ''guidance document'' to provide greater clarity to

[1] *Authority of EPA to Hold Employees Liable for Negligent Loss, Damage, or Destruction of Government Personal Property,* 32 O.L.C. 79, 2008 WL 4422366 at *4 (May 28, 2008) (''OLC Opinion'').

[2] Authority of EPA to Hold Employees Liable for Negligent Loss, Damage, or Destruction of Government Personal Property, 32 O.L.C. 79, 2008 WL 4422366 at *4 (May 28, 2008) (''OLC Opinion'').

[3] See section 4(a) of E.O. 13891 (October 15, 2019; 84 FR 55237).

[4] See section 1 of E.O. 13891 (84 FR 55235).

[5] *Guidance Implementing Executive Order 13891,* Dominic J. Mancini, Acting Director, OIRA, October 31, 2019, (M–20–02).

[6] 85 FR 31104 (May 22, 2020).

the public regarding the scope of documents subject to these procedures. This regulation will improve the ability of members of the public to identify the guidance documents that the EPA uses and relies upon, resolving any concerns over the difficulty assessing the final, effective, active guidance of the Agency.[7]

The EPA intends that this regulation be interpreted and implemented in a manner that, consistent with the goals of improving the Agency's accountability and the transparency of the EPA's guidance documents, provides appropriate flexibility for the EPA to take those actions necessary to accomplish its mission.

III. Guidance Document Procedures

This final rule establishes the EPA's internal policies and procedures for the issuance of future guidance documents pursuant to the directives included in E.O. 13891 and codifies the requirement that the Agency maintain an internet portal with a list of all effective, active EPA guidance documents meeting the definition in this regulation. The procedures contained in this final rule apply to guidance documents, as defined by this regulation, issued by the EPA and not excluded under Section 4(b) of E.O. 13891, as described in section III.A of this preamble.[8] Section 4(b) of the E.O. directs the Administrator of OIRA to issue memoranda establishing exceptions from the E.O. for categories of guidance documents, as appropriate. Categorical exceptions may include documents that generally are only routine or ministerial, or that are otherwise of limited importance to the public. The procedures established in this rule do not apply to guidance documents excepted from the requirements of E.O. 13891 under Section 4(b) of the E.O., as interpreted by M–20–02, or otherwise excepted by the Administrator of OIRA.

[7] This regulation defines the term ''active guidance document'' to mean a guidance document in effect that the EPA expects to cite, use, or rely upon. The term active guidance document is synonymous with ''effective guidance document'' and ''guidance in effect.'' Active guidance document is the term used on the EPA Guidance Portal website.

[8] The EPA issues non-binding guidance using a variety of methods to clarify existing obligations and provide information to help regulated entities comply with requirements. Guidance documents come in a variety of formats, including interpretive memoranda, policy statements, manuals, bulletins, advisories, and more. Any document that satisfies the definition of ''guidance document'' in this regulation would qualify, regardless of name or format.

A. Definition of Guidance Document and Significant Guidance Document (40 CFR 2.503)

The EPA proposed definitions of the terms ''guidance document'' and ''significant guidance document'' consistent with the definitions in E.O. 13891 and OMB's implementing memorandum, M–20–02. Several commenters provided strong support for the EPA's definition of ''guidance document'' and stated that it is consistent with the targeted approach under E.O. 13891. The EPA agrees that the proposed definition is consistent with the E.O. 13891 definition.

Other commenters expressed their concerns that the definition of ''guidance document'' in this rulemaking does not provide sufficient clarity regarding what documents the EPA considers to be guidance documents subject to these requirements. A few commenters recommended that the EPA create three or more categories of EPA guidance documents, such as significant guidance documents, other important guidance documents on the EPA Guidance Portal, and other technical program guidance documents excluded from the EPA Guidance Portal. One commenter noted that the definition of ''guidance document'' could be interpreted to only encompass guidance documents that apply to regulated parties, not States, and recommended a revision to clarify applicability to States.

The EPA disagrees that the definition of guidance document is unclear. The EPA adopted the definition of guidance document set forth in E.O. 13891 with only minor modifications and believes the listed exclusions are helpful in distinguishing the types of documents that do not meet the definition. In common parlance, guidance can refer to many types of documents issued by the EPA and other agencies. The EPA does not intend to use this rule to parse the various nomenclatures and types of guidance that it uses. The definition of a ''guidance document'' and ''significant guidance document'' as used in this rule are specific to this rule. To provide further clarity in the implementation of this rule, the EPA has also included definitions for ''active guidance document'' and ''rescinded guidance document.'' Regarding the revision recommended by a commenter to clarify whether guidance documents can apply to States, the EPA disagrees with revising the proposed definition of guidance document. In some circumstances, States are regulated entities subject to EPA guidance documents while in other circumstances States are co-regulators. The EPA believes that the proposed definition adequately allows for this dual role of States.

The EPA received comments regarding the meaning of ''active guidance document'' and ''rescinded guidance document.'' One commenter stated that the EPA should clarify what it means for a guidance document to be ''rescinded'' or ''in effect,'' as neither term was expressly defined in the proposed rule or explained in the preamble and clarifying would ensure that the public understands which guidance documents have legal effect. The commenter stated that the EPA should clarify that a ''rescinded'' guidance document is a guidance document that is not included on the EPA Guidance Portal and means that the EPA cannot ''cite, use, or rely on'' it as explaining regulatory requirement except to establish historical facts. The commenter stated that the EPA should clarify that a guidance document ''in effect'' is one that meets the proposal's definition of ''guidance document'' and is included in the EPA Guidance Portal, and thus means that the EPA may cite it.

The EPA agrees that these definitions would increase clarity and transparency. Based on comments received, the EPA is adding definitions for ''active guidance document'' and ''rescinded guidance document.'' Specifically, the EPA is defining ''active guidance document'' in this rule as a guidance document or significant guidance document in effect that EPA expects to cite, use, or rely upon. Conversely, the EPA is defining a ''rescinded guidance document'' in section 2.503 as a document that would otherwise meet the definition of a guidance document or significant guidance document, but that the EPA may not cite, use, or rely upon except to establish historical facts. This definition was adopted from the proposed section 2.502(c).

Several commenters provided comments regarding how the definition of guidance document applied to scientific and technical documents. Several commenters recommended that the definition of ''guidance document'' should not exclude scientific or technical determinations. For example, several commenters recommended that scientific assessments produced by the EPA's Integrated Risk Information System (IRIS) Program be included in the definition of guidance document. One commenter agreed with the EPA that health advisories are appropriately considered guidance with regards to the proposed rulemaking, while another

commenter specifically requested that the EPA clarify whether water quality criteria documents (CWA Sec. 304(a)) qualify as guidance documents or significant guidance. Another commenter recommended that the EPA either clearly state that scientific documents are not covered by this rule or post all of the scientific documents that the EPA has relied on since 2008 on the EPA Guidance Portal.

EPA defines ''guidance document'' consistent with the definitions in E.O. 13891 and OMB's implementing memorandum, which includes the term ''technical issue.'' Furthermore, for purposes of this rule, the EPA considers the term ''scientific'' to be a subset of ''technical.'' As such, the EPA has determined that the definition of ''guidance document'' includes certain scientific and/or technical documents. For example, the EPA has determined that drinking water health advisories and CWA 304(a) national recommended Water Quality Criteria issued by the Office of Water because they are statements of general applicability, set forth a policy on a technical issue, are intended to have future effect on the behavior of regulated parties, and are not subject to one of the listed exclusions. However, EPA releases a great deal of technical information (including scientific information) that would *not* be subject to this regulation because it is *not* a statement intended to affect the future behavior of regulated parties that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. Due to the diversity of purpose and content of scientific and technical documents, it would be inconsistent with E.O. 13891 for the EPA to categorically determine whether all scientific and technical documents are ''guidance documents.''

B. Inventory of Active Guidance Documents (40 CFR 2.504)

The EPA proposed that all active guidance documents issued by the Agency must be included on the EPA Guidance Portal,[9] The EPA Guidance Portal was initially made publicly available on February 28, 2020, and was fully populated to include all active guidance documents on July 31, 2020. Starting on the effective date of this rule, as per section 2.504 of this final rule, all active guidance documents shall appear on the EPA Guidance Portal on the EPA website. Any guidance document (as defined in this regulation) excluded from the EPA Guidance Portal does not represent an active guidance document of the Agency and will have no effect except to establish historical facts.

The EPA proposed to inform the public via the EPA Guidance Portal that a new guidance document has been issued, an active guidance document has been modified, or an active guidance document has been withdrawn. The EPA solicited and received several comments related to the EPA Guidance Portal, the requirement for all active guidance to be on the EPA Guidance Portal, and the utility of using the EPA Guidance Portal to inform the public that a new guidance document has been issued, an active guidance document has been modified, or an active guidance document has been withdrawn.

Most commenters supported the creation and use of the EPA Guidance Portal to maintain a consolidated online portal with lists of active guidance documents as an important method for the Agency to promote transparency, fairness, consistency, and regulatory compliance. One commenter stated that the EPA Guidance Portal will be especially helpful for smaller businesses with limited resources and personnel for regulatory compliance.

The EPA agrees with commenters that the establishment of the EPA Guidance Portal is an important achievement in promoting greater transparency with respect to the Agency's guidance documents.

Several commenters noted that it is difficult for an interested party to ascertain whether a document is not on the EPA Guidance Portal because it does not meet the definition of a guidance document or because it has been rescinded. Some commenters recommended that the EPA include new sections on the EPA Guidance Portal for documents that the EPA has determined not to be a ''guidance document'' and for guidance documents that are rescinded. One commenter suggested that the EPA could include a select list of rescinded guidance documents that would be of broad interest, another suggested a list of rescinded guidance documents would be helpful even if not comprehensive. One commenter recommended that the EPA be over-inclusive in its initial listing so that no essential guidance gets accidently rescinded. Commenters requested that the EPA clarify when and the manner in which non-Agency parties may continue to rely on guidance that are not posted to the EPA Guidance Portal, and clarify that external parties are not subject to the same prohibition on citing, using, or relying on such guidance as the EPA.

The EPA will work to continually improve the transparency of the EPA Guidance Portal, including exploring ways to inform the public of the status of documents not included on the EPA Guidance Portal. The EPA recommends that questions regarding specific guidance documents omitted from the EPA Guidance Portal should be directed to the relevant EPA program or regional office that issued the document.

Regarding the status of rescinded guidance documents, it is important to note that this rule only specifies the procedures that the Agency will follow. The EPA believes the proposed regulation was clear that the Agency could not rely on a rescinded guidance document except to establish historical facts. This regulation is not intended to affect the Agency's past actions that relied upon EPA guidance documents that are now rescinded; decisions made by the Agency are not invalidated because guidance used in reaching those decisions is now rescinded. Notwithstanding the general prohibition on EPA's use of rescinded guidance documents, the EPA cannot limit how non-Agency parties use rescinded guidance, as long as they do not represent rescinded guidance documents as current Agency policy.

Several commenters noted that the EPA Guidance Portal was missing specific documents or classes of documents or that it contained documents that should not be considered active guidance documents.

During the public comment period for this rule, the EPA Guidance Portal had not yet been fully populated, so some situations involving purportedly missing documents may have been resolved in the intervening time. The dispensation of specific documents on the EPA Guidance Portal is outside the scope of this rulemaking. The EPA recommends that any such questions regarding specific guidance documents should be directed to the relevant EPA program or regional office that issued the document. Additionally, as discussed in section III.E in this preamble, the EPA is adopting in section 2.507 new procedures for the public to petition for reissuance of a rescinded guidance document that the petitioner believes should be included on the EPA Guidance Portal.

Many commenters provided suggestions to improve the usability and functionality of the EPA Guidance Portal, for example, by making it easier to do a single search across all agency guidance. Suggestions included improving the search functionality across programs, adding automated notifications for new or modified

[9] The EPA Guidance Portal is available at *https://www.EPA.gov/guidance.*

documents (*e.g.,* subscribed email lists or listservs), using visual flags to denote changes or additions, curating the list into statutory or programmatic categories. One commenter opposed using the EPA Guidance Portal as the only source of information regarding new or modified guidance.

The EPA agrees with commenters that the usability and functionality of the EPA Guidance Portal could be improved. In consideration of these comments, the EPA will continue to evaluate and work to improve the functionality of the EPA Guidance Portal, such as improving search capabilities and notification mechanisms.

After consideration of these comments and consistent with the requirements of E.O. 13891, the EPA is finalizing the requirement that all active guidance documents be published on the EPA Guidance Portal and that any guidance document excluded from the list of active guidance documents published on the EPA Guidance Portal does not represent an active guidance document (as defined in this regulation) of the Agency and will have no effect, as proposed.[10] When a new guidance document is issued, or an active guidance document is modified, or an active guidance document is withdrawn, the EPA will inform the public via the EPA Guidance Portal.

The EPA agrees that the EPA Guidance Portal is the most effective method to notify the public of changes to the list of active guidance documents because it provides the ability to sort or search by the most current date so that newly added or modified guidance documents appear at the top of the list. The EPA will work to improve the functionality of the Portal and will consider additional means of notifying the public of changes to the list of guidance documents in the future. In addition, the EPA will explore ways to inform the public of the status of documents not included on the EPA Guidance Portal.

As stated in the proposed rule, the list of active guidance documents on the EPA Guidance Portal is intended to contain only documents that meet the definition of ''guidance document'' and ''significant guidance documents'' as defined in this regulation. Documents that are excluded from that definition will not typically be included in the list of active guidance documents on the EPA Guidance Portal, although they may still be in effect. For example, the definition of guidance documents in this regulation excludes, among others, internal guidance directed to the EPA or its components or other agencies, statements of specific rather than general applicability, and internal executive branch legal advice or legal opinions addressed to executive branch officials, provided these actions are not intended to have substantial future effect on the behavior of regulated parties. Because excluded documents are not ''guidance documents'' under this regulation, their omission from the EPA Guidance Portal does not imply that they are ''rescinded guidance documents.''

As noted in the proposal, the EPA Guidance Portal currently provides the following information for each guidance document:

- A concise name for the guidance document;
- The date on which the guidance document was issued;
- The date on which the guidance document was posted to the Guidance Portal;
- An EPA unique identifier;
- A hyperlink to the guidance document and any supporting or ancillary documents;
- The general topic, program, and/or statute addressed by the guidance document; and
- A brief summary of the guidance document's content.

In addition to the information associated with each guidance document, the EPA Guidance Portal includes a clearly visible note expressing that (a) guidance documents lack the force and effect of law, unless authorized by statute or incorporated into a contract; and (b) the Agency may not cite, use, or rely on any guidance document as defined in this rule, that is not posted on the EPA Guidance Portal, except to establish historical facts. As noted in the preamble to the proposed regulation, the EPA Guidance Portal will also include a link to this final regulation after publication in the **Federal Register** as well as to any future proposed or final amendments.[11]

C. General Requirements and Procedures for Issuance of All Guidance Documents (40 CFR 2.505)

The EPA proposed to require certain standard elements for all guidance documents issued after the effective date of this final rule, consistent with E.O. 13891. Specifically, the EPA proposed to require that each guidance document would include: The term ''guidance;'' the issuing office; the title; a unique identification number; the date issued; the general activities to which and persons to whom it applies (when practicable); a citation to the statutory provision or regulation; whether it was a revision to a previous document; a summary; and a disclaimer as to the non-binding nature of guidance documents.

The EPA received comments that were generally supportive of the minimum required elements for guidance documents. Several commenters supported the proposed disclaimer that clarifies that guidance documents are non-binding, would not have the force and effect of law, and are intended to clarify existing requirements. A few commenters recommended additional required elements, such as identification of an EPA contact person for the guidance document.

The EPA acknowledges the support for the minimum elements from most commenters but disagrees that the additional recommended elements would be appropriate to require for all guidance documents at this time. For example, the identification of a specific EPA contact person would become less useful over time, as individual staff change positions or leave the Agency. Instead, the requirement to identify the issuing office will provide sufficient transparency for the public to contact the Agency regarding the guidance. The EPA believes the current set of elements strikes the appropriate balance between consistency and flexibility.

Most commenters supported the proposed requirement that guidance documents refrain from using mandatory language. Consistent with these comments, the EPA is finalizing the proposed requirement that guidance documents, given their legally nonbinding nature, will avoid including mandatory language such as ''shall,'' ''must,'' ''required'' or ''requirement,'' unless these words are used to describe a statutory or regulatory requirement, or the language is addressed to EPA staff and will not foreclose consideration by the EPA of positions advanced by affected private parties.

Most comments were supportive regarding the requirement that the EPA Regional Office must receive concurrence from the corresponding Presidentially-appointed EPA official (*i.e.,* the relevant Assistant Administrator or an official who is serving in the acting capacity) at EPA headquarters who is responsible for administering the national program to which the guidance document pertains

[10] See section 3(b) of E.O. 13891 (84 FR 55236). See Q9–Q12 in *Guidance Implementing Executive Order 13891,* Dominic J. Mancini, Acting Director, OIRA, October 31, 2019 (M–20–02).

[11] The EPA Guidance Portal is available at *https://www.EPA.gov/guidance.*

before issuing a new guidance document developed by an EPA Regional Office. Therefore, the EPA is finalizing this concurrence requirement as proposed.

For significant guidance documents, the EPA proposed to require public notice in the **Federal Register** and a minimum 30-day comment period. However, several commenters recommended that the EPA expand the notice and comment requirement to cover most or all guidance covered by this rulemaking, not just those defined as ''significant.'' Some commenters stated that broader application of the notice and comment requirements could delay issuance of non-significant guidance.

The EPA disagrees that it is necessary to expand the notice and comment requirements for significant guidance documents to all guidance documents. As stated in the proposal preamble, the EPA has the authority to seek comment on any document that the Agency determines would benefit from public input and would do so when appropriate. In addition, all active guidance documents that meet the definition in this rulemaking will be available on the EPA Guidance Portal, and the public can petition the Agency to modify or rescind any of these guidance documents. Further, the EPA agrees that applying the notice and comment requirements to non-significant guidance could delay issuance. For these reasons, the EPA declines to expand the notice and comment requirement to all guidance documents.

Regarding determinations of whether a guidance document qualifies as significant, a few commenters requested clarification on the process that will be used to identify a guidance document as a significant guidance document. The EPA disagrees that more details on this process are required and believes that the regulation is clear. The EPA is finalizing the proposed requirement to seek significance determinations from OIRA for guidance documents, as appropriate, according to E.O. 12866 and E.O. 13891.

One commenter stated that if the Guidance Portal and the procedures within this rule are used to revoke guidance that has not been formally replaced, it could end up creating more confusion for regulated entities and stakeholders rather than helping to resolve it.

The EPA disagrees that the implementation of this rulemaking will cause confusion. In fact, this rulemaking will increase transparency regarding the issuance, modification, and rescission of guidance documents and benefit regulated entities and stakeholders by clarifying which guidance documents are active and in effect. If the EPA rescinds a guidance document that clarifies existing obligations, EPA will not utilize an alternative policy or interpretation in taking an action without providing sufficient and fair notice.

D. Requirements for Issuance of Significant Guidance Documents (40 CFR 2.506)

The EPA proposed additional requirements for significant guidance documents beyond the requirements for all guidance documents described in section III.C. of this preamble. These proposed requirements for significant guidance documents included announcements in the **Federal Register**, minimum 30-day comment period, response to comments, approval by Presidential appointees, review by OIRA under Executive Order 12866 before issuance, and compliance with other Executive Orders.

The EPA received several comments on these proposed requirements for significant guidance documents. Most commenters were supportive of the requirements to announce new, modified, and rescinded significant guidance documents in the **Federal Register** and to provide the public an opportunity to comment. For example, some commenters noted that these requirements would increase transparency and public participation that may not have occurred when the EPA previously issued significant guidance. Some commenters favored other mechanisms to announce significant guidance documents instead of or in addition to a **Federal Register** notice (*e.g.,* using the EPA Guidance Portal, through program specific websites, notifications to states directly, notifications to the affected regulated community through trade associations).

Most commenters supported the 30-day comment period requirement for significant guidance documents. Some commenters recommended that the final rule clarify that the 30-day comment period is a minimum and that the EPA retains discretion to allow longer comment periods, while other commenters recommended that a 60-day comment period should be the minimum. Some commenters recommended additional engagement with states on a government-to-government basis, beyond the public comment process. One commenter recommended that the EPA make the comments received on guidance documents publicly available. Some commenters recommended that the EPA limit its response to comments on draft guidance to ''major concerns'' only (as specified in E.O. 13891, section 4(a)(iii)(A)) and recommended that the responses generally inform the public of the Agency's thinking on key issues rather than create a detailed record.

The EPA agrees that the notice and comment requirements for significant guidance documents would increase transparency and public participation. As stated in the proposal preamble, the EPA reiterates that the 30-day public comment opportunity for significant guidance documents is a minimum, and the EPA retains discretion to use longer comment periods and will do so when it is warranted by the circumstances surrounding the issuance of a specific guidance document. As stated in the proposal preamble, the EPA does not intend to supersede non-conflicting internal policy and procedures that the EPA established for significant guidance documents in 2007 as part of its implementation of the OMB's *Bulletin for Agency Good Guidance Practices* (2007).[12] The EPA will continue to follow recognized best practices, such as those identified in the 2007 Bulletin, in responding to public comments received on guidance documents.

Many commenters supported the proposed exceptions to the comment requirement for significant guidance documents for ''good cause'' because there are emergencies when it is essential for the EPA to be able to issue guidance quickly. However, other commenters claimed that the proposed exceptions were vague and not transparent.

The EPA agrees that there can be instances when it is in the public interest for the Agency to issue a significant guidance document without a public comment period, though such instances are expected to be rare. This good cause exception is consistent with E.O. 13891 (Section 4 (a)) and the APA requirement for regulations (5 U.S.C. 553(b)(3)(B)). After consideration of the public comments, the EPA is finalizing the additional specific requirements for significant guidance documents and the exceptions to the comment requirement, as proposed, with a minor modification to clarify that approval of significant guidance documents will occur on a

[12] Office of Management and Budget. 2007. *Final Bulletin for Agency Good Guidance Practices* (72 FR 3432, January 25, 2007). While E.O. 13891 and the OMB Implementation Memorandum (M–20–02) issued on October 31, 2019 (the 2019 Memo) supersede the 2007 Bulletin, it is ''noted that many of the practices specified by E.O. 13891 and explained in the 2019 Memo are identical to practices discussed in the 2007 Bulletin.'' (Q3 from the 2019 Memo).

non-delegable basis, consistent with E.O. 13891.

E. Procedures for Public To Petition for Modification or Withdrawal (40 CFR 2.507)

Consistent with E.O. 13891, the EPA proposed procedures to allow the public to petition the EPA for the modification or withdrawal of an active guidance document posted on the EPA Guidance Portal. The EPA proposed formatting and content elements for petitions to enable a full evaluation by the Agency of the merits of the requested action, including the petitioner's name and contact information, title and the EPA unique identifier of the guidance document that the petitioner is requesting be modified or withdrawn, the nature of the relief sought by the petitioner, and the rationale for their request, among other elements.

Additionally, the proposed rule included requirements to ensure timely responses to petitions. The EPA would respond to petitions no later than 90 calendar days after receipt of the petition. If the EPA requires more than 90 calendar days to consider a petition, the EPA would inform the petitioner that more time is required and indicate the reason why and provide an estimated decision date. The EPA would only extend the response date one time for a period not to exceed 90 calendar days before providing a response. The EPA noted in the proposed rule that the response and the set timeframes for responding to the petition are not intended to capture the implementation of the response.

The EPA received comments on the process for requesting modification or withdrawal of guidance documents. Several commenters supported the creation of petition process and noted that petitions can help the Agency be made aware of existing guidance that is of concern to impacted stakeholders. Many commenters were supportive of the minimum information to be included in petitions and noted that they had no suggestions for additional information to be included in petitions to modify or withdraw an active guidance document.

The EPA agrees with these supportive comments. After consideration of public comments, the EPA is finalizing these requirements with minor modifications. The EPA Guidance Portal will provide clear and specific instructions to the public regarding how to request the modification or withdrawal of an active guidance document. The EPA is finalizing that the public may submit petitions using one of the two following methods described on the EPA Guidance Portal: (1) An electronic submission through the EPA's designated submission system identified on the EPA Guidance Portal (*i.e.,* using a link labeled ''Submit a petition for Agency modification or withdrawal of guidance documents''), or, (2) a paper submission to the EPA's designated mailing address listed on the EPA Guidance Portal.

The EPA received public comments requesting more transparency surrounding petitions submitted to the Agency. Several commenters noted that the EPA should make petitions received publicly available and some supported making public the Agency's response to petitions. Commenters also believed that the most appropriate place to identify information related to petitions is on the EPA Guidance Portal. One commenter suggested that the EPA publicize and provide a comment period to allow stakeholders and members of the public to comment on such a petition. Finally, a commenter noted that the EPA did not indicate how the Agency would notify the public of subsequent actions taken by the Agency pursuant to the petition.

The EPA agrees with public comments requesting additional transparency regarding petitions received. Therefore, the EPA is finalizing a requirement that the Agency make available to the public, information about petitions received, including the title of the putative guidance document to which the petition pertains. Please note, the information about petitions received may, from time to time, include references to invalid petitions (such as petitions that do not request that the Agency modify or rescind an active guidance document or reinstate a rescinded guidance document), and references to such invalid petitions is not an acknowledgement by the EPA that the documents referenced by those petitions are guidance documents as defined by these procedures.

Although the EPA is not finalizing a requirement for Agency responses to petitions to be made publicly available in this regulation, the EPA will evaluate the feasibility of doing so in the future once more information exists about the volume and complexity of petitions. The EPA disagrees with requiring the Agency to seek public comment on petitions received because such a process goes beyond E.O. 13891, would unduly complicate the petition process, and would be excessively burdensome for the Agency to implement. The additional time required for notice and comment on petitions received could delay the timeliness of the Agency's response to petitions. The public will have access to information regarding subsequent actions related to a petition to modify or withdraw a guidance document through the EPA Guidance Portal where the EPA will post newly modified guidance documents and remove rescinded guidance documents from the list of active guidance documents.

A few commenters noted that proposed section 2.507 does not contain procedures for the public to petition the EPA to add to the EPA Guidance Portal a guidance document that a stakeholder believes should be an active guidance document. Commenters requested that the EPA add a specific procedure by which any party can petition for the inclusion of an existing guidance document in the EPA Guidance Portal. One commenter stated that if the EPA declines to add a document to the Guidance Portal, then the EPA should be required to explain the basis for their decision.

The EPA agrees with these commenters that it is appropriate for the public to have a formal mechanism to request that a rescinded guidance document be included on the EPA Guidance Portal and is providing procedures for the public to petition the EPA for reinstatement of a rescinded guidance document. The EPA is limiting these procedures to rescinded guidance documents due to concerns about the potential administrative burden associated with processing petitions of unknown scope and number to reclassify other categories of documents as guidance documents. The EPA anticipates that a petition response would provide the basis for granting or denying the petition. Prior to petitioning the EPA to reinstate a rescinded guidance document, to determine the status of a guidance document excluded from the EPA Guidance Portal, the public is encouraged to contact the EPA program office or regional office that issued the guidance document.

EPA also received comments regarding the applicability of the petition procedures. Specifically, one commenter noted that the scope specified in section 2.503(b) of the proposed rulemaking was inconsistent with the proposed petition procedures for modification or withdrawal of a guidance document. The proposed regulation would limit the applicability of the guidance procedures to ''to all active guidance documents as defined in this subpart, issued by all components of the Environmental Protection Agency (EPA) *after [date of issuance for the final rule].*'' The commenter noted that limiting the

applicability of the regulations to guidance documents ''issued after'' the proposed rulemaking was inconsistent with the petition procedures that apply to all active guidance documents on the EPA Guidance Portal, including those issued prior to the effective date of this regulation.

The EPA agrees that the petition process is intended to apply to all active guidance documents and has clarified the applicability in this final regulation. In response to comments, the EPA is clarifying that petition procedures for modification or withdrawal apply to all active guidance documents on the EPA Guidance Portal. For petitions for reinstatement, the procedures apply to guidance documents not currently on the EPA Guidance Portal.

F. Deviation From Procedures (Proposed 40 CFR 2.502(f))

The EPA proposed to allow the Agency to deviate from the procedures set forth in this regulation when necessary at the written direction of the Administrator and in the Administrator's sole and unreviewable discretion.

Several commenters expressed concerns regarding the proposed provision that would allow the EPA to deviate from the required procedures. These commenters claimed that allowing deviation undermines the purpose of the proposed rulemaking, would decrease transparency and certainty, would be contrary to the fundamental principle of administrative law to explain the Agency's decisions, and would lower the likelihood of consistency through this and future administrations.

The EPA agrees with commenters that this provision creates uncertainty and is not finalizing this provision.

IV. Statutory and Executive Orders Reviews

Additional information about these statues and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is exempt from review by the Office of Management and Budget (OMB) because it is a rule of agency procedure and practice and is limited to agency management.

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

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

C. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This is a rule of agency procedure and practice. The EPA expects the benefits of this rule to be improved transparency and management of the EPA's guidance documents.

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.

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. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children. Per the definition of ''covered regulatory action'' in section 2–202 of Executive Order 13045 and because this action does not concern an environmental health risk or safety risk, it is not subject to Executive Order 13045.

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 (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes 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 regulatory action is a procedural rule and does not have any impact on human health or the environment.

L. Congressional Review Act

This rule is exempt from the CRA because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Organization and functions (Government agencies).

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 2 as follows:

PART 2—PUBLIC INFORMATION

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717; Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970).

■ 2. Add subpart D, consisting of §§ 2.501 through 2.507, to read as follows:

Subpart D—Guidance Procedures

Sec.

Authority: 5 U.S.C. 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717; Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970).

§ 2.501 General.

This subpart establishes procedures for the issuance of Environmental Protection Agency (EPA) guidance documents consistent with Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 15, 2019). This subpart also establishes procedures for the public to petition for modification, withdrawal, or reinstatement of such guidance documents.

§ 2.502 Scope.

(a) The procedures in this subpart apply to guidance documents, as defined in § 2.503, excluding those excepted under Section 4(b) of Executive Order 13981 or that are not otherwise subject to Executive Order 13891 or otherwise excepted by the Administrator of OIRA.

(b) Subject to the qualifications and exemptions contained in this subpart, the procedures in this subpart apply to all active guidance documents as defined in this subpart, issued by all components of the EPA after November 18, 2020. The procedures and requirements described in § 2.504 regarding public access to active guidance documents and § 2.507 regarding the procedures for the public to petition for modification or withdrawal shall apply to all active guidance documents regardless of when they were issued. The procedures for petitioning for reinstatement of a rescinded guidance document apply to all guidance documents regardless of when they were issued.

(c) This subpart is intended to improve the internal management of the EPA. As such, it is for the use of EPA personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

(d) If Executive Order 13891, or any provision thereof, is rescinded or superseded, this subpart remains in force.

§ 2.503 Definitions.

For the purposes of this subpart, the following definitions apply:

Active guidance document means a guidance document or significant guidance document in effect that EPA expects to cite, use, or rely upon.

Guidance document means an Agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, subject to the following exclusions:

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

(2) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(3) Rules of Agency organization, procedure, or practice not intended to have substantial future effect on the behavior of regulated parties;

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

(5) Internal guidance directed to the EPA or its components or other agencies that is not intended to have substantial future effect on the behavior of regulated parties;

(6) Internal executive branch legal advice or legal opinions addressed to executive branch officials, including legal opinions by the Office of General Counsel, not intended to have substantial future effect on the behavior of regulated parties;

(7) Agency statements of specific, rather than general, applicability. This would exclude from the definition of ''guidance'' advisory or legal opinions directed to particular parties about circumstance-specific questions; notices regarding particular locations or facilities; and correspondence with individual persons or entities about particular matters, including congressional correspondence or notices of violation unless a document is directed to a particular party but designed to guide the conduct of the broader regulated public;

(8) Agency statements in the form of speeches, press releases, or similar communications, as well as statements of general applicability concerning participation in the EPA's voluntary programs;

(9) Legal briefs and other court filings;

(10) Grant solicitations and awards; or

(11) Contract solicitations and awards.

Rescinded guidance document means a document that would otherwise meet the definition of a guidance document or significant guidance document, but that the EPA may not cite, use, or rely upon except to establish historical facts.

Significant guidance document means a guidance document that is determined to be ''significant'' pursuant to Executive Order 12866 and Executive Order 13891.

§ 2.504 Public access to active guidance documents.

All active guidance documents shall appear on the EPA Guidance Portal on the EPA website.

§ 2.505 Guidance document general requirements and procedures.

(a) *Minimum guidance requirements.* In each guidance document, the EPA will:

(1) Include the term ''guidance'';

(2) Identify the component office issuing the document;

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

(4) Include the date of issuance;

(5) When practicable, identify the general activities to which and the persons to whom the document applies;

(6) Include the citation to the statutory provision (including the U.S.C. citation) or regulation (to the CFR) to which the guidance document applies or which it interprets;

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

(8) Include a short summary of the subject matter covered in the guidance document at the beginning of the document; and

(9) Include a disclaimer stating that the contents of the guidance document do not have the force and effect of law and that the Agency does not bind the public in any way and intends only to provide clarity to the public regarding existing requirements under the law or Agency policies, except as authorized by law or as incorporated into a contract. When a guidance document is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, the statement will reflect that.

(b) *Approval.* A guidance document issued by an EPA Regional Office must receive concurrence from the corresponding Presidentially-appointed EPA official (*i.e.,* the relevant Assistant Administrator or an official who is serving in the acting capacity) at EPA headquarters who is responsible for administering the national program to which the guidance document pertains.

(c) *Avoid mandatory language.* A guidance document will avoid mandatory language such as ''shall,'' ''must,'' ''required'' or ''requirement,'' unless using these words to describe a statutory or regulatory requirement, or the language is addressed to EPA staff and will not foreclose consideration by the EPA of positions advanced by affected private parties.

(d) *Significance determinations.* The EPA will seek significance determinations from the Office of Information and Regulatory Affairs (OIRA) for guidance documents pursuant to E.O. 12866.

§ 2.506 Significant guidance document requirements and procedures.

A significant guidance document will adhere to all the requirements described in § 2.505 and the requirements in this section.

(a) *Draft for public comment.* (1) The EPA will make publicly available a draft significant guidance document, including a significant guidance document that is being reinstated, or draft modification of a significant active guidance document, for public comment before finalizing any significant guidance document. The EPA will post appropriately labeled draft guidance and any supporting documents on the EPA's website.

(2) The EPA will publish a notice in the **Federal Register** announcing the availability of a draft significant guidance document, or draft modification of a significant active guidance document, to open the public comment period.

(b) *Withdrawal of a significant guidance document.* (1) The EPA will seek public comment on the Agency's intent to withdraw a significant active guidance document.

(2) The EPA will publish a notice in the **Federal Register** announcing the Agency's intent to withdraw a significant active guidance document to open the public comment period.

(c) *Public comment process.* (1) Except as provided in paragraph (d) of this section, a draft significant guidance document, or a draft modification or withdrawal of a significant active guidance document, will have a minimum of 30 days public notice and comment before issuance of a final significant guidance document or issuance of the final modified significant guidance document, or withdrawal of an active significant guidance document. Public comments shall be available to the public online, either in a docket or on the EPA website.

(2) The EPA shall respond to major concerns and comments in the final significant guidance document itself or in a companion document.

(d) *Exceptions to comment process.* The EPA will not seek or respond to public comment before the EPA implements a significant guidance document if at the sole discretion of the Administrator:

(1) Doing so is not feasible or appropriate because immediate issuance is required by a public health, safety, environmental, or other emergency requiring immediate issuance of the significant guidance document or a statutory requirement or court order that requires immediate issuance; or

(2) When the Agency for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the significant guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

(e) *Additional notices.* The EPA also will publish a notice in the **Federal Register** when it finalizes a significant guidance document, reinstates a significant guidance document, or finalizes a modification or withdrawal of a significant active guidance document.

(f) *Approval.* On a non-delegable basis, the EPA Administrator or other Presidentially-appointed EPA official, or an official who is serving in the acting capacity of either of the foregoing, will approve a significant guidance document prior to its issuance and posting in the EPA Guidance Portal website.

(g) *Executive order compliance.* A significant guidance document shall comply with the requirements of Executive Orders 12866, 13563, 13609, 13771, 13777, and 13891.

§ 2.507 Procedures for the public to petition for modification, withdrawal, or reinstatement.

(a) *Submission of a petition.* (1) The public may submit a petition to the EPA for the modification or withdrawal of an active guidance document, or reinstatement of a rescinded guidance document.

(2) In order to be considered a valid petition under this section, the petition must address the guidance document in question itself and not merely underlying statutory or regulatory text.

(b) *Petition methods.* A petitioner should only submit a petition to the EPA using one of the two methods in paragraphs (b)(1) and (2) of this section and not submit additional copies by any other method. A petition should be submitted through:

(1) An electronic submission through the EPA's designated submission system identified on the EPA Guidance Portal website; or

(2) A paper submission to the EPA's designated mailing address listed on the EPA Guidance Portal website.

(c) *Petition format.* A petition under this section should include:

(1) The petitioner's name and a means for the EPA to contact the petitioner such as an email address or mailing address, in addition to any other contact information (such as telephone number) that the petitioner chooses to include; and

(2) A heading, preceding its text that states, ''Petition to Modify a Guidance Document,'' ''Petition to Withdraw a Guidance Document,'' or ''Petition to Reinstate a Guidance Document''

(d) *Petition content.* A petition for modification or withdrawal of an active guidance document, or a petition for reinstatement of a rescinded guidance document, should include the following elements:

(1) Identification of the specific title the guidance document that the petitioner is requesting be modified, withdrawn, or reinstated;

(2) For petitions to modify or withdraw a guidance document only, the EPA unique identifier of the guidance document;

(3) The nature of the relief sought (*i.e.,* modification, withdrawal, or reinstatement);

(4) An explanation of the interest of the petitioner in the requested action (*i.e.,* modification, withdrawal, or reinstatement);

(5) For petitions to modify or withdraw a guidance document only, and only if practicable, specification of the text that the petitioner request be modified or withdrawn, and, where possible, suggested text for the Agency to consider; and

(6) A rationale for the requested modification, withdrawal, or reinstatement.

(e) *Petitions received.* The EPA will make available to the public information about petitions received, including the title of the guidance document to which the petition pertains.

(f) *Petition handling.* Failure to follow one of the submission methods described in paragraph (b) of this section and to include in a petition the elements in paragraphs (c) and (d) of this section may create delays in processing time and may result in the EPA being unable to evaluate the merits of the petition.

(1) The EPA may treat a petition that is not submitted as specified in paragraph (b) of this section, but that meets the other elements of this section, as a properly filed petition and received as of the time it is discovered and identified.

(2) The EPA may treat a document that fails to conform to one or more of the elements of paragraphs (c) and (d) of this section as if it is not a petition under this section. The EPA may treat such a document according to the existing correspondence or other

appropriate procedures of the EPA, and any suggestions contained in it will be considered at the discretion of the Administrator.

(g) *Petition response timing.* (1) The EPA should respond to a petition in a timely manner, but no later than 90 calendar days after receipt of the petition.

(2) If, for any reason, the EPA needs more than 90 calendar days to respond to a petition, the EPA will inform the petitioner that more time is needed and indicate the reason why and an estimated response date. The EPA will only extend the response date one time not to exceed 90 calendar days before providing a response.

(h) *Petition response.* The EPA may provide a single response to issues raised by duplicative petitions and petitions submitted as part of a mass petitioning effort.

[FR Doc. 2020–20519 Filed 10–16–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0615; FRL–10015–78–Region 3]

Air Plan Approval; Pennsylvania; Attainment Plan for the Indiana, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision is an attainment plan for the 2010 sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) in the Indiana County, Pennsylvania SO_2 nonattainment area (hereafter referred to as the ''Indiana Area'' or ''Area''). The Indiana Area is comprised of Indiana County and a portion of Armstrong County (Plumcreek Township, South Bend Township, and Elderton Borough) in Pennsylvania. The attainment plan includes the base year emissions inventory, an analysis of the reasonably available control technology (RACT) and reasonably available control measure (RACM) requirements, a reasonable further progress (RFP) plan, a modeling demonstration showing SO_2 attainment, enforceable emission limitations and control measures, contingency measures for the Indiana Area, and Pennsylvania's new source review (NSR) permitting program. As part of approving the attainment plan, EPA is approving into the Pennsylvania SIP new SO_2 emission limits and associated compliance parameters for Keystone Plant (hereafter referred to as ''Keystone''), and existing SO_2 emission limits and associated compliance parameters for Conemaugh Plant, Homer City Generation, and Seward Generation Station (hereafter referred to as ''Conemaugh,'' ''Homer City,'' and ''Seward''). EPA is approving these revisions that demonstrate attainment of the SO_2 NAAQS in the Indiana Area in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 18, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0615. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability of information.

FOR FURTHER INFORMATION CONTACT: Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2027. Ms. Goold can also be reached via electronic mail at *goold.megan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2010, the EPA Administrator signed a final rule establishing a new SO_2 primary NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations. 75 FR 35520 (June 22, 2010), codified at 40 CFR 50.17. This action also provided for revocation of the existing 1971 primary annual and 24-hour standards, subject to certain conditions.[1] Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1)–(2) of the CAA. On August 5, 2013, EPA promulgated initial air quality designations for 29 areas for the 2010 SO_2 NAAQS (78 FR 47191), which became effective on October 4, 2013, based on violating air quality monitoring data for calendar years 2009–2011, where there was sufficient data to support a nonattainment designation.[2] The Indiana Area was designated as nonattainment in this initial (first) round of designations. 78 FR 47191 (August 5, 2013).

The Indiana Area consists of all of Indiana County, Pennsylvania and also Plumcreek Township, South Bend Township, and Elderton Borough in Armstrong County, Pennsylvania. The boundaries of the nonattainment area were defined in order to encompass the four primary SO_2 emitting sources of Keystone, Conemaugh, Homer City, and Seward. The October 4, 2013 effective date of the final designation triggered a requirement for Pennsylvania to submit, by April 4, 2015, an attainment plan SIP revision describing how the Area would attain the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018, in accordance with CAA sections 172(c) and 191–192.

For a number of areas, including the Indiana Area, EPA published a document on March 18, 2016, finding that Pennsylvania and other states had failed to submit the required SO_2 attainment plan by the April 4, 2015 deadline. 81 FR 14736. This finding triggered the CAA section 179(a) deadline for the potential imposition of new source review and highway funding sanctions. Pennsylvania submitted the attainment plan on October 11, 2017. EPA then sent a letter to Pennsylvania, dated October 13, 2017, finding that the attainment plan

[1] EPA's June 22, 2010, final action provided for revocation of the 1971 primary 24-hour standard of 140 ppb and the annual standard of 30 ppb because they were determined not to add additional public health protection given a 1-hour standard at 75 ppb. 75 FR 35520. However, the secondary 3-hour SO_2 standard was retained. Currently, the 24-hour and annual standards are only revoked for certain of those areas the EPA has already designated for the 2010 1-hour SO_2 NAAQS. 40 CFR 50.4(e).

[2] EPA is continuing its designation efforts for the 2010 SO_2 NAAQS. Pursuant to a court-order entered on March 2, 2015, by the U.S. District Court for the Northern District of California, EPA must complete the remaining designations for the rest of the country on a schedule that contains three specific deadlines. *Sierra Club, et al.* v. *Environmental Protection Agency,* 13–cv–03953–SI (N.D. Cal. 2015).

submittal was complete, and therefore the sanctions under section 179(a) would not be imposed as a consequence of Pennsylvania having missed the April 4, 2015 deadline. Additionally, EPA's March 18, 2016 finding triggered a requirement under CAA section 110(c) that EPA promulgate a Federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete submittal and EPA has approved the submittal as meeting applicable requirements. This FIP obligation will no longer apply as a result of this action to finalize this SIP approval.

Attainment plans for SO_2 must meet the applicable requirements of the CAA, and specifically, CAA sections 110, 172, 191, and 192. The required components of any attainment plan submittal are listed in section 172(c) of Title I, part D of the CAA, and additional requirements specific to SO_2 attainment plans are found in CAA sections 191 and 192 and in EPA's implementing regulations at 40 CFR part 51. On April 23, 2014, EPA also issued guidance (hereafter ''2014 SO_2 Nonattainment Guidance'') recommending how state submissions could address the statutory requirements for SO_2 attainment plans.[3] The 2014 SO_2 Nonattainment Guidance describes the statutory requirements for an attainment plan, which include: (1) A comprehensive, accurate, current inventory of actual emissions from all sources of SO_2 within the nonattainment area (172(c)(3)); (2) an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (172(c)); (3) demonstration of RFP (172(c)(2)); (4) implementation of RACM, including RACT (172(c)(1)); (5) Nonattainment NSR requirements (172(c)(5)); and (6) adequate contingency measures for the affected area (172(c)(9)).

II. Summary of SIP Revision and EPA Analysis

In accordance with section 172(c) of the CAA, the Commonwealth of Pennsylvania's October 2017 attainment plan for the Indiana Area includes: (1) An emissions inventory for SO_2 for the plan's base year (2011); and (2) an attainment demonstration. The plan's attainment demonstration includes the following: (1) Analyses that locate, identify, and quantify sources of emissions contributing to violations of the 2010 SO_2 NAAQS; (2) a determination that the control strategy for the primary SO_2 sources within the nonattainment areas constitutes RACM/RACT; (3) a dispersion modeling analysis of an emissions control strategy for the primary SO_2 sources (Keystone, Conemaugh, Homer City, and Seward), showing attainment of the SO_2 NAAQS by the October 4, 2018 attainment date; (4) requirements for RFP toward attaining the SO_2 NAAQS in the Area; (5) contingency measures; (6) the assertion that Pennsylvania's existing SIP-approved NSR program meets the applicable requirements for SO_2; and (7) the request that emission limitations and compliance parameters for Keystone, Conemaugh, Homer City, and Seward be incorporated into the SIP.

On July 13, 2018 (83 FR 32606), EPA published a notice of proposed rulemaking (NPRM) in which EPA proposed approval of Pennsylvania's Indiana, PA SO_2 attainment plan and SO_2 emission limits and associated compliance parameters for the Keystone, Homer City, Conemaugh and Seward sources. During the public comment period, the Sierra Club (in conjunction with the National Parks Conservation Association, PennFuture, Earthjustice, and Clean Air Council) submitted a modeling analysis which purported to show that the emission limits in the attainment plan did not assure attainment because one modeled receptor within the nonattainment area was above the SO_2 NAAQS. Sierra Club's modeling also purported to show exceedances of the SO_2 NAAQS outside of the nonattainment area.

In response to this comment, on February 5, 2020, the Pennsylvania Department of Environmental Protection (PADEP) submitted supplemental information in support of the attainment plan. The February 5, 2020 submittal includes: (1) A supplemental air dispersion modeling report; (2) supplemental air dispersion modeling data; (3) a supplemental air dispersion modeling protocol; (4) a meteorological monitoring plan; (5) meteorological monitoring data; (6) meteorological monitoring quality assurance, quality control, and audit reports; (7) Clean Air Markets Division (CAMD) emissions data for 2010–2018; and (8) Continuous Emissions Monitoring (CEM) data for 2010–2019 (3rd Quarter). The supplemental air dispersion modeling used a more refined model receptor grid than the original submittal, meteorological data collected near the controlling modeled source (Seward) and more recent (2016–18) background concentrations from the South Fayette SO_2 monitor (the monitor used to determine background concentrations in the original modeling analysis). All of these updates have been fully described in the supplemental modeling report from the February 5, 2020 submittal and in four separate Technical Support Documents (TSDs) written by EPA for this action: (1) The TSD for the Randomly Reassigned Emission (RRE) Modeling Analysis in the Supplemental Information to Address a Comment Received by the EPA on Pennsylvania's 1-hour Sulfur Dioxide Attainment Demonstration for the Indiana, Pennsylvania Nonattainment Area submitted on February 5, 2020 (hereafter referred to as the RRE Modeling TSD); (2) the TSD for the Modeling Portions of the Document Entitled ''Supplemental Information to Address a Comment Received by the EPA on Pennsylvania's 1-hour SO_2 Attainment Demonstration for the Indiana, Pennsylvania Nonattainment Area'' (hereafter referred to as the Supplemental Modeling TSD); (3) the TSD Addressing Modeled Concentration Values for the Keystone Generating Station Included in the Indiana, PA 1-Hour SO_2 Nonattainment Area (hereafter referred to as the Keystone Modeling TSD); and (4) the TSD For the Part 75 Source Emissions Contained in the Supplemental Information to Address a Comment Received by the EPA on Pennsylvania's 1-hour Sulfur Dioxide Attainment Demonstration for the Indiana, Pennsylvania Nonattainment Area 2020 submitted on February 5, 2020 (hereafter referred to as the Part 75 Emissions TSD).

In order to allow for public comment on this supplemental information and modeling, on March 9, 2020 (85 FR 13602), EPA published a notice of data availability (NODA) for the February 5, 2020 submittal. Sierra Club submitted new comments raising issues with the supplemental modeling, which are fully discussed later in this preamble.

Other specific requirements of the Indiana Area attainment plan and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. This final action incorporates the rationale provided in the NPRM and the NODA, except to the extent necessary to reflect any changes in the rationale in response to the public comments.

III. Response to Comments

EPA received multiple comments on the NPRM and adverse comments from two commenters on the NODA. To review the full set of comments received, refer to the Docket for the

[3] ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (April 23, 2014), available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

rulemaking, as identified in the **ADDRESSES** section of this document. A summary of the comments and EPA's responses are provided below.

Comment 1. The commenter states that the alternative limits for Homer City are greater than the critical emission value (CEV),[4] with no explanation given. The CEV for the three units at Homer City are 6,360 pounds per hour (lb/hr) for all three combined. There are multiple emissions limits in the proposal for Homer City that are higher than the CEV. There is a start-up limit of 9,000 lb/hr, and an alternative limit of 7,300 lb/hr for all units in a transition phase. These limits are higher than the CEV and the commenter believes they would thus lead to NAAQS violations. The commenter argues that the modeling shows that these additional limits would violate the NAAQS.

Response 1. EPA agrees with the commenter that there are multiple SO_2 emission limits for Homer City. However, EPA disagrees that the modeling shows that the alternative limits would result in SO_2 emissions concentrations that violate the NAAQS. The modeling does not include the alternative limits since they are intermittent in nature, and, as explained in more detail later in this preamble, Pennsylvania correctly excluded them from the modeling demonstration.

The Homer City emission limits for start-up, shut down and the Novel Integrated Desulfurization (NID) system transitions are limited to 500 hours combined in any 12-month rolling period. As stated in EPA's March 2011 Memorandum on Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard (hereafter referred to as the ''March 2011 Clarification Memo'') [5] and as specifically referenced in EPA's August 2010 Memorandum on the Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 National Ambient Air Quality Standard,[6] EPA believes the most appropriate data to use for compliance demonstrations for the 1-hour SO_2 NAAQS are those based on emissions scenarios that are continuous enough or frequent enough to contribute significantly to the annual distribution of daily maximum 1-hour concentrations. EPA's modeling recommendations involve a degree of conservatism in the modeling assumptions for demonstrating compliance with the NAAQS by recommending the use of maximum allowable emissions. The intermittent nature of the actual emissions associated with these transitions, when coupled with the probabilistic form of the SO_2 standard, could result in modeled impacts being significantly higher than actual impacts would realistically be expected to be if the maximum allowable emissions were modeled continuously year round.

EPA is concerned that if emissions occurring during intermittent operations are assumed to be occurring continuously, this would impose an additional level of stringency beyond that intended by the level of the standard itself. EPA, therefore, recommended that compliance demonstrations for the 1-hour SO_2 NAAQS be based on emission scenarios that can logically be assumed to be relatively continuous or which occur frequently enough to contribute significantly to the annual distribution of daily maximum 1-hour concentrations. Existing modeling guidelines provide sufficient discretion for states to exclude certain types of intermittent emissions from compliance demonstrations for the 1-hour SO_2 standard under these circumstances.

Pennsylvania's exclusion of the alternative limits for Homer City (which are limited to a combined 500 hours in a 12-month rolling period) in the modeling demonstration follows EPA's guidance regarding intermittent emission scenarios. The modeling demonstration provided by Pennsylvania provides support that the one-hour emission limit that was adopted by Homer City provides for attainment of the NAAQS.

Comment 2. The commenter asks EPA to explain why there are numerous values in micrograms per cubic meter ($\mu g/m^3$) that have been translated to 75 ppb. The commenter notes in this action EPA is using 1 ppb = approximately 2.619 g/m^3, [7] and in other EPA documents, the conversion factor of 2.62 was used. The commenter claims that this use of multiple conversion factors is a hindrance in determining if an area has met the standard.

Response 2. The commenter is correct in stating that historically EPA has accepted a range of values for the $\mu g/m^3$ equivalent to 75 ppb. In the Round 3 intended designations (82 FR 41903) published September 5, 2017, EPA recognized the need noted by the commenter to identify and apply a consistent value expressed in $\mu g/m^3$ that EPA considers equivalent to 75 ppb. At that time, EPA endorsed a value of 196.4 $\mu g/m^3$ (based on calculations using all available significant figures). To avoid confusion, EPA is expecting attainment demonstrations to show achievement with concentrations at or below precisely 196.4 $\mu g/m^3$.[8]

Comment 3. The commenter asserts that the longer term limits applicable to Seward and Keystone (1) do not follow EPA's 2014 SO_2 Nonattainment Guidance; (2) are not comparably stringent to the one-hour CEV; and (3) are not based on maximum allowable emissions. The commenter argues that approval of these longer term limits would be arbitrary and capricious. The commenter provides the following reasons as to why the emission limits have not followed EPA's 2014 SO_2 Nonattainment Guidance: (1) EPA is proposing to approve longer term emission limits that are higher than the comparably stringent emission limits that are calculated via Appendix C methodology; and (2) EPA is proposing to approve longer term emission limits that were calculated using Appendix B methodology, which was provided in the 2014 SO_2 Nonattainment Guidance to justify the Appendix C methodology. The commenter therefore argues that using Appendix B methodology to calculate emission limits is contrary to the purposes of that Appendix as described in the 2014 SO_2 Nonattainment Guidance. The commenter continues that EPA is now proposing to approve emission limits that are based on a facility's actual historic emissions, instead of maximum allowable emissions. This is unprecedented and does not meet the requirements of 40 CFR 51.112 and 40 CFR part 51 appendix W, which

[4] The CEV is the continuous 1-hour emission rate which modeling shows is expected to result in the 3-year average of annual 99th percentile daily maximum 1-hour average concentrations being at or below 75 ppb, which in a typical year means that fewer than four days have maximum hourly ambient SO_2 concentrations exceeding 75 ppb.

[5] Memorandum, Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard. March 2011. *https://www.epa.gov/sites/production/files/2015-07/documents/appwno2_2.pdf.*

[6] Memorandum, Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 National Ambient Air Quality Standard. August 2010. *https://www3.epa.gov/ttn/scram/guidance/clarification/ClarificationMemo_AppendixW_Hourly-SO2-NAAQS_FINAL_08-23-2010.pdf.*

[7] The commenter erroneously claims that EPA is using 1 ppb = 2.619 g/m^3. EPA believes the commenter meant to write 2.619 $\mu g/m^3$.

[8] While some Round 3 designation TSDs explained that this value was ''equivalent . . . using a 2.619 $\mu g/m^3$ conversion factor'' (more precisely, using a conversion factor of approximately 2.6187), in fact EPA here was determining the concentration value in $\mu g/m^3$ that is to be considered equivalent to 75 ppb, rather than the precise value of the conversion factor.

mandates the use of allowable emissions.

Response 3. EPA agrees that Pennsylvania did not employ EPA's SO_2 Nonattainment Guidance Appendix C methodology in developing the longer term emission limits for the Seward and Keystone facilities. EPA also agrees that the longer term emission limits for Seward and Keystone are higher than the emission limits would be if the state used the Appendix C methodology. However, that does not mean that the longer term emission limits are not protective of the NAAQS, nor does it mean that the emission limits are arbitrary and capricious.

EPA's 2014 SO_2 Nonattainment guidance explains how state air agencies might establish emissions limitations for sources such as Seward and Keystone that have averaging periods that are longer than one hour in duration. Appendix W to 40 CFR part 51—Guideline on Air Quality Models, requires modeling conducted in support of SIP limits to be representative of maximum allowable emission rates. In most cases, EPA requires using the American Meteorological Society (AMS)/EPA Regulatory Model or AERMOD near-field dispersion modeling system. While uses of AERMOD for attainment planning purposes generally use a constant emission rate for each source throughout the duration of a simulation, AERMOD can also be run with time-varying emissions, varying for example by month or by hour.

In formulating its 2014 guidance, EPA recognized the challenges of representing allowable emissions for a limit that reflects a longer-term average. EPA recommended an approach which did not require any development of variable emission profiles to represent allowable emissions. Instead, EPA's recommended approach relies on traditional modeling of a constant emission rate, for purposes of determining the 1-hour average emission rate that if adopted as a 1-hour limit would provide for attainment. In normal circumstances, a longer-term average limit at a given level is inherently less stringent than a 1-hour limit at the same level. Therefore, EPA's recommended approach then uses appropriate data, generally taken from the historical record for the pertinent source, to obtain a quantitative estimate of the reduction of a one-hour limit's stringency arising from use of the longer-term average. The ratio derived in this approach (found by comparing the 99th percentile among the longer-term average values in the data set against the 99th percentile among the 1-hour values in the data set) serves as an adjustment factor. In EPA's recommended approach, this adjustment factor is applied to the modeled (1-hour) attaining emission rate, and the resulting, downward adjusted longer-term average emission limit is presumed to have comparable stringency to a 1-hour limit at the modeled emission rate. This approach is described at length in the body of EPA's 2014 guidance (see pages 22 to 39) and delineated as a step-by-step procedure in Appendix C of the guidance. Appendix B of the guidance presents analyses that support EPA's view that longer-term limits that are comparably stringent to their 1-hour counterparts may be expected to yield comparable air quality.[9]

EPA has approved several SIPs relying on longer term average limits derived according to these methods. See, for example, 83 FR 4591 (February 1, 2018) (approval of Illinois SO_2 SIP); 83 FR 25922 (June 5, 2018) (approval of New Hampshire SO_2 SIP); 84 FR 8813 (March 12, 2019) (approval of Arizona SO_2 SIP); 84 FR 30920 (June 28, 2019) (approval of Kentucky SO_2 SIP); 84 FR 51988 (October 1, 2019) (approval of Pennsylvania SO_2 SIP for the Beaver County area); 85 FR 22593 (April 23, 2020 (approval of Pennsylvania SO_2 SIP for the Allegheny County area), and 85 FR 49967 (August 17, 2020) (approval of Indiana SO_2 SIP). As part of its 2014 SO_2 Nonattainment Guidance, EPA added that states are not precluded from using other approaches to determine appropriate longer-term average limits (see page 26).

For the Indiana County area, Pennsylvania did not use the methods discussed in the 2014 guidance for deriving its limits, but instead developed a different approach. Therefore, the validity of EPA's recommended approach in the 2014 guidance and the validity of the resulting longer-term average limits when using that approach, which are issues in other rulemakings such as those cited previously, are not at issue in this rule. Instead, at issue in this rule is whether the particular approach applied by Pennsylvania suffices to demonstrate that its adopted and submitted allowable emissions limits provide for attainment as required in CAA sections 110, 172, and 192.

Pennsylvania used conceptually similar approaches for assessing the adequacy of limits for Keystone and for Seward, though selected features of these analyses differ. Therefore, the following first discusses the analysis for Keystone and then discusses the analysis for Seward.

Pennsylvania's different approach for Keystone (as for Seward) began at the same starting point as EPA's 2014 guidance's recommended approach. As recommended by EPA, Pennsylvania determined the 1-hour CEV (9,711 lb/hr) for Keystone using AERMOD. Then, Pennsylvania provided modeling addressing its proposed limit for Keystone using an approach which relies on a large number of AERMOD simulations and an underlying data set that represents recent hourly emissions variability of the source (referred to as RRE Modeling). This approach relies on the expectation that future variability of Keystone while meeting the limit is likely to be similar or less than historic variability given that no major changes are planned for the source (*i.e.,* no new control equipment, fuel changes, etc.), except for the imposition of a new 24-hour emission limit based on this attainment SIP. EPA analyzed 10 past years of Keystone's emissions and operational data, and the regional transmission organization Pennsylvania-New Jersey-Maryland (PJM) forecasts for future electric demand, which support these suppositions (see the Part 75 Emissions TSD in the docket for this rule).

The hourly modeled emission values were based on actual emissions and determined through a binning approach further described in the RRE Modeling TSD. Keystone has had highly variable emissions in the past. Hourly emissions are less variable in recent years. The source's historic emissions profile was such that the actual emission rate for 15% of the hours per year were above the CEV of 9,711 lb/hr, and those hours fell within 15 days in each month. Because of this pattern, where hourly values above the CEV were clustered together on a limited number of days rather than individually dispersed throughout the year, Pennsylvania created a ''rule'' in the modeling, whereby the hours over the CEV were modeled in clusters which Pennsylvania calls ''high emission event days.'' The total amount of SO_2 emissions each day, however, are constrained by a limit

[9] See also work done to supplement the work described in appendix B. This supplemental work, done to address a comment on rulemaking for the Southwest Indiana SO_2 nonattainment area objecting that the appendix B analysis is not comparable to an assessment of air quality with a 1-hour emission limit, provides further evidence that longer term limits that are appropriately determined can be expected to achieve comparable air quality as comparably stringent 1-hour limits. Documentation of this supplemental work is available in the docket for the Southwest Indiana rulemaking, at *https://www.regulations.gov/document?D=EPA-R05-OAR-2015-0700-0023,* as discussed in the associated rulemaking at 85 FR 49969–49971 (August 17, 2020).

which restricts the total pounds of SO_2 emissions, on a 24-hour block average basis, to be at or below 9,600 lb/hr. The hours for which the emissions were modeled above the CEV were not randomly dispersed individually throughout the year because the plant did not and likely will not operate that way in order to meet the limit. Thus, these high emission events were modeled in a way that is representative of the variability in the historic emissions data and in compliance with the allowable emissions limit.

The ''rule'' constrained the high emission events days to not exceed 9,604 lb/hr on a 24-hour block average; however, not every day was modeled with hourly emission rates resulting in a 24-hour block average at or near 9,604 lbs/hr. As previously described, the historical emissions data demonstrate that not every day is a high emission event day based on the historic variability of the source. Pennsylvania modeled about 50% of the days in a month where hourly SO_2 emissions were always below the CEV value and about 50% of the days in a month as high emission event days where there were at least three hours over the CEV during that 24 hours. The high emission events days included nine days (30% of the days) in a month where the 24-hour averages were near 9,600 lb/hr. The remaining six high emission event days per month experienced three hours of emissions above the CEV, yet emissions during the remaining hours of the day resulted in the 24-hour daily average falling at 6,333 lb/hr for five of the six days and at 8,964 lb/hr for one of the six days. However, the other hours in these days were assigned values at or below the CEV, reflecting the predominance of values below the CEV in the modeled emissions distribution (which in turn reflected the predominance of values below the CEV in the historical record), resulting in daily average emission rates for these days below 9,600 lb/hr. The remaining days (not categorized as high emission events days) had 24-hour daily average emissions between 5,000 lb/hr and 6,200 lb/hr.

Pennsylvania developed 100 different annual emission profiles using the historic data of high emission event days, and randomly assigning the other hourly emissions such that the 24-hour limit of 9,600 lbs/hr is modeled 30% of the days across each month, which is representative of the variation within the historical emissions. These emission files provide a large array of temporally varying hourly emissions which take into account the ''rule'' where hourly emissions above the CEV are clustered together into high emission event days, representative of the variability in the historic emissions data and are reflective of historic plant operations. Each of the 100 emissions scenarios (each reflecting compliance with the emissions limit) were modeled with five years of meteorological data using AERMOD. For each of the 100 5-year AERMOD simulations for Keystone, the 5-year average of the 99th percentile of the daily maximum 1-hour SO_2 modeled concentrations were below the NAAQS.[10]

EPA concludes that this modeling provided enough permutations of emissions and meteorology that we can be reasonably confident that the longer-term limit is protective of the NAAQS. This conclusion is based upon the large number of emission distribution profiles (100), the frequency and distribution of high emission event days, the 9,600 lb/hr 24-hour emission limit modeled 30% of the days per month, emissions inputs reflective of the variability in historic plant operations, and meteorological data (five years of National Weather Service data).

Pennsylvania used the same general modeling approach to support the 30-day rolling average SO_2 emission limit for Seward. First, Pennsylvania determined Seward's CEV of 4,500 lb/hr using AERMOD.[11] Then, using 2016–2018 emissions from Seward, Pennsylvania developed a binned emissions dataset to be used in formulating the inventories modeled in 100 AERMOD simulations. Pennsylvania used a total of 13 bins, including five bins ranging from an upper level of 2,000 lbs/hour to an upper level of 4,500 lbs/hour and eight bins at various ranges above the CEV. Hours without operation were represented as hours with 2,000 lbs/hour, and other hours were represented with the upper level of the applicable bin. The dataset included 2.5% of emissions above the CEV (or 220 hours). This was based on how the plant historically operated while complying with this 30-day limit and how it is expected to operate into the future while in compliance with the 30-day limit. The hours above the CEV were distributed across four high emission events, where the duration of each event was 4, 7, 12, or 16 hours, with the frequency of those events being twice per month, monthly, every six months and once per year, respectively, such that these 220 hours above the CEV were spread across 39 days.

The remaining 97.5% of hourly emissions were below the CEV and randomly assigned throughout the annual emission profile. EPA analyzed 10 past years of Seward's emissions and operational data and PJM forecasts for future electric demand, and understands that no major changes are planned for the source (*i.e.,* no new emission limits, no new control equipment, fuel changes, etc.) (See the Part 75 Emissions TSD in the docket for this rulemaking). Therefore, EPA believes that the future variability of Seward while meeting the limit is likely to be similar to historic variability.

Pennsylvania calculated a weighted average of the emissions in the binned inventory by multiplying the bin level times the percentage of hours in each bin and summing the results. This sum, representing the average of the modeled emissions, equaled 3,088 lb/hr. Despite minor variations resulting from the random distribution process, each of the 100 AERMOD simulations had approximately this average level of emissions.

Pennsylvania developed 100 different annual emission profiles using the historic data of high emission event days, and randomly assigning the other hourly emissions such that the average of the 30-day averages of each simulation was close to 3,088 lb/hr, which is representative of the variation within the historical emissions. Seward's SO_2 emissions limit of 3,038.4 lb/hr on a 30-day rolling average basis is approximately 50 lb/hr less than the approximate average emissions value used in the AERMOD simulations.

Each of the 100 emissions scenarios (each with average emissions above the limit level) were modeled with one year of site specific meteorological data using AERMOD. For each of the 100 AERMOD simulations for Seward, the 99th percentile of the daily maximum 1-hour SO_2 modeled concentrations were below the NAAQS.

EPA concludes that this modeling provided enough permutations of emissions and meteorology that we can be reasonably confident that Seward's longer-term limit is protective of the NAAQS. This conclusion is based upon the large number of emission distribution profiles (100), the targeted 30-day emissions average value in each simulation being set slightly above the 30-day average limit, model inputs reflective of the variability in historic plant operations (based on EPA's review of 10 years of emissions data) and one year of site specific meteorological data.

[10] See EPA's March 1, 2011 clarification memo *Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard*.

[11] This CEV and the description provided are based on Pennsylvania's updated analysis which was provided to EPA on February 5, 2020.

Pennsylvania's modeling process is described in Appendix C–1 of the state submittal, in the state's February 5, 2020 supplemental modeling report, in EPA's TSD for the proposed rulemaking entitled ''State Implementation Plan Revision: Attainment Demonstration and Base Year Inventory Indiana, PA Nonattainment Area for the 2010 1-Hour SO_2 NAAQS'', dated October 2017 (hereafter referred to as the ''October 2017 Modeling TSD''), and EPA's RRE Modeling TSD, which are available in the docket.[12]

In regard to the commenter's concern that Appendix B was not meant to provide guidance on how to develop a longer term limit, EPA agrees that neither the Guidance nor Appendix B stated that Appendix B was a recommended approach to develop longer term emission limits. Nevertheless, EPA believes that elements of the methodology used in Appendix B may be used to assess whether a longer term limit could be protective of the NAAQS.

Although the analysis described in Appendix B does not use allowable emissions (insofar as only the maximum 30-day average emissions equal the 30-day average limit), the analyses in Pennsylvania's submittal differ in some respects from the analysis described in Appendix B, and EPA must evaluate Pennsylvania's submittal on its own merits. For reasons described previously, EPA believes that Pennsylvania's modeling provides a suitable demonstration that the plan provides for attainment. Using actual historic operations as a basis for developing the emission rates used in the modeling analysis is in EPA's opinion a reasonable approach. Past actual operations provide the data necessary to develop a representative and realistic range of emission rates to be used in the RRE simulations to assess if Seward's 30-day rolling average limit provides for attainment. Without the bounds of past operations, there are an infinite number of emission scenarios that could fit within Seward's 30-day rolling limit (and to a lesser extent Keystone's 24-hour block limit). For example, Seward could emit 2,186,929 lbs between midnight and one in the morning then 1 lb/hr for the next 719 hours and still meet its limit (it is impossible that Seward can emit at this rate, but this illustrates that there is a wide range of numeric operating scenarios which could still result in compliance with the 30-day average limit). On the other hand, Seward could emit 3,084 lb/hr for 720 hours with no variability and meet its limit. Neither of these scenarios are likely to occur, and thus EPA believes that Pennsylvania has appropriately used historical data to develop a representative distribution of potential future hourly emissions that can be expected to occur when complying with a longer term limit.

In summary, EPA has concluded that Pennsylvania's evaluation of longer term limits using 100 AERMOD simulations provides reasonable confidence that the longer term limits for Keystone and Seward are protective of the NAAQS. Pennsylvania evaluated the likelihood of violations based on random reassignment of emission profiles designed to reflect the historic variability of emissions at each of these plants, and modeled these emission profiles using appropriate meteorological data (1-year of site specific meteorological data for Seward and five years of representative meteorological data for Keystone). Because an hour with emissions above the CEV will not necessarily experience a NAAQS exceedance, Pennsylvania's analysis showing the source's emissions variability, when randomly reassigned to different hours in the year, with a percentage of hours modeled above the CEV, provides evidence that the sources complying with those longer term emission limits will protect the NAAQS.

Comment 4. The commenter states that the 30-day average limit for Seward was calculated contrary to EPA Guidance. The commenter notes that the conversion factor AECOM presented in worksheets of 0.47 was not used, and a conversion factor of 0.60 was used. The commenter asserts that the conversion factors of 0.47 and 0.60 are both too permissive. The commenter provided an analysis which they claim demonstrates that the conversion factor is dependent on the time period used to analyze Seward's emission, and that the 0.47 and 0.60 conversion factors are inconsistent with the actual variability observed in Seward's emissions.

A similar comment was received on the NODA, where the commenter asserted that AECOM failed to employ a conversion factor that ''properly reflects the emissions variability'' at Seward and ignored EPA's 2014 Nonattainment Guidance Appendix C methodology. AECOM provided a conversion factor of 0.47 that was not used to calculate the longer term limit. Rather, the commenter asserts, AECOM used Appendix B methodology to calculate longer term limits, and the commenter asserts this is against the stated purpose of Appendix B.

Response 4. EPA agrees that the adjustment factor (which the commenter refers to as the ''conversion'' factor) which was calculated by AECOM of 0.47 using Appendix C methodology was not used to calculate the longer term emission limit for Seward. However, EPA does not agree that an adjustment factor of 0.60 was used. Adjustment factors were not used to develop the emission limit for Seward. In determining whether the longer term limit at Seward was supportive of the NAAQS, Pennsylvania considered variability of the source in a different manner than the recommended Appendix C methodology. As described in Response 3 of this preamble, Pennsylvania used a modeling approach which varied emissions and meteorology in 100 AERMOD simulations to evaluate the adequacy of the 30-day rolling average SO_2 emission limit for Seward.

EPA acknowledges that if EPA's recommended adjustment factor approach is used to convert a shorter term emission limit into a longer term emission limit, the calculated adjustment factor can vary depending on the time period used to analyze the source's emissions, though as a general matter EPA expects that different periods with suitably robust data sets and similar control regimes will have similar variability and calculated adjustment factors. However, the state did not use EPA's recommended approach for developing the longer term emission limit for Seward. The commenter did not explain why its objections to an adjustment factor that was not used are relevant. The question is not whether Pennsylvania used the correct adjustment factor to develop the longer term limit, but whether the longer term limit, which was developed without an adjustment factor, is set at a level which is protective of the NAAQS. Based on the information provided in Response 3 of this preamble, EPA concludes that the 30-day limit for Seward and the 24-hour block limit for Keystone are protective of the NAAQS, and that the commenter's objections related to the un-used adjustment factor are not relevant to this determination.

Comment 5. The commenter asserts that the longer term limits for Seward and Keystone are fundamentally incapable of protecting the 1-hour SO_2 NAAQS. The commenter asserts that an emission limit with an averaging period longer than one hour is highly unlikely to protect the short term standard, and spikes in emissions could cause short term elevations in ambient SO_2 levels sufficient to violate the NAAQS while nonetheless averaging out over a longer

[12] The analysis was updated in the February 5, 2020 submittal.

period such that the source complies with their longer term limit. The commenter cites to previous EPA documents stating that compliance with emission limits should be determined based on an averaging time consistent with the NAAQS.[13] The commenter asserts that the 30-day emission limit proposed for Seward is 720 times the standard. The commenter provided an assessment of historic hourly emissions from 2011 to 2016 for Seward and concluded that during this period, there were 445 hours in which emissions from the plant exceeded its CEV. The commenter states that because exceedances [14] of the NAAQS can occur if as few as four hours over the course of a year are above 75 ppb, the 30-day proposed emission limit cannot be protective of the NAAQS.

The commenter also states that the 24-hour emission limit proposed for Keystone is also inadequate to protect against violations of the NAAQS. The commenter provided an analysis of historic hourly emissions data from 2011 to 2016 for Keystone [15] and concluded that Keystone had exceeded its CEV 12,830 total hours over the examined period. The commenter argues that given the Keystone and Seward emissions limits are not new requirements, it is questionable that these limits will protect the NAAQS.

Response 5. The commenter is incorrect in stating that Keystone does not have new emission limit requirements. Prior to the attainment plan, the SO_2 emission limit at Keystone was set at 1.2 lb/MMBtu on a 30-day rolling average basis. A new SO_2 limit was established in this attainment plan for Keystone of 9,600 lb/hr average calculated on a 24-hour block basis, a limit which went into effect on October 1, 2018. Therefore, the commenter's reasoning that the Keystone limit will not protect the NAAQS because the past emissions exceeded the CEV 12,830 hours in a six-year period (prior to the adoption of the limit) is based on faulty information. Subsequent evidence indicates, as expected, that imposition of the limit has led to a significant decline in the frequency of emissions exceeding the CEV.

EPA disagrees with the commenter's statement that the proposed 30-day limit for Seward and the 24-hour limit for Keystone are fundamentally incapable of protecting the 1-hour SO_2 NAAQS. Pennsylvania has conducted detailed modeling supporting the view that the distribution of emissions that can be expected in compliance with its requested SIP limits will provide for attainment. The specific examples of earlier EPA statements cited by the commenter (*i.e.,* those contained in Exhibits 1 and 2 to Appendix A of the comment submission) pre-date the release of EPA's 2014 SO_2 Nonattainment Area Guidance. As such, these examples only reflect the Agency's development of its policy for implementing the 2010 SO_2 NAAQS as of the dates of the issuance of the statements. At the time these statements were issued, EPA had not yet addressed the specific question of whether it might be possible to devise an emission limit with an averaging period longer than one-hour, using appropriate adjustments that would make it comparably stringent to an emission limit shown to attain one-hour emission levels or other possible approaches, that could adequately ensure attainment of the SO_2 NAAQS. None of the pre-2014 EPA documents cited by the commenter address this question; consequently, it is not reasonable to read any of them as rejecting that possibility.

In contrast, EPA's 2014 SO_2 Nonattainment Area Guidance specifically addressed this issue as it pertains to SIP requirements for SO_2 nonattainment areas under the 2010 NAAQS. EPA found that a longer term average limit could be devised such that it is likely to yield attaining air quality under the one-hour NAAQS. See 2014 SO_2 Nonattainment Guidance. While EPA's guidance focuses on a different approach (involving establishment of a longer term average limit that is comparably stringent to the one-hour limit that would otherwise be set), EPA believes that Pennsylvania has made a suitable demonstration that its limits are adequate to provide for attainment.

Any analysis of whether a 30-day or 24-hour average limit provides for attainment must consider factors for reducing the likelihood of 1-hour average concentrations that exceed the NAAQS level as well as factors creating a risk of additional concentrations that exceed the NAAQS level. To facilitate this analysis, EPA used the concept of a CEV for the SO_2-emitting facilities which are being addressed in a nonattainment SIP. The CEV is the continuous 1-hour emission rate which modeling shows is expected to result in the 3-year average of annual 99th percentile daily maximum 1-hour average concentrations being at or below 75 ppb, which in a typical year means that fewer than four days have maximum hourly ambient SO_2 concentrations exceeding 75 ppb. See 2014 SO_2 Nonattainment Guidance.

EPA recognizes that a 30-day or 24-hour average limits can allow occasions in which hourly emissions from the source exceed the CEV, and such occasions yield the possibility of ambient concentrations exceeding the NAAQS level that would not be expected if emissions were always at the CEV. At the same time, the establishment of the longer term average limit at a level below the CEV means that emissions must routinely be lower than they would be required to be with a 1-hour emission limit set at the CEV.

As described in detail in Response 3 of this preamble, the RRE modeling runs submitted by Pennsylvania specifically modeled ''high emission events'' at Keystone and Seward where the hourly emissions exceeded the CEV. The RRE modeling used the distribution of past hourly SO_2 emissions, with a certain number of hours over the CEV (15% of the hours at Keystone and 2.5% of the hours at Seward were modeled with emissions over the CEV). For each facility, the emissions in the resulting emission profiles were randomly reassigned to develop 100 hourly emission files for use in 100 AERMOD simulations. The AERMOD simulations were conducted with the same general methodology as the air dispersion modeling for the CEVs, except that the hourly emission files, for either Keystone or Seward, replaced the CEV in AERMOD. All of these AERMOD simulations resulted in maximum 1-hour SO_2 design concentrations equal to or less than the NAAQS, which provides sufficient support for EPA to assert that the longer term emission limits for Seward and Keystone are protective of the NAAQS.

While the commenter claims that emissions above the CEV will cause NAAQS violations, no analysis has been provided to support this assertion. In contrast, Pennsylvania did provide a detailed modeling analysis which specifically showed that the longer term limits for Seward and Keystone, including a percentage of hours over the CEV, provide for attainment. A more detailed discussion of the hourly emissions data for Seward and Keystone and the RRE analysis is provided in the Part 75 Emissions TSDs, the Supplemental Modeling TSD and the

[13] EPA Region 7 Comments re: Sunflower Holcomb Station Expansion Project 4 (August 12, 2010); EPA Region 5 comments re: Monroe Power Plant Construction Permit 1 (February 1, 2012).

[14] For clarity, EPA notes that a violation of the 2010 SO_2 NAAQS occurs when the 3-year average of the 99th percentile of the yearly distribution of daily maximum 1-hour average concentrations is above 75 ppb. The 2010 SO_2 NAAQS is not a single exceedance based standard.

[15] EPA notes that the graph provided on page 7 of the Comment document indicates the commenter's analysis is based on a CEV equal to 9600 lb/hr, however, the CEV for Keystone is 9711 lb/hr.

RRE Modeling TSD found in the docket for this action.

Comment 6. The commenter states that EPA's justification for Pennsylvania's use of the Appendix B methodology for developing longer term emission limits is nonsensical and contrary to EPA's 2014 SO_2 Nonattainment Guidance. The commenter cites EPA's Guidance, which suggests that longer term emission limits are most appropriate where periods of hourly emissions above the CEV are a rare occurrence at a source, particularly if the magnitude of the emissions is not substantially higher than the CEV. These periods of time over the CEV would be unlikely to have a significant impact on air quality, because they would be very unlikely to occur repeatedly at the times when the meteorology is conducive for high ambient concentrations of SO_2. However, the commenter indicates that in the TSD for the NPRM, EPA states that a survey of emissions from 2014–2016 for Keystone showed hourly emissions exceeded the CEV quite frequently and therefore Appendix B was chosen to model attainment. The commenter argues that reasoning is nonsensical.

Response 6. EPA's 2014 SO_2 Nonattainment Guidance provides recommendations, but does not require states to follow the guidance in each aspect of their submittal. The state may decide to use a different approach than recommended by EPA, and it is EPA's role to determine if that approach and the result is reasonable and protective of the NAAQS. In this case, the state used elements of the methodology described in Appendix B to demonstrate that the longer term limits for Keystone are protective of the NAAQS. Regardless of the state's reasoning for using that approach, EPA must judge the state's submittal.

EPA's proposal that the SO_2 emission limits at Keystone are protective of the NAAQS relies upon Pennsylvania's RRE modeling analysis. Pennsylvania's SO_2 limits with averaging periods of longer than one-hour can provide sources flexibility to deal with the inherent variability in their SO_2 emissions and emission control systems.

Pennsylvania submitted RRE model simulations that calculate design values over the model receptor grid based on varying hourly emissions that for Keystone exceeded the 1-hour CEV emission rate approximately 15% of the hours in a year. The RRE simulations allow the model to determine if the total contribution to the averaged design value by the hours exceeding the 1-hour CEV, when considered along with the hours in which emissions are below the 1-hour CEV, and in compliance with the target emission limit, would result in a modeled NAAQS violation. Pennsylvania developed 100 sets of hourly emission data sets where Keystone's peak daily average emission rate was equal to a target value of 9,600 lb/hr (the new SO_2 24-hr emission limit), 85% of the hours were modeled below the CEV, and 15% of the hours were modeled above the CEV. The RRE evaluation shows compliance with the NAAQS since all 100 simulations return modeled design values less than or equal to 75 ppb. If the modeled emission limits were not protective, the RRE test would show modeled design values above the 1-hour SO_2 NAAQS.

Because Pennsylvania did not follow the approach in Appendix C from EPA's SO_2 Nonattainment Guidance to develop the longer term limit for Keystone, this analysis was the evidence EPA relied on to determine that the longer term limit for Keystone was protective of the NAAQS. In any case, more recent evidence indicates that Keystone's compliance with its new limit will result in substantially fewer hours when emissions exceed the CEV. For example, in 2019, after the limit took effect, only 35 hours exceeded the CEV, representing 0.4% of the 8,623 operating hours during the year.

Comment 7. The commenter asserts that AECOM's modeling erroneously splits the nonattainment area into two modeling domains, and thus does not adequately assess the impacts of the four electric generating units (EGUs) together. The commenter points out that the modeled peak impact for Armstrong County of 192.3 μg/m^3 is due to Keystone impacts only, and does not include impacts from the other three EGUs. The commenter notes that the maximum modeled concentration from Seward [16] of 194.44 μg/m^3 occurs just over the border between Indiana and Armstrong Counties on the Indiana County side, and that simulation includes all four EGUs. The commenter thinks that both results cannot be true: Either the maximum impact reported for Seward is incorrect because it considers all four EGUs or the modeling in Armstrong County needs to include all four EGUs. The commenter also argues that EPA used an incorrect rationale for approving the two separate modeling domains. Specifically, the commenter is concerned that the wind rose provided in the TSD shows that winds having a southeasterly component occur approximately 15% of the time, which they claim is not ''infrequent,'' as EPA describes in that TSD. Also, the commenter takes issue with the fact that the background concentrations used in the two modeling domains are different—while the same monitor is used, the dates from the monitoring values are different (2014–2016 vs. 2013–2015). The commenter believes that the same date range should be used.

Response 7. EPA disagrees that the nonattainment area was erroneously split into two modeling domains and that this splitting of the nonattainment area into separate modeling domains would not correctly consider the joint impacts of all four sources included in the Indiana, PA SIP modeling demonstration. EPA believes that modeling two domains was warranted in this case based on the justification provided by Pennsylvania in Appendix C–1a (AECOM's SO_2 NAAQS Compliance Modeling Report for the Indiana, PA Non-Attainment Area: Phase 1 Modeling (Revision No. 1)) of the state's submittal. EPA believes that the commenter misunderstands the model results for Seward and Keystone based on the fact that the commenter noted that the maximum modeled concentration from Seward was 194.44 μg/m^3, which is actually the peak modeled concentration around Keystone.[17]

EPA will further explain the reasoning for the use of the split modeling domains and the reasons supporting EPA's conclusion that the use of two modeling domains in this case is appropriate. The nonattainment area was divided into two modeling domains; one covering portions of Armstrong County surrounding Keystone, and one covering all of Indiana County. In the Armstrong domain, Pennsylvania modeled Keystone as the only source. In the Indiana domain, Pennsylvania modeled all four SIP sources. EPA agrees with this approach because of the long aerial transport distances (for SO_2) between Keystone and the remaining SIP sources in Indiana County, and the prevailing wind directions in the Area.

The distances between Keystone and the remaining SIP sources are greater than 10 kilometers. From EPA's March 2011 Clarification Memo, ''*. . . the*

[16] The peak model concentration of 196.44 μg/m^3 is in the area surrounding Keystone, it is not in the area surrounding Seward as the commenter wrote. The peak model concentration around Seward was reported at 192.75 μg/m^3 in the original state submittal.

[17] EPA has included in the docket for this action a TSD Addressing Modeled Concentration Values for the Keystone Generating Station Included in the Indiana, PA 1-Hour SO_2 Nonattainment Area. The TSD explains that using updated background concentrations, the modeled maximum concentration for Keystone is below 196.4 μg/m^3.

emphasis on determining which nearby sources to include in the modeling analysis should focus on the area within about 10 kilometers of the project location in most cases.'' The distance between Keystone and Homer City is approximately 20.5 kilometers, between Keystone and Conemaugh is approximately 38.9 kilometers and between Keystone and Seward Station is approximately 38.3 kilometers. Therefore, it was reasonable for Pennsylvania to model Keystone in a separate modeling domain.

EPA's clarification memo continues, ''*[T]he routine inclusion of all sources within 50 kilometers of the project location, the nominal distance for which AERMOD is applicable, is likely to produce an overly conservative result in most cases.*'' EPA believes that including all four sources in the Keystone modeling domain would have been overly conservative.

When modeling all four sources, the peak model concentration is located approximately four km northeast of Keystone. This would be the result of plant emissions being blown from winds out of the southwest (from Keystone's stack towards the peak model receptor). Emissions from Conemaugh, Homer City and Seward would be transported in a similar direction, *i.e.* to locations far away from the peak receptor near Keystone. Evaluative modeling conducted by AECOM (Appendix C1–a of the SIP submittal) confirmed the minimal impact of these three sources in the vicinity of Keystone. Specifically, the modeling shows that the peak modeled concentration contains a fractional contribution (0.6%) from the other three SIP sources even under circumstances where those plant's emissions would have been advected in an almost opposite direction. Given this result, and since it is logical to conclude that when winds are blowing from the southwest, emissions would not be transported in the northwesterly direction, EPA believes it was appropriate to exclude contributions from Conemaugh, Homer City and Seward in modeling the area around the Keystone plant.

In regard to the commenter's concern regarding the use of different background concentrations in the two modeling domains, EPA believes the state's use of a higher background concentration in the Keystone only modeling domain provides a level of conservatism that, while not required, provides additional assurances that the Keystone limits are protective of the NAAQS. The higher background concentration was from a period of time from 2013–2015, prior to the installation of SO_2 controls on Homer City and during a time with higher regional SO_2 background concentrations. Homer City is the closest of the three sources outside the modeling domain. The inclusion of these potential impacts was considered to provide a more conservative analysis. While Pennsylvania could have used more updated background concentrations reflecting a decrease in impacts from Homer City (and from all SO_2 sources), the state submitted a more conservative analysis to show that even if the background concentrations were higher than recent background data, the modeling results are within the NAAQS.

For model receptors in Indiana County, all four sources were modeled with newer regional background reflecting reduced emissions from Homer City due to new SO_2 controls. The use of newer background concentrations (2014–2016) is warranted since it provides a more accurate depiction of reality. Current background concentrations are even lower [18] than in 2016 (mainly due to reduced regional SO_2 emissions), providing additional support that the plan provides for attainment. Pennsylvania provided more recent background values in the Supplemental Submittal of February 5, 2020.

Comment 8. GenOn (owner and operator of Conemaugh and Keystone) was advised by EPA that the absence of a site-specific study would not, in of itself, preclude the use of AERMOIST for the Indiana Area SIP provided that other site-specific studies conducted elsewhere demonstrated the applicability and effectiveness of AERMOIST in providing improved model results. Consequently, based on EPA's guidance, GenOn and their modeling contractor, AECOM, proceeded with the companion modeling effort that utilized AERMOIST.

Response 8. EPA acknowledges the detailed responses regarding AERMOIST provided during the public comment period (see next comment). EPA's analysis of possible shortcomings of the AERMOIST plume module was outlined in a December 27, 2017 response to Pennsylvania's request to use AERMOIST as an alternative model under Appendix W. At that time, EPA had determined that use of the AERMOIST plume module was not approvable under section 3.2.2 of Appendix W and that the (higher) limits established using AERMOIST were not protective of the 1-hour SO_2 NAAQS.

EPA continues to believe that the use of AERMOIST is not an appropriate basis for evaluating emission limits in the Indiana, PA nonattainment area.

Comment 9. The commenter asserts that in an EPA White Paper, EPA agreed with the physical and theoretical merits of the AERMOIST hypothesis, specifically that AERMOD does not account for the effects of plume moisture. Plume moisture tends to increase plume rise over that for a ''dry'' plume because the condensation which occurs when water vapor in a moist plume condenses upon leaving the stack, releasing heat as part of the condensation process. The commenter provided a presentation (which was previously shared with EPA) that responds to the deficiencies of AERMOIST that EPA pointed out to them. The commenter asserts that EPA has acknowledged that AERMOD in default mode is deficient in not addressing the real effect of moisture in the plume, so there is merit in pursuing the AERMOIST approach. Therefore, the commenter concludes that AERMOIST should be considered as an ''ALPHA'' procedure, which means that as an ''experimental'' procedure, AERMOIST has scientific merit, but is not yet ready for regulatory applications.

Response 9. EPA acknowledges the analysis provided by the commenter regarding the AERMOIST plume module. As noted previously, application of AERMOIST in the Indiana, PA modeling demonstration has not been justified. The commenter appears to acknowledge that AERMOIST has not been demonstrated to warrant being used in regulatory applications such as in Pennsylvania's SO_2 attainment plan. The comment regarding designation of AERMOIST as an alpha procedure is outside the scope of this rulemaking.

Comment 10. The commenter asserts that AECOM used erroneous assumptions and methods in their modeling analysis and EPA's reliance on this modeling would be arbitrary and capricious. The commenter claims the following aspects of the modeling analysis are incorrect:

1. The receptor grid used by AECOM has glaring areas of no coverage including the area around Homer City and the area across the Indiana County border right next to Seward and Conemaugh. This is a particular problem for Seward and Conemaugh as the emissions from those sources cause attainment problems both inside the nonattainment area and east and

[18] *https://www.epa.gov/air-trends/sulfur-dioxide-trends#sonat.*

southeast of the plants (outside the nonattainment area).

2. The AECOM modeling used fixed stack parameters and ignored differences in the plume loft and dispersion that would occur at different gas exit temperatures and velocities. AECOM plotted SO_2 emissions vs. temperature, and SO_2 emissions vs. gas velocity, and both data sets showed a variation in the variables as a function of emissions. Data from Conemaugh and Homer City stacks are absent. In addition, the data for Seward and Keystone that are presented (SO_2 emissions and temperature/velocity) are not directly correlated, and the link that would correlate them (boiler operation) is not provided or taken into consideration.

3. The emissions modeled in the randomized modeling for Keystone are improper because they do not account for the actual historic emissions practices at the plant. The data provided by the commenter show that approximately 25% of the hours for 2011 through 2016 were above the CEV, while the modeling only included emissions over the CEV 15% of the time.

4. Only one meteorological data source was used for modeling all four EGUs, rather than selecting the most appropriate meteorological data for each source. EPA should have insisted on a meteorological data sensitivity analysis to ensure the model results were not driven by the meteorological data source selection. Johnston airport is not in the nonattainment area and is a significant distance from several coal-fired power plants and the Strongstown monitor. It lies 16 miles south-southeast of the monitor. DEP could have considered the Jimmy Stewart Airport which is located in Indiana County. The model results could be affected by the differences in wind speed and direction at these airports. Wind roses for each airport were provided. EPA should do the modeling again using the closer meteorological data.

To summarize, the commenter states that these modeling issues are not trivial and notes that when these model assumptions are used, each facility, itself causes exceedances of the NAAQS.

Response 10. EPA disagrees with the commenters' points as follows:

1. Regarding model receptors surrounding the Homer City power plant, this item was brought up (and fully addressed) during Pennsylvania's public comment period. EPA finds Pennsylvania's response fully adequate (see response to comment 11 in Pennsylvania's Comment Response Document). The modeling analysis did include model receptors ''. . . along the public roads which pass through the facility, specifically, Coal Road, Power Plant Road, Cherry Run Road, and Quarter Center Road.'' Homer City has also properly established that it has ownership and imposed proper public access control protocols that support its modeled ambient air boundary. Additionally, due to Homer City's tall stacks, local peak model concentrations occur well beyond the plant's ambient air boundary (see Figure 5–7 of Appendix C–1a of the Commonwealth's submittal) indicating model receptors within the area highlighted by the commenters probably do not exceed the source generated local concentration peaks mainly due to the GEP oriented stack height. GEP formula height for all three stacks is 298.62 meters above local ground elevations.

The commenter's concern that no model receptors outside of the Indiana nonattainment area boundaries were included in Pennsylvania's modeling demonstration showing SO_2 attainment within the nonattainment area is outside the scope of this action. The boundaries of the Indiana, PA nonattainment area were set and made final in August 2013 in ''Round One'' of EPA's designations for the 2010 SO_2 NAAQS, and these boundaries were not challenged.[19] Pennsylvania's obligation under section 110(a) of the CAA is to submit ''. . . a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State.'' CAA section 110(a)(1). Section 110 further provides that ''[i]n the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).'' CAA section 110(a)(2)(I). Section 172(c)(6) then requires the SIP for a nonattainment area to include enforceable emission limitations and control measures as necessary or appropriate to provide for NAAQS attainment ''in such area.'' CAA section 172(c)(6). In this case, Pennsylvania's attainment plan for the Indiana area includes limits on SO_2 sources and a modeling demonstration showing that SO_2 concentrations throughout the Indiana nonattainment area are at or below the NAAQS. While section 110(a)(2)(D) contains provisions requiring that a state's SIP contain provisions to avoid causing or contributing to nonattainment or maintenance in another state, the Commenter does not cite any statutory or regulatory requirements or EPA guidance that a state must include modeling receptors outside of a nonattainment area in an attainment plan. Further, EPA's role is limited to determining whether the submitted SIP meets the requirements of the CAA, see section 110(k), and Pennsylvania's SIP does not address areas outside the defined nonattainment area. Absent a clear requirement that Pennsylvania must include model receptors outside of the nonattainment area in its submission, EPA will confine its analysis to whether the attainment SIP demonstrates attainment within the designated nonattainment area.

Although some of the modeling submitted by the commenter purports to show SO_2 concentrations outside of the boundaries of the Indiana, PA nonattainment area that are above the SO_2 NAAQS, primarily in Cambria and Westmoreland Counties to the east, Pennsylvania was required to develop and submit an SO_2 attainment demonstration SIP only for the Indiana, PA nonattainment area, which does not include these counties. Prior to making its final round one designations, EPA invited interested parties other than the states and Tribes to submit comments on the proposed designations of these areas, including the boundaries of these areas. 78 FR 11124 (February 15, 2013).

2. The commenter's concern regarding not accounting for source variability in stack temperatures and velocities was also raised during the Pennsylvania public comment period. EPA believes Pennsylvania's response is adequate for the commenter's concern and information supporting their conclusions was provided as part of Pennsylvania's SIP package (see Comment Response Document, response to comment 12). EPA generally agrees with Pennsylvania's observation that while stack velocities (and sometimes stack temperatures) decrease under loads less than 100% or the facility's peak load, the emission reductions for boiler loads lower than 100% more than offset any reduction in stack plume-height and dispersion caused by lower plume lofting due to lower exit velocities and lower temperatures. Additional information included in AECOM's modeling reports clearly show stack temperatures and exhaust parameters are relatively uniform across different emission ranges, which supports using constant values in the modeling analysis.

3. Pennsylvania analyzed the heat input for years 2014 through 2016 for

[19] See *https://www.epa.gov/sulfur-dioxide-designations/so2-designations-state-designations-round-1.*

Keystone. Station operations in 2016 represented the average of station operations over the three-year period from 2014 through 2016 (heat input-based capacity factors of 74%, 64% and 69% for 2014, 2015 and 2016, respectively), therefore the 2016 emission cumulative frequency plot was used in the analysis to derive the emissions input to the 100 AERMOD simulations. EPA analyzed the last ten years of heat input and notes that the heat input has been relatively stable.

The commenter is evaluating the likelihood of emissions exceeding the CEV based on data before Pennsylvania's limit took effect. EPA has analyzed the hours over the CEV for the last 10 years and notes a downward trend. More importantly, the newly developed SIP limit for Keystone went into effect on October 1, 2018, which can be expected to cause a reduction in the frequency of emissions exceeding the CEV. Indeed, the available evidence indicates that this has already occurred. Data from 2018 and 2019 indicates that Keystone emissions are now exceeding the CEV for only about 1 percent of the hours. EPA believes the new emission limit provides a constraint that will result in the frequency of hourly emissions over the CEV being considerably less than 15% of the time. While EPA believes that the 2016 data provide a good basis for formulating the anticipated shape of the future distribution of emissions, including assessing the variability of emissions (particularly as it pertains to the spread among the emission rates in the upper portion of the distribution, which are of most interest for air quality planning purposes), EPA does not believe that modeling with 25 percent of hours exceeding the CEV would appropriately reflect emissions in compliance with Pennsylvania's limits. A more detailed discussion of EPA's analysis of Keystone's emissions and heat input is included in the Part 75 Emissions TSD.

4. The use of the Johnstown-Cambria County airport as the source of meteorological data for the modeling analysis has been adequately justified. The possibility of using the Indiana County (Jimmy Stewart) airport data was addressed in Pennsylvania's comment response document (see comment 9 and response). In addition to Pennsylvania's response, EPA asserts that using a site in lower terrain, such as the Indiana County airport, may provide unrepresentative wind speeds for the modeling analysis. The Johnstown-Cambria County airport sits in elevated terrain along the Allegheny Front to the east of the Indiana, PA nonattainment area. Due to its elevation, the Johnstown-Cambria County airport experiences relatively sustained wind speeds. One of the reasons this airport was chosen was because its elevation is closer to the exit height of the elevated stacks that are included in the Indiana, PA modeling demonstration.

Pennsylvania submitted additional site-specific meteorological data on February 5, 2020 which was collected near the Seward and Conemaugh stations. This meteorological data is called the Ash Landfill Tower data and is more representative of the meteorology in the vicinity of Seward and Conemaugh. EPA compared the new Ash Landfill Tower data [20] to the Johnstown-Cambria County airport data which demonstrated that more sustained wind speeds aloft are clearly evident. Ash Landfill Tower wind speeds from the lowest level (10-meters) tend to be lighter during the overnight hours and suggest that wind speeds at lower elevation sites, such as the Jimmy Stewart airport the commenters suggested, may not be representative of wind speeds near the exit heights of the stacks for the four coal and waste-coal fired facilities in the SIP modeling demonstration (see 500-m Ash Landfill SODAR wind speeds vs the Johnstown-Cambria County Airport wind speeds).

Comment 11. The commenter questions the purpose of EPA's Emissions Inventory Technical Support Document and requests a robust analysis and discussion of the emissions so the public can understand why the emissions information provided by the state is acceptable.

Response 11. Pennsylvania submitted their attainment and projection year emission inventories in accordance with EPA's 2014 SO_2 Nonattainment Guidance. The guidance states that air agencies should develop a comprehensive, accurate and current inventory of actual emissions from all sources of SO_2 in the nonattainment area, as well as any sources located outside the nonattainment area which may affect attainment in the area as required under the Clean Air Act section 172(c)(3). EPA verified all emissions that were submitted by Pennsylvania against the 2011 National Emissions Inventory (NEI) version 2 and found them to be acceptable.

TABLE 1—COMMONWEALTH SUBMITTED SO_2 EMISSIONS COMPARED TO 2011 NEI (tpy)

Indiana nonattainment area emission source category	Commonwealth submitted SO_2 tons per year (tpy) *	2011 NEI v2 SO_2 tons per year (tpy)
Stationary Point Sources	144,269.02	144,266.29
Area Sources	555.61	555.597
Non-road Sources	1.025	1.025
On-road Highway Sources	7.73	7.319
Total	144,833.38	144,830.23

* Submitted with the Attainment Plan.

For the attainment year inventory, EPA's 2014 SO_2 Nonattainment Guidance explains that the inventory should reflect projected emissions for the attainment year for all SO_2 sources in the nonattainment area, taking into account emission changes that are expected after the base year. For point sources, Pennsylvania projected emissions from 2011 to 2018 based on the anticipated 2018 operating scenario for each facility. For the nonpoint and nonroad emission projections, Pennsylvania submitted projected inventories developed by the Mid-

[20] The Ash Landfill Tower Data was a site-specific meteorological monitoring data collected at a site located in southeast Indiana county along the Conemaugh River between the Conemaugh and Seward power plants. AECOM collected meteorological data from a multi-level instrumented tower and SODAR. A more complete description of this site-specific data can be found in AECOM's *Meteorological Monitoring Station Design and Quality Assurance Project Plan for the Conemaugh and Seward Generating Stations—Indiana County, PA* referenced in the NODA.

Atlantic Regional Air Management Association (MARAMA), which are documented in the TSD found in Appendix A–1 of the Attainment Plan. Onroad emission projections were developed by Michael Baker Corp. and are also detailed in Appendix A of the Attainment Plan. Point Source emissions account for approximately 95% of the emissions in the NAA. EPA compared the 2018 projected actual emissions with the actual point source emissions in the most recent 2017 NEI for all point sources in the NAA, and the projected emissions are conservative (*i.e.* higher) when compared to actual emissions from the NEI. EPA also compared nonpoint, nonroad, and on-road emissions from the 2017 NEI and found the 2018 projected emissions to be conservative in comparison.

TABLE 2—FACILITY-SPECIFIC COMPARISON OF 2018 ANTICIPATED SO_2 EMISSIONS AND 2017 NEI SO_2 EMISSIONS

Facility	2018 Anticipated actual SO_2 (tpy) *	2017 NEI SO_2 (tpy)
KEYSTONE STATION	32,459.53	23,248.09
SEWARD GENERATING STATION/SEWARD	10,118.93	7,265.86
HOMER CITY GEN LP/CENTER TWP	16,714.31	5,748.06
CONEMAUGH STATION	9,248.29	4,619.78
All other point Sources	4.24	7.93
Total	68,545.30	40,889.72

* Submitted with the Attainment Plan in 2016.

Comment 12. The commenter provided modeling analyses of Seward and Conemaugh's emission limits using the same meteorological data, the same stack parameters, the same background concentrations, and the same building downwash data as did Pennsylvania/AECOM. The commenter used emissions inputs from actual historical emissions from a variety of time periods between 2013 through quarter one of 2018 (EPA's Air Markets Program Database) and used a finer receptor grid around Seward and Conemaugh and included receptors outside the Indiana nonattainment area. The commenter modeled the CEVs and asserts that EPA cannot approve this SIP because the commenter's modeling demonstrates emission limits for those facilities are too lax and will not ensure attainment of the NAAQS. Modeling results for four separate date ranges were provided: 2013–2015, 2014–2016, 2015–2017, and 2013–2017.

Response 12. EPA agrees with the commenter that their modeling demonstrated that the CEV for Seward was too high because one receptor in the southeast corner of the nonattainment area exceeded the standard. However, EPA does not agree that the commenter's modeling demonstrates that the emission limits for Seward and Conemaugh are too lax. As a result of this comment, on February 5, 2020, Pennsylvania submitted an additional analysis showing compliance within the southeast portion of the Indiana, PA nonattainment area (near the Conemaugh and Seward power plants) where the commenter's modeling analysis had shown a modeled violation of the 1-hour SO_2 NAAQS at one receptor. This new analysis used one year (September 2015 through August 2016) of meteorological tower/SODAR (Sonic Detection and Ranging) data collected at the Ash Landfill site (located in Indiana County between the Conemaugh and Seward power plants), which is more representative of local conditions. The CEV model runs for Seward and Conemaugh were updated using this site-specific meteorological data and updated, more accurate background concentrations, plus a refined modeling grid to better resolve the commenter's modeled violation. The newly submitted CEV for Seward is 4,500 lbs/hr; the Conemaugh CEV did not change.

To better understand the reduction in Seward's CEV, EPA analyzed the changes in the model inputs for the supplemental analysis through an iterative process. A summary of the changes and the resulting model concentrations is provided in Table 3.

TABLE 3—MODELING RESULTS FOR SEWARD CEV MODEL RUNS

Run iteration description	Seward emissions (lbs/hr)	Meteorological data	Peak receptor location	Receptor grid	Background concentration	Peak Model concentration ($\mu g/m_3$)
Commenter's Original Run	5,079	JST 2011–15	Laurel Ridge Terrain ..	Commenter ...	Original SIP (2014–16)	213.84551
Change to Supplemental Grid	5,079	JST 2011–16	Laurel Ridge Terrain ..	Supplemental	Original SIP (2014–16)	304.07974
Change to Supplemental Grid and Ash Tower Meteorological data.	5,079	Ash Landfill ...	Robindale Heights	Supplemental	Original SIP (2014–16)	220.21861
Change to Supplemental Grid, Ash Tower, Updated Background Concentration.	5,079	Ash Landfill ...	Robindale Heights	Supplemental	Updated SIP (2016–18).	217.81186
All changes; Lower CEV until compliance	4,500	Ash Landfill ...	Robindale Heights	Supplemental	Updated SIP (2016–18).	191.85440

When EPA used the same inputs as the commenter's except replaced the receptor grid with the Pennsylvania supplemental grid, EPA's analysis produced a peak concentration over 300 $\mu g/m^3$ as opposed to the commenter's concentration of 213 $\mu g/m^3$. In the next iteration, EPA used the supplemental grid, and the Ash Landfill meteorological data, and the concentrations in the area of the original modeled violation went below the NAAQS and the maximum modeled concentration now occurred in a location north-northeast of the Conemaugh and Seward power plants in East Wheatfield Township near Robindale Heights.

Finally, EPA completed a model run with all the updates from the supplemental modeling: The Ash

Landfill met data, supplemental receptor grid, and updated background concentration from 2016–18. When all the updates were modeled, Seward's 1-hour modeled CEV (for the supplemental run) had to be reduced (about 11% from the original modeling analysis) to show compliance with the NAAQS. A detailed description of EPA's analysis can be found in the June 2020 Supplemental Modeling TSD (Appendix B).

Based on the AERMOD simulations provided which show that no receptors in the nonattainment area exceed the NAAQS, EPA believes the revised CEV for Seward and the pre-existing CEV for Conemaugh are protective of the 1-hour SO_2 NAAQS.

Pennsylvania submitted updated RRE model simulations using the site-specific Ash Landfill meteorological data, updated receptor grid, updated background concentration, and updated operating information (2016–2018) at Seward. The 30-day emission limit for Seward is below the newly submitted CEV, and the updated RRE modeling provides evidence that this limit is protective of the NAAQS (as described in Response 3). EPA solicited public comments on this updated modeling in a notice of data availability published on March 9, 2020 at 85 FR 13602. A more detailed analysis of the RRE modeling for Seward is provided in the February 2020 RRE Modeling TSD.

Comment 13. The commenter asserts that the SIP is not approvable because the AECOM modeling is improperly based on ''representative future operations'' that are not enforceable. The modeling evaluated hourly emissions from 2014 through 2016 and assumed similar future operations in its 100 RRE model simulations. However, the commenter argues that there is no mechanism proposed (enforceable or otherwise) to ensure future distribution of emissions do not change such that a NAAQS violation would occur.

Response 13. While the comment is somewhat ambiguous, EPA interprets this comment to express concerns that the modeled emissions reflect a variability that may not occur in the future. Other comments by this commenter discussed previously spoke more precisely to maximum allowable emissions; those comments were answered previously. EPA is expecting states to set limits that reflect expected normal degrees of variability (at the 99th percentile level).[21] EPA does not believe that the constraints on operation inherent in restricting emissions distributions are workable, warranted, or appropriate. EPA believes that air quality is likely to be relatively insensitive to differences among normal emission distributions. In addition, the intention of allowing longer term SO_2 limits was to provide sources some degree of operating flexibility while still attaining the 2010 SO_2 NAAQS. Requiring that the sources maintain a specific emission profile would greatly hamper any flexibility provided by a longer term limit.

EPA believes the RRE modeling provided by Pennsylvania in the original submittal and supplemented on February 5, 2020 provides the technical evidence that the longer term emission limits (*i.e.,* 30 day rolling average and 24-hour average) at Seward and Keystone are protective of the NAAQS. EPA agrees that the future distribution of hourly emissions for either source will not be exactly the same as those modeled in the RRE demonstration, but does not agree that an enforceable mechanism is required to ensure that the future distribution of emissions do not change. EPA believes that the longer term limits provide the constraints necessary to protect the NAAQS.

The commenter did not provide any analysis, modeling or otherwise, showing that adherence with these limits with a different emissions distribution would violate the NAAQS.

The commenter may be assuming that future operations at Seward and Keystone would change significantly in a way that generates much higher hourly SO_2 emissions than those observed over the RRE emission survey years, even while complying with their emission limits. If so, no justification or analysis was provided to support such an assumption. EPA believes that even if this source operates at higher heat inputs in the future, the emission limits will constrain operations and continue to provide protection of the NAAQS. Nonetheless, EPA researched the regional transmission organization's (PJM's) projected electric demand and analyzed historic emission trends at Seward and Keystone to better understand the potential for a change in emissions in the future. Based on the review of PJM forecasts, EPA contends that it is highly unlikely that Seward or Keystone will operate at much higher levels in the future. Furthermore, hourly operations and emissions data from Keystone and Seward collected under part 75 of the CAA also show no long-term increase in operating levels (total hours of operation and MMBtu/hr) over the past 10 years. Both of these sources of information strongly suggest that the plants will not increase their hours of operation or level of operation. EPA further finds no reason to believe that the shape of the distribution of these plants' emissions will change in a way that indicates greater variability. EPA's assessment of this data is available in the Part 75 Emissions TSD available in the docket for this action.

Comment 14. The commenter asserts that EPA's proposed approval fails to meet the CAA statutory deadline for issuing a Federal Implementation Plan (FIP) because the SIP was not approved by March 8, 2018 (two years after EPA issued a finding of failure to submit), and EPA must impose sanctions on Pennsylvania for failing to submit a lawful, approvable SIP.

Response 14. The comment raises issues that are not relevant to the action EPA must take here, which is to either approve or disapprove the submitted SIP. In regard to EPA's failure to issue a FIP, EPA believes that the most expeditious way to bring this area into attainment and maintain attainment is to approve the submitted SIP with the limits and restrictions adopted by the Commonwealth, making those limits and restrictions Federally enforceable and obviating any need for EPA to issue a FIP. We also note that neither the commenter nor any other entity has undertaken any effort to enforce a duty to promulgate a FIP for this area.

EPA disagrees with the commenter that sanctions should have been applied in this case because, as discussed in the NPRM, the sanctions clock that was started by Pennsylvania not timely submitting its SIP was turned off when EPA determined that Pennsylvania subsequently submitted a complete SIP on October 13, 2017. See CAA 179(a); see also 40 CFR 52.31(d)(5) (a sanctions clock started by a finding of failure to submit a required SIP will be permanently stopped upon a final finding that the deficiency forming the basis of the finding of failure to submit has been corrected).

The result of EPA's final approval of the Indiana, PA attainment plan will be to make Federally enforceable the 24-hour average SO_2 limits at Keystone Station and the contingency measures

[21] EPA uses the term ''variability'' to address the shape of the distribution of a facility's emissions, in particular to be a measure of how much variation exists between upper emission levels and more common emission levels. EPA's guidance recommends a specific procedure, delineated in appendix C, for taking one measure of variability, to obtain a quantitative indication of how the typical range of emissions from a facility influences the relative magnitude of long term average emissions versus 1-hour values. While Pennsylvania did not use this procedure, the principle in EPA's guidance that historic variability may be used in many cases to predict future variability, without the need for explicit limitations on variability, nevertheless applies here.

for all four sources. The emission limits at Homer City, Conemaugh, and Seward were already Federally enforceable, and are also being incorporated into the SIP for purposes of permanently attaining the SO_2 NAAQS.

Comment 15. The commenter expresses concern with the RACM/RACT and contingency measures, questioning how EPA can incorporate the unredacted portions of Homer City's Plan approval, which lists an expiration date of August 28, 2017, and Seward's Title V Operating Permit, which lists an expiration date of February 11, 2017. The commenter asks EPA to explain why not all of the consent orders have compliance parameters and why the contingency measures appear to be compliance parameters.

Response 15. EPA acknowledges that expiration dates were inadvertently included in the unredacted portions of Homer City's Plan approval and Seward's Title V Operating Permit. Pennsylvania has submitted corrected redacted permits which redact the expiration dates, such that the limits may be considered permanent. These corrected permits will be incorporated into the SIP, and will remain in effect unless and until Pennsylvania submits a SIP revision seeking changes to these incorporated permit terms and EPA approves such revisions after evaluating whether such a revision would interfere with NAAQS attainment, as required by CAA section 110(l). EPA also notes that the SO_2 emission limits listed in these permits for Homer City and Seward did not actually expire on the dates listed in the originally submitted permits. Both permits were properly extended per the state permitting requirements and Title V of the CAA.

Concerning the request for an explanation of why contingency measures appear to be compliance parameters, EPA notes that the 2014 SO_2 Nonattainment Guidance describes special features of the pollutant SO_2 and therefore SO_2 planning that warrant the adoption of alternative means of addressing the requirement in section 172(c)(9) for contingency measures. The control efficiencies for SO_2 control measures are well understood and are far less prone to uncertainty than for other criteria pollutants. Because SO_2 control measures are based on what is directly and quantifiably necessary to attain the SO_2 NAAQS, it would be unlikely for an area to implement the necessary emission controls yet fail to attain the NAAQS. See 2014 SO_2 Nonattainment Area Guidance, page 41. Therefore, for SO_2 programs, EPA has explained that contingency measures can mean that the air agency has a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of the revised SIP. EPA believes that this approach continues to be valid for the implementation of contingency measures to address the 2010 SO_2 NAAQS, and consequently concludes that Pennsylvania's comprehensive enforcement program, as discussed later, satisfies the contingency measure requirement.

Pennsylvania has a comprehensive enforcement program as specified in Section 4(27) of the Pennsylvania Air Pollution Control Act (APCA), 35 P.S. § 4004(27). Under this program, Pennsylvania is authorized to take any action it deems necessary or proper for the effective enforcement of the Act and the rules and regulations promulgated under the Act. Such actions include the issuance of orders (for example, enforcement orders and orders to take corrective action to address air pollution or the danger of air pollution from a source) and the assessment of civil penalties. Sections 9.1 and 10.1 of the APCA, 35 P.S. §§ 4009.1 and 4010.1, also expressly authorize Pennsylvania to issue orders to aid in the enforcement of the APCA and to assess civil penalties.

Any person in violation of the APCA, the rules and regulations, any order of PADEP, or a plan approval or operating permit conditions could also be subject to criminal fines upon conviction under Section 9, 35 P.S. § 4009. Section 7.1 of the APCA, 35 P.S. § 4007.1, prohibits PADEP from issuing plan approvals and operating permits for any applicant, permittee, or a general partner, parent or subsidiary corporation of the applicant or the permittee that is placed on PADEP's Compliance Docket until the violations are corrected to the satisfaction of PADEP.

In addition to having a fully approved enforcement program, Pennsylvania has included contingency measures that are triggered when any of the four SIP sources' emissions reach a certain percentage of the allowable emissions or if the Strongstown monitor in the nonattainment area registers a daily maximum 1-hour average concentration exceeding 75 ppb. These measures are in line with the supplemental contingency measure guidance EPA mentions previously and are included in the Homer City COA, Seward COA, Conemaugh Order and the Keystone Order, and thus will be fully approved provisions within the SIP.

EPA concludes, in accordance with the 2014 SO_2 Nonattainment Guidance, that Pennsylvania's enforcement program suffices to satisfy the contingency measure requirements for SO_2. The magnitude of prospective benefit from Pennsylvania's supplemental contingency measures is unclear, but it is clear that these measures can only improve, and will not worsen, air quality. EPA believes that Pennsylvania's enforcement program, which is enhanced by the supplementary provisions in the COAs and Orders, suffice to meet Section 172(c)(9) requirements as interpreted in the 1992 General Preamble and the 2014 SO_2 Nonattainment Guidance.

In regard to the commenter's question as to why all of the consent orders do not contain compliance parameters, the compliance parameters can be found in either the COA, Orders or permits that are being incorporated into the SIP. EPA is interpreting the term ''compliance parameters'' in the comment to mean any specified method for determining compliance with the emission limits. The compliance parameters for Seward, Homer City and Conemaugh are found in the respective redacted permits, and the compliance parameters for Keystone are found in the Order. The COA or Orders for Seward, Homer City and Conemaugh do not have compliance parameters, as they are contained in the redacted permits.

Comment 1 on NODA. The commenter expresses concern with the idea that the newly calculated CEV for Seward of 4,500 lbs/hr, which is less than the original CEV of 5,079 lbs/hr, still supports the 3,038 lbs/hr 30-day average emission limit for Seward. The commenter concludes that the prior Seward CEV used to calculate the emission limit in the original submittal was too high and accordingly that the 3,038 lbs/hour emission limit itself is too high.

Response 1 on NODA. EPA recognizes the concern that the prior CEV calculated for Seward was higher than the newly calculated CEV, but the longer term limit has not changed. While this would not necessarily occur if Pennsylvania had followed the methodology described in Appendix C, they did not. Pennsylvania opted to use a different approach to calculate the longer term limits (their approach was the same in the original submittal as in the supplemental submittal). Pennsylvania did not rely on adjustments from the CEV as set forth by the approach in Appendix C. Therefore, a reduction in the CEV does not necessarily dictate a reduction in the longer term limit. Instead, Pennsylvania

provided an updated RRE modeling analysis demonstrating that Seward's 30-day average emission limit of 3,038 lbs/hr is protective of the NAAQS.[22]

The supplemental modeling analysis provided on February 5, 2020 included updated and more accurate meteorological data, a more refined receptor grid and updated emission profiles. These updates were incorporated into both the CEV AERMOD simulations and the RRE AERMOD simulations. EPA's February 2020 RRE Modeling TSD located in the docket for this rulemaking explains EPA's review of Pennsylvania's updated RRE analysis and is also addressed in Response 3 of this preamble.

EPA reviewed Seward's emissions data which indicates a decline in emissions variability.[23] In particular, while a comparison of 2014 to 2016 data against 2016 to 2018 shows fairly similar or even slightly increasing 99th percentile 30-day average values, these data also show a significant decline in the 99th percentile 1-hour values. This decreased difference between peak 1-hour values and peak 30-day average values, indicating a decline in this critical measure of variability, appears to be an important factor in Pennsylvania's supplemental modeling (using emissions reflecting the more recent, less variable emissions) concluding that the same 30-day average limit in the original modeling (using emissions reflecting the older, more variable emissions) still suffices to show attainment. The 2017 to 2019 data indicate that this trend toward less variable emissions appears to be continuing.

Comment 2 on NODA. The commenter states that AECOM justified the conversion factor of 0.68 for Seward by comparing it to Table 1 of Appendix D of EPA's 2014 SO_2 Nonattainment Guidance for sources with dry scrubbers (which lists the conversion factor as 0.63). The commenter points out that 0.63 is significantly lower than 0.68, yet significantly higher than the 0.47 conversion factor AECOM calculated using Appendix C methodology for Seward, but ultimately decided to not use. The commenter states that Seward is a waste coal plant and is less likely to operate similarly to the coal fleet as a whole, which may be why using Appendix C methodology supports a conversion factor of 0.47.

Response 2 on NODA. A conversion factor was not used to calculate the longer term limit for Seward. While a ratio between the 30-day average limit for Seward and the CEV may be calculated, and this ratio may be compared to the adjustment factor that would be derived using the procedures in Appendix C, the concept of a conversion factor is not directly relevant to the calculation of Seward's longer term limit. EPA acknowledges that the CEV provides an upper bound for the value of a potential longer term limit (*i.e.,* the longer term limit cannot be greater than the CEV). However, that is the extent to which the CEV was used in Pennsylvania's development of Seward's 30-day limit. Instead, Pennsylvania provided updated 100 RRE AERMOD simulations as reasonable evidence that the longer-term emission limit for Seward is protective of the NAAQS. More details on Pennsylvania's methodology for developing Seward's longer term limit is provided in Response 3 of this preamble, and in the RRE Modeling TSD.

Comment 3 on NODA. The commenter expressed concern that the modeling analysis did not include areas outside the nonattainment area boundary. The commenter claims that by hiding areas with peak impacts above the NAAQS, the AECOM analysis undercalculates CEVs, and thereby fails to assess emission limits low enough to protect the NAAQS.

Response 3 on NODA. As discussed in more detail in Response 10 of this preamble, absent a clear requirement that Pennsylvania must include model receptors outside of the nonattainment area in its submission, EPA will confine its analysis to whether the attainment SIP demonstrates attainment within the designated nonattainment area.

Comment 4 on NODA. The commenter requested that EPA extend this public comment period due to the National Covid-19 Pandemic. Specifically, the commenter requested an additional 30 days after the President's National Emergency Order or Governor Wolf's State Emergency Order are pulled back.

Response 4 on NODA. EPA is not able to extend the public comment period for this NODA, particularly when the request seeks an additional 30 day period after some unknown future date when the President's or Governor's Emergency Order is withdrawn. EPA is under an October 30, 2020 court-ordered deadline to take action on this SIP, and therefore an indeterminate delay would require an amendment of that court order, and EPA could not be assured that such an extension could be obtained, particularly when the amount of time of the extension is tied to Emergency Orders with indefinite end dates. Also, EPA believes that issuance of the President's and Governor's orders did not significantly hamper the public's ability to comment because the supplemental information and all materials necessary to evaluate that supplemental information were available electronically in the docket or by contacting EPA for this matter. For these reasons, EPA did not grant the commenter's request for an indefinite extension of the public comment period.

IV. Final Action

EPA is approving the attainment plan for the Indiana, PA SO_2 nonattainment area as a revision to the Pennsylvania SIP as submitted by PADEP to EPA on October 11, 2017 and supplemented on February 5, 2020. Specifically, EPA is approving the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, an RFP plan, and contingency measures for the Indiana Area and is finding that the Pennsylvania SIP revision has met the requirements for NNSR for the 2010 1-hour SO_2 NAAQS. Additionally, EPA is approving into the Pennsylvania SIP the SO_2 emission limits and compliance parameters in the following Orders, Consent Order and Agreements (COAs) and permits: the unredacted portion of the Order between Pennsylvania and Genon NE Management Company, Conemaugh Plant; the unredacted portions of the Consent Order and COA between Pennsylvania and Homer City Generation, LP; the unredacted portions of the Order between Pennsylvania and Genon NE Management Company, Keystone Plant; the unredacted portions of the COA between Pennsylvania and Seward Generation, LLC; the unredacted portions of the Title V Permit for Conemaugh Plant (provided to EPA on May 13, 2020); the unredacted portions of the Plan Approval for Homer City (provided to EPA on May 13, 2020); and the unredacted portion of the Title V Operating Permit for Seward Station (provided to EPA on May 13, 2020).

EPA has determined that Pennsylvania's SO_2 attainment plan for the 2010 1-hour SO_2 NAAQS for the Indiana Area meets the applicable requirements of the CAA and is consistent with EPA's 2014 SO_2 Nonattainment Guidance where applicable. Thus, EPA is approving Pennsylvania's attainment plan for the Indiana Area as submitted on October 11, 2017 and supplemented on February 5, 2020. This final action of this SIP submittal removes EPA's duty to implement a FIP for this Area, and

[22] PADEP did not provide an updated RRE analysis for Keystone, only for Seward.

[23] Clean Air Market Division data submitted to EPA from PADEP on February 5, 2020.

discharges EPA's requirement under the court order entered in *Center for Biological Diversity, et al.,* v. *Wheeler,* No. 4:18–cv–03544 (N.D. Cal., Nov. 26, 2019) to sign final action on the SIP by October 30, 2020.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the unredacted portions of the Order between Pennsylvania and Genon NE Management Company, Conemaugh Plant; the unredacted portions of the Consent Order and Agreement (COA) between Pennsylvania and Homer City Generation, LP; the unredacted portions of the Order between Pennsylvania and Genon NE Management Company, Keystone Plant; the unredacted portions of the COA between Pennsylvania and Seward Generation, LLC; the unredacted portions of the Title V Permit for Conemaugh Plant (provided to EPA on May 13, 2020); the unredacted portions of the Plan Approval for Homer City (provided to EPA on May 13, 2020); and the unredacted portion of the Title V Operating Permit for Seward Station (provided to EPA on May 13, 2020). EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[24]

VI. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the attainment plan for the Indiana, PA SO_2 nonattainment area may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: October 13, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020:

■ a. The table in paragraph (d)(3) is amended by adding entries for ''Conemaugh Plant, Genon NE Management Co.'', ''Title V permit 32–00059''; ''Conemaugh Plant, Genon NE Management Co.'', ''Order''; ''Homer City Generation'', '' Plan Approvals 32–00055H and 32–00055I''; ''Homer City

[24] 62 FR 27968 (May 22, 1997).

Generation'', ''Consent Order and Agreement''; ''Seward Station'', ''Title V Permit 32–00040''; ''Seward Station'', ''Consent Order and Agreement''; and ''Keystone Station'', ''Consent Order and Agreement'' at the end of the table; and

■ b. The table in paragraph (e)(1) is amended by adding an entry for ''Attainment Plan for the Indiana, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard'' at the end of the table.

The additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(3) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	* *
Conemaugh Plant, Genon NE Management Co.	Title V permit 32–00059.	Indiana	10/28/15	10/19/20, [Insert **Federal Register** citation].	Sulfur dioxide emission limits and associated compliance parameters in unredacted portions of the Title V permit provided to EPA on May 13, 2020.
Conemaugh Plant, Genon NE Management Co.	Order	Indiana	10/11/17	10/19/20, [Insert **Federal Register** citation].	Contingency measures in unredacted portion of the Order.
Homer City Generation.	Plan Approvals 32–00055H and 32–00055I.	Indiana	2/28/17	10/19/20, [Insert **Federal Register** citation].	Sulfur dioxide emission limits and associated compliance parameters in unredacted portions of the Plan Approvals provided to EPA on May 13, 2020.
Homer City Generation.	Consent Order and Agreement.	Indiana	10/3/17	10/19/20, [Insert **Federal Register** citation].	Contingency measures in unredacted portion of Consent Order and Agreement.
Seward Station	Title V Permit 32–00040.	Indiana	4/8/16	10/19/20, [Insert **Federal Register** citation].	Sulfur dioxide emission limits and associated compliance parameters in unredacted portions of the Title V permit provided to EPA on May 13, 2020.
Seward Station	Consent Order and Agreement.	Indiana	10/3/17	10/19/20, [Insert **Federal Register** citation].	Contingency measures in unredacted portion of the Consent Order and Agreement.
Keystone Plant	Consent Order	Armstrong	10/1/18	10/19/20, [Insert **Federal Register** citation].	Sulfur dioxide emission limits established with AERMOD modeling without AERMOIST and related parameters in unredacted portions of the Consent Order dated 10/11/17.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	*	*
Attainment Plan for the Indiana, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard.	Indiana County and portions of Armstrong County (Plumcreek Township, South Bend Township, and Elderton Borough).	10/11/17 Supplemental information submitted 02/05/20, redacted permits submitted on 05/13/20.	10/19/20, [Insert **Federal Register** citation].	52.2033(f).

* * * * *

■ 3. Amend § 52.2033 by adding paragraph (f) to read as follows:

§ 52.2033 Control strategy: Sulfur oxides.

* * * * *

(f) EPA approves the attainment demonstration State Implementation Plan for the Indiana, PA Nonattainment Area submitted by the Pennsylvania Department of Environmental Protection on October 11, 2017, updated on February 5, 2020, and corrected permits and plan approvals submitted on May 13, 2020.

[FR Doc. 2020–23037 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0189; FRL–10014–98–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for individual major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this action, EPA is only approving source-specific (also referred to as ''case-by-case'') RACT determinations for four major sources. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

DATES: This final rule is effective on November 18, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0189. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Bertram, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5273. Ms. Bertram can also be reached via electronic mail at *bertram.emily@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 5, 2020, EPA published a notice of proposed rulemaking (NPRM). 85 FR 26647. In the NPRM, EPA proposed approval of case-by-case RACT determinations for four sources in Pennsylvania for the 1997 and 2008 8-hour ozone NAAQS. The case-by-case RACT determinations for these four sources were included in SIP revisions submitted by PADEP on November 21, 2017, April 26, 2018, June 26, 2018, and October 29, 2018.

Under certain circumstances, states are required to submit SIP revisions to address RACT requirements for major sources of NO_X and VOC or any source category for which EPA has promulgated control technique guidelines (CTG) for each ozone NAAQS. Which NO_X and VOC sources in Pennsylvania are considered ''major,'' and therefore to be addressed for RACT revisions, is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the ''major source'' definitions established under the CAA based on their classification. In the case of Pennsylvania, sources located in any areas outside of moderate or above nonattainment areas, as part of the Ozone Transport Region (OTR), are subject to source thresholds of 50 tons per year (tpy). CAA section 184(b).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major NO_X RACT requirements for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, Additional RACT Requirements for Major Sources of NO_X and VOCs (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_X and VOC control measures in 25 Pa. Code 129.92–95, Stationary Sources of NO_X and VOCs, (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_X sources. The requirements of the RACT I rule remain approved into Pennsylvania's SIP and continue to be implemented.[1] On September 26, 2017, PADEP submitted a supplemental SIP revision, dated September 22, 2017, which committed to address various deficiencies identified by EPA in their May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 supplemental SIP revision. See 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide averaging plan approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020. The SIP revisions addressed in this rule are part of PADEP's efforts to meet the conditions of its supplemental SIP revision and EPA's conditional approval of the RACT II Rule.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code

[1] The RACT I Rule was approved by EPA into the Pennsylvania SIP on March 23, 1998. 63 FR 13789. Through the current rule, certain source-specific RACT I requirements will be superseded by more stringent RACT II requirements. See Section II of this preamble.

129.99. In the Pennsylvania RACT SIP revisions, PADEP included a case-by-case RACT determination for the existing emissions units at each of these major sources of NO_X and/or VOC that required a source-specific RACT determination. In PADEP's RACT determinations, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emission limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the new RACT II presumptive or case-by-case requirements. If more stringent, the RACT I requirements will continue to apply to the applicable source. If the new case-by-case RACT II requirements are more stringent than the RACT I requirements, then the RACT II requirements will supersede the prior RACT I requirements.[2]

Here, EPA is taking action on SIP revisions pertaining to case-by-case RACT requirements for four major sources of NO_X and/or VOC in Pennsylvania, as summarized in Table 1.

TABLE 1—FOUR MAJOR NO_X AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II DETERMINATIONS UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major source (county)	1-Hour ozone RACT source? (RACT I)	Major source pollutant (NO_X and/or VOC)	RACT II permit (effective date)
Transco—Salladasburg Station 520 (Lycoming)	Yes	NO_X and VOC	41–00001 (06/06/17).
Novipax (Berks)	Yes	VOC	06–05036 (12/19/2017).
Sunoco Partners Marketing & Terminals (Delaware)	Yes	NO_X and VOC	23–00119 (01/20/17).
Global Advanced Metals USA, Inc. (Montgomery)	Yes	VOC	46–00037 (03/10/17).

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific emission limit or control measures, if any, satisfy RACT for that particular unit. The adoption of new, additional, or revised emission limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in new or revised Federally enforceable permits (hereafter RACT II permits) issued by PADEP to the source. The RACT II permits, which revise or adopt additional source-specific limits and/or controls, have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP are listed in the last column of Table 1 of this preamble, along with the permit effective date, and are part of the docket for this rule, which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2020–0189.[3] EPA is incorporating by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT emission limits and control measures under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions.

B. EPA's Proposed Action

PADEP's SIP revisions incorporate its determinations of source-specific RACT II controls for individual emission units at major sources of NO_X and/or VOC in Pennsylvania, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation. After thorough review and evaluation of the information provided by PADEP in its five SIP revision submittals for four major sources of NO_X and/or VOC in Pennsylvania, EPA proposed to find that PADEP's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls.

PADEP, in its RACT II determinations, considered the prior source-specific RACT I requirements and, where more stringent, retained those RACT I requirements as part of its new RACT determinations. In the NPRM, EPA proposed to find that all the proposed revisions to previously SIP approved RACT I requirements would result in equivalent or additional reductions of NO_X and/or VOC emissions. The proposed revisions should not interfere with any applicable requirement concerning attainment or reasonable further progress with the NAAQS or interfere with other applicable CAA requirements in section 110(l) of the CAA.

Other specific requirements of Pennsylvania's 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and the rationale for EPA's proposed action were explained in the NPRM and its associated technical support document (TSD) and will not be restated here.

III. Public Comments and EPA Responses

EPA received comments from seven commenters on the May 5, 2020 NPRM. 85 FR 26647. A summary of the comments and EPA's response are discussed in this section of the preamble. A copy of the comments can be found in the docket for this rule.

Comment 1: The commenter states that water/steam injection is a control option for Transco Station 520's simple cycle turbines that was inappropriately determined to be technically infeasible and indicates that this control option is found on EPA's RACT/BACT/LAER Clearinghouse (RBLC) as technically feasible in at least 10 natural gas fired simple cycle turbines over the last 20 years. The commenter further states that EPA had made a similar comment for the public record on the technical feasibility of water/steam injection and had arbitrarily reversed its position in the NPRM. The commenter claims that the reasons given for technical infeasibility such as water/steam supply, storage tanks, the source of water, and water treatment and pretreatment are economic, and not technical, feasibility issues. For these reasons, the commenter states that EPA should disapprove PADEP's RACT

[2] While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

[3] The RACT II permits are redacted versions of a facility's Federally enforceable permits and reflect the specific RACT requirements being approved into the Pennsylvania SIP.

determination for Transco Station 520 and reevaluate the economic feasibility of water/steam injection.

Response 1: The commenter is correct in stating that EPA made prior comments suggesting that water/steam injection was a technically feasible control option for natural gas fired simple cycle turbines in gas transmission service that should be evaluated for economic feasibility. However, EPA disagrees that it has arbitrarily changed its position in proposing to approve the case-by-case RACT requirements for the two Transco Station 520 simple cycle turbines. Both the facility and PADEP responded to EPA's comment explaining why the water/steam injection control option was not technically feasible at this specific site.

PADEP conducted its case-by-case RACT analysis of potential controls for Transco's natural gas fired simple cycle turbines pursuant to the requirements of Pennsylvania's RACT regulations. The case-by-case RACT II analysis requirements are set forth in 25 PA Code 129.99(c), which then references the RACT proposal requirements identified in 25 Pa Code 129.92. As identified in Section 129.92(b)(1), ''[a]vailable control options are air pollution control technologies with a reasonable potential for application at the source.'' Section 129.29(b)(2) further identifies that ''[a] determination of technical infeasibility shall identify technical difficulties which would preclude the successful use of the control option on the source.''

The water/steam injection control option requires a large volume of purified water. The Transco facility is located in a remote location without a viable on-site source of clean water. In order to have the needed purified water on-site for water/steam injection, Transco would need to drill an on-site well or transport water to an on-site water purification facility. A water study would be needed to determine whether and how an on-site well could be drilled. Transporting water to the site would require the installation of a water purification facility and large on-site storage tanks. The need to transport water to the site for the use of water/steam injection also introduces unreliability and the risk of insufficient water due to the unpredictable nature of weather and transportation. The uncertainties created by the need to transport water to the site increases the risk of system failure because the Transco turbines are peaking units. Given the nature of peak demand, these turbines are required to operate immediately when necessary with little advanced notice.[4]

For these reasons, the RACT analysis determined that water/steam injection was technically infeasible for the Transco turbines. Lacking an on-site water source or a reliable off-site source of on-demand water, it was reasonable for PADEP to conclude that water/steam injection was not an available control option with a ''reasonable potential application at the source.'' While the need to install a water purification system and large on-site storage tanks may be factors that can be evaluated through an economic feasibility analysis, the lack of an on-site water source and the risks and uncertainties of an insufficient water supply due to the potential need for the on-demand trucking of water are issues far more fundamental to determining initially whether using water/steam injection is truly an available control technology for these sources at this site. These circumstances present ''technical difficulties which would preclude the successful use of the control option on the affected source.'' After reviewing the responses from the company and PADEP, EPA concluded that PADEP's RACT determination that water/steam injection is not technically feasible for the Transco Station 520 peaking turbines was a reasonable conclusion based on Pennsylvania's RACT requirements.

Comment 2: The commenter complains that the Transco Station 520 redacted permit consists of non-uniform pages, where one added page is in color and the remaining pages are in black and white. The commenter claims that EPA illegally altered the state's submittal to correct a mistake made by the state. The commenter refers to a prior proposed rulemaking, EPA–R03–OAR–2017–0290, where the redacted permit for Transco station 520, included in the docket for that proposed rulemaking, did not include the 79.3 lbs/hr and 95.6 tpy RACT emission limits. However, the commenter notes that the redacted permit in the current docket does contain such RACT limits. The commenter states that EPA must remit the SIP back to Pennsylvania to incorporate enforceable RACT limitations.

Response 2: The commenter's concern relates to the RACT emission limits for Source ID 106 in the Transco Station 520 Permit No. 41–00001, Section D, I., Condition #004. The commenter notes that, in a proposed rule from 2017, EPA–R03–OAR–2017–0290 which was never finalized, this permit condition was not included in the redacted permit to be incorporated into the SIP.[5] This was an inadvertent error because the emission limits contained in the permit condition were always intended to be part of Pennsylvania's RACT determination for this source. See, for example, the PADEP technical review memo, dated February 22, 2017, the EPA TSD, and the full Transco Station 520 Permit No. 41–00001, all of which were in the docket for the 2017 proposed action. EPA, subsequently notified PADEP that the SIP submittal for Transco Station 520 contained an incorrectly redacted permit. On April 6, 2020, PADEP supplemented their SIP submittal with the correctly redacted permit.[6] The docket for the proposal for the current rulemaking included a correctly redacted permit, which included the 79.3 lbs/hr and 95.6 tpy RACT emission limits.[7]

Comment 3: The commenter agrees with EPA's proposed approval of PADEP's determination to avoid the use of the blowing agent 152a when considering RACT alternatives to the use of pentane. The commenter explains that coal is not the only substance that is bad for the environment and claims that blowing agent 152a is an extremely dangerous compound that is harmful to the environment because it is a potent greenhouse gas, a carcinogen and produces carbon dioxide.

Response 3: While the commenter does not identify a specific facility, we believe the commenter's comment applies to the Novipax facility, where the blowing agent 152a was discussed in the RACT analysis. EPA appreciates the support of the commenter for the Novipax RACT determination.

[4] See email dated May 18, 2017 from Williams to PADEP and PADEP memorandum dated May 22, 2017, which are both part of the record for this docket.

[5] EPA never took any final action under the EPA–R03–OAR–2017–0290 proposed rulemaking because of CBI issues with the docket. See discussion in Supplementary Information section of this preamble.

[6] PADEP supplemented its SIP revision submittal with a corrected version of the redacted permits for Transco via email on April 6, 2020. The revised redacted permit was appropriately added to the supporting materials for the current proposed rulemaking. The email from PADEP to EPA Region 3, dated April 6, 2020, is now being added to the final docket along with the Final Rule Notice.

[7] EPA notes that PADEP, in its RACT SIP revisions for Transco Station 520, Novipax, SPTM, and Global Advanced Metals, included some form of annual limits in the RACT II permits for those facilities. EPA wishes to clarify that it is not approving any such annual limits as RACT limits. Rather, because PADEP analyzed what should be RACT under operating conditions that included annual limits from the existing facility permit, and PADEP included those requirements in its SIP submittal to us, EPA is incorporating those annual limits into the SIP not as RACT control limits but for the purpose of SIP strengthening.

Comment 4: The commenter states that EPA should require more controls for Sunoco Partners Marketing and Terminals (SPMT), including controls that exceed Pennsylvania's cost thresholds of $2,800/ton or other states' $5,000/ton cost thresholds. The commenter claims that facilities such as SPMT, which causes millions of dollars in environmental damage and makes millions of dollars, can afford to do more and should be required to do more. The commenter explains that the area in which SPMT is located is historically poor, damaged by industrial pollution, and is a neighborhood of black and brown people. The commenter claims that EPA has a duty to consider environmental justice and should disapprove the RACT determination for SPMT and require PADEP to use a higher cost threshold and force RACT level controls to be installed.

Response 4: There are seven emission units that required case-by-case RACT determinations at the SPMT facility. The RACT determinations are governed by the requirements of 25 Pa. Code 129.99, which requires a technical and economic feasibility analysis of available control options. Three of these emission units are the auxiliary boilers. The SPMT auxiliary boilers are dual-fueled, burning both natural gas and refinery gas. They are currently controlled with low NO_X burners and flue gas recirculation. PADEP's case-by-case RACT II determination require these boilers to achieve a 0.05 lb NO_X/MMBtu emission limit, which will be incorporated into the SIP through the current rule. This new limit tightens the prior RACT I limit of 0.25 lb NO_X/MMBtu emission limit. Although there are no presumptive RACT requirements that apply to SPMT's dual-fired boilers, the RACT II limit of 0.05 lb NO_X/MMBtu is at least twice as stringent as the presumptive RACT requirements at 25 Pa. Code 129.97(g)(1) for combustion units equal to or greater than 50 MMBtu heat input. Because the SPMT boilers are already controlled and achieve relatively low NO_X emissions, additional controls were found to be economically infeasible. The cost effectiveness evaluation of the technically feasible control options for these boilers determined a range of costs from $12,126 to $52,331/ton of NO_X reduced, a cost level well above the higher $5,000 cost threshold identified by the commenter.[8]

The fourth emission unit subject to case-by-case RACT is the marine vessel loading operation that is currently subject to the requirements of 25 Pa. Code § 129.81 and 40 CFR part 63, subpart Y, the National Emission Standards for Marine Tank Vessel Loading Operations, which contains additional requirements for vapor collection and leak detection. All marine vessel loading at the facility is currently controlled by a marine vapor recovery (MVR) system which captures gases and directs them to the fuel gas system to be combusted as a fuel in the auxiliary boilers. The RACT analysis of the marine vessel loading operations concluded that there is no feasible control with a greater control efficiency than the current MVR control technology. Because there were no technically feasible controls better than the current controls, a cost effectiveness analysis was not required.[9]

The fifth emission unit subject to case-by-case RACT is a single cooling tower, which has a potential to emit 4.6 tpy VOC. There were no technically or economically feasible control options for this source in addition to what is already required under prior RACT SIP approvals, which are equipment inspection and monitoring.[10] The sixth and seventh emission units subject to case-by-case RACT are fugitive leaks from valves and fugitive leaks across the facility. Again, the RACT analysis identified that there were no technically feasible controls for these sources. For both of these sources, PADEP is requiring as RACT compliance with 40 CFR part 60 subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (or VVa as appropriate), which minimizes leaks from valves, flanges, and tanks through the use of specified equipment, work practices and inspections.[11]

As identified in this preamble, PADEP followed the RACT analysis requirements of 25 Pa. Code 129.99 and for only three sources was it able to identify additional technically feasible control options. For those sources, the three auxiliary boilers, the cost of added emission reduction well exceeded even the higher cost effectiveness threshold identified by the commenter. In its approval capacity, EPA shall approve a state's proposed RACT proposal if it meets the statutory and regulatory requirements of the program. CAA Section 110(k)(3). In this case, EPA determined that PADEP's proposed RACT SIP was reasonable and met the statutory and regulatory requirements.

The commenter also urges EPA to consider environmental justice as part of the RACT determination for this facility. The Clean Air Act and the requirements to implement RACT are designed to protect public health and the environment. However, the only factors EPA is legally required to consider for determining RACT are those in the statue and regulations, and environmental justice is not a statutory or regulatory factor in the RACT analysis. As described in this preamble and in our proposal document we believe it is appropriate to fully approve PADEP's SIP submittal with respect to RACT for SPMT.

Comment 5: One commenter asserts that ''other neighboring states such as New York and New Jersey both have cost effectiveness thresholds set at or above $5,000 per ton, but here EPA arbitrarily allows a lower dollar per ton threshold!'' The commenter goes on to question EPA's approval of a lower cost threshold in Pennsylvania. Further, the commenter states that ''EPA must retract their proposed approval and set a uniform dollar per ton threshold based on, and consistent with, past EPA actions'' and ''that the cost per ton threshold should at least be consistent in the Ozone Transport Region (OTR).'' Lastly, the commenter claims that ''EPA is arbitrary and capricious when approving two different states RACT SIPs with inconsistent cost thresholds'' and that ''EPA needs to set the bar, not let the states waffle in the wind and never install controls.''

Response 5: EPA is aware that Pennsylvania considered cost-effectiveness levels ($/ton removed) that are lower than other states, such as New Jersey and New York as the commenter notes, when developing the RACT II rule. However, EPA has not set a single cost, emission reduction, or cost-effectiveness figure to fully define cost-effectiveness in meeting the NO_X or VOC RACT requirement. Therefore, states have the discretion to determine what costs are considered reasonable when establishing RACT for their sources. Each state must make and defend its own determination on how to weigh these values in establishing RACT.

As PADEP explained in its RACT II rulemaking, it did not establish a bright-line cost effectiveness threshold in determining what is economically reasonably for purposes of defining RACT.[12] Instead, it developed as guidance a cost-effectiveness threshold

[8] See Sunoco Partners Marketing and Terminals, L.P., RACT II Proposal, Philadelphia, Pennsylvania, dated November 2016.

[9] Id.

[10] Id.

[11] Id.

[12] 46 Pa. Bulletin 2036 (April 23, 2016).

of $2,800 per ton of NO_X controlled and $5,500 per ton of VOC controlled for RACT. Pennsylvania also determined that even evaluating control technology options with an additional 25% margin, an upper bound cost-effectiveness threshold of $3,500 per ton NO_X controlled and $7,000 per ton VOC controlled, would not affect the add-on control technology decisions required by RACT. Id. Pennsylvania determined that these higher cost-effectiveness thresholds did not impact the determination of what add on control technology was feasible. Pennsylvania also reviewed examples of benchmarks used by other states: Wisconsin, $2,500 per ton NO_X; Illinois, $2,500–$3,000 per ton NO_X; Maryland, $3,500–$5,000 per ton NO_X; Ohio, $5,000 per ton NO_X; and New York, $5,000–$5,500 per ton NO_X.[13]

In a separate prior final agency action, EPA found that PADEP's cost effectiveness thresholds are reasonable and reflect control levels achieved by the application and consideration of available control technologies, after considering both the economic and technological circumstances of Pennsylvania's own sources. See 84 FR 20274, 20286 (May 9, 2019).

Comment 6: The commenter notes that good operating practices are determined to be RACT for several sources at Global Advanced Metals. However, the commenter claims that for Source IDs 102, 124, and 201, those good operating practices are not defined in the permit.

Response 6: The commenter is correct, in part, in stating that good operating practices have been determined as VOC RACT for Source IDs 102, 124, and 201. However, they are only one aspect of the overall RACT II requirements imposed on the sources. For all three sources, PADEP conducted a VOC RACT analysis per 25 Pa. Code 129.99, concluding that the additional control technologies evaluated were either technically and/or economically infeasible and that RACT would, among other requirements, be operation and maintenance of the source in accordance with manufacturers' specifications and good air pollution control practices.[14]

As noted previously, PADEP imposed additional RACT requirements on these sources based on existing permit conditions, which were considered in the RACT analysis. For instance, Global Advanced Metals currently utilizes a recovery unit to control methyl isobutyl ketone (MIBK) emissions from Source ID 124, the extraction process in Building 74, and PADEP has imposed the requirement to operate this recovery unit as a RACT requirement. The RACT II permit also includes efficiency restrictions on the control device and extensive recordkeeping requirements on operational factors such as flow rates, pressure drops, MIBK content in influent and effluent, and maintenance downtime.[15]

The MIBK recovery system also helps to limit emissions from Source ID 102, the tantalum salts process in Building 19.[16] While the RACT II permit does not specifically include the operation of the MIBK recovery unit for Source 102, the recovery unit's operation is required in the RACT II permit under Source 124, as identified in this preamble. PADEP also imposed on Source 102 a throughput restriction on the number of batches.[17] Additionally, the RACT II for Source ID 201, the wastewater treatment plant, included a requirement to provide PADEP with relevant records found in the facility's National Pollutant Discharge Elimination System (NPDES) permit, upon request.[18]

EPA concluded that ''good operating practices,'' which was determined as VOC RACT for these three sources by PADEP, is adequately defined in the facility's permit as ''operating and maintaining the source in accordance with manufacturers' specifications.'' The requirement to operate the source in accordance with the manufacturer's specifications holds the facility accountable for operating and maintaining each of these three sources per the guidance established by the manufacturer specifically for that particular source. The good operating practices requirement is further clarified and strengthened by the additional RACT requirements for recovery unit operation, operational restrictions, and recordkeeping included in the redacted permit to be incorporated into the SIP.

Comment 7: The commenter notes that EPA is approving particulate matter (PM) limits for Global Advanced Metals as part of the facility's RACT determination. The commenter asks why and what relationship these PM limits have in setting NO_X and/or VOC RACT emission limits for the source.

Response 7: While the commenter does not provide a specific reference to the PM limits in question, EPA assumes the commenter is referring to the PM limit of ''not to exceed 0.02 grains per dry standard cubic foot'' as a control device efficiency restriction for the RotoClone wet dust collector.[19] The RotoClone wet dust collector was not one of the control technologies examined by PADEP for the control of VOCs from Source 109. Rather, it is a control technology for PM. The PM limits were established under other regulatory programs and not the RACT program. It was identified as an ongoing facility requirement while reviewing the VOC RACT requirements for the fugitive emissions from ethanol transfer and storage operations. The commenter's concern about PM is warranted. The PM limits are not included in the source's permit to address RACT requirements and therefore should not be incorporated into the SIP through the current rule. PADEP has subsequently submitted a revised redacted permit that does not include the PM requirements for incorporation into the SIP.[20]

Comment 8: The commenter notes that for Source ID 201 at Global Advanced Metals, the RACT determination includes the submission of records required under the facility's NPDES permit. The commenter claims that neither EPA nor PADEP provide justification or explanation as to why submission of these records is necessary. The commenter claims that EPA has no authority under the CAA to require submission of records under the Clean Water Act (CWA), stating that the

[13] PADEP Responses to Frequently Asked Questions, Final Rulemaking RACT Requirements for Major Sources of NO_X and VOCs. October 20, 2016.

[14] This identical permit condition can be found in Global Advanced Metals' redacted Permit No. 46–00037, Section D, Source 102, VI. Condition #013; Source ID 124, VI. Condition #010; and Source ID 201, I. Condition #002, which is part of the record of this docket and will be incorporated into the SIP through this action.

[15] See Global Advanced Metals' redacted Permit No. 46–00037, Section D, Source ID 124, I. Condition #003 and IV. Conditions #006, #007 and #010; which is part of the record of this docket and will be incorporated into the SIP through this action.

[16] See Global Advanced Metals' Alternative RACT Compliance proposal, dated October 2016, which is part of the record for this docket.

[17] See Global Advanced Metals' redacted Permit No. 46–00037, Section D, Source 102, I. Conditions #004, which is part of the record for this docket and will be incorporated into the SIP through this action.

[18] See Global Advanced Metals' redacted Permit No. 46–00037, Section D, Source ID 201, I. Condition #001, which is part of the record for this docket and will be incorporated into the SIP through this action.

[19] Global Advanced Metals' redacted Permit No. 46–00037, Section D., Source ID 109, Condition #003(b)(2).

[20] See August 21, 2020 email from PADEP to EPA identifying changes to redacted RACT II permit for Global Advanced Metals and attaching the revised redacted permit. Both documents have been added to the docket in this matter and the revised redacted permit will be incorporated into the SIP. At the same time, PADEP has also revised the original RACT II permit by deleting requirements for Source 102 related to hydrogen flouride and hydrogen chloride for similar reasons. Those facility requirements were not related to VOC control.

Information Collection Request (ICR) approved for these records makes no mention of allowing them to be used for purposes outside of the NPDES program. The commenter claims that in order for EPA to require submission of these records for CAA purposes, EPA would have to go through the ICR process and calculate the burden on these sources to do so.

Response 8: The commenter is correct that among the RACT requirements for Source ID 201, the wastewater treatment plant (WWTP), Condition #001 requires the facility to ''provide to the DEP, upon request, copies of records required by the NPDES permit.'' [21] This condition is determined to be part of the source's VOC RACT determination per 25 Pa. Code 129.100(d).

EPA disagrees with the commenter that there is insufficient justification or explanation as to why these records are relevant to the VOC RACT determination for the WWTP. In its VOC RACT analysis, PADEP explained that the constituents of the wastewater at Global Advanced Metals include dissolved VOCs, which may be emitted to some extent to the atmosphere in the treatment process.[22] Knowledge of the wastewater constituents informs PADEP's knowledge as to the effectiveness of the wastewater treatment process in removing VOC emissions at this source. Information on such constituents is contained in the regular testing of total suspended solids and total dissolved solids performed by Global Advanced Metals pursuant to its NPDES permit. Therefore, this information is directly related to the control of VOC air emissions from the WWTP.

EPA also disagrees with the commenter's contentions about the use of NPDES records for RACT purposes and believes the commenter may have misinterpreted the nature of EPA's proposed action. In this SIP action, EPA is not relying on any CWA information collection authorization and is not adding such into the SIP. Rather, it is approving a legitimate permit term established by PADEP, under its own independent authority (the Air Pollution Control Act) to collect air emissions data, into the Pennsylvania SIP. Data that is collected under the NPDES program related to dissolved VOC constituents in a facility's wastewater is such data and referring to the NPDES permit merely helps the facility identify the required data but is not the authority being used to collect it. The reference to the NPDES permit helps to identify that the information needed to be supplied for compliance with the Pennsylvania air permit is the same as the information being collected under the CWA. It is merely a convenient way of identifying the data needed to be reported under the air permit and is not the basis for the state's authority to include it in the permit.

[21] Global Advanced Metals' redacted Permit No. 46–00037, Section D, Source ID 201, Condition #001.

[22] See PADEP's technical review memo, dated March 6, 2017, which is included as part of the docket for this action.

IV. Final Action

EPA is approving case-by-case RACT determinations for four sources in Pennsylvania, as required to meet obligations pursuant to the 1997 and 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of VOC and NO_X in Pennsylvania. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[23]

[23] 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's NO_X and VOC RACT requirements for four case-by-case facilities for the 1997 and 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 22, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by:

■ a. Revising the entries ''W.R. Grace and Co.—FORMPAC Div''; '' W. R. Grace and Co.—Reading Plant''; ''Cabot Performance Materials—Boyertown''; ''Sunoco, Inc. (R&M); Marcus Hook Plant''; and ''Transcontinental Gas Pipeline Corporation'' (Permit No. PA–41–0005A); and

■ b. Adding the following entries at the end of the table: ''Transco—Salladasburg Station 520 (formerly referenced as Transcontinental Gas Pipeline Corporation)''; ''Novipax (formerly referenced as W. R. Grace and Co.—FORMPAC Div and W. R. Grace and Co.—Reading Plant)''; ''Sunoco Partners Marketing & Terminals (formerly referenced as Sunoco, Inc. (R&M); Marcus Hook Plant)''; and ''Global Advanced Metals USA, Inc. (formerly referenced as Cabot Performance Materials—Boyertown)''.

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
* *	*	*	*	*	*
W. R. Grace and Co.—FORMPAC Div	PA–06–1036	Berks	5/12/95	5/16/96, 61 FR 24706	See also 52.2064(b)(2).
W. R. Grace and Co.—Reading Plant	PA–06–315–001.	Berks	6/4/92	5/16/96, 61 FR 24707	See also 52.2064(b)(2).
* *	*	*	*	*	*
Cabot Performance Materials—Boyertown	OP–46–0037	Montgomery	4/13/99	12/15/00, 65 FR 78418	See also 52.2064(b)(4).
* *	*	*	*	*	*
Sunoco, Inc. (R&M); Marcus Hook Plant	CP–23–0001	Delaware	6/8/95, 8/2/01	10/30/01, 66 FR 54699	See also 52.2064(b)(3).
* *	*	*	*	*	*
Transcontinental Gas Pipeline Corporation	PA–41–0005A	Lycoming	8/9/95	8/24/05, 70 FR 49496	See also 52.2064(b)(1).
* *	*	*	*	*	*
Transco—Salladasburg Station 520 (formerly referenced as Transcontinental Gas Pipeline Corporation).	41–00001	Lycoming	6/6/17	October 19, 2020, [INSERT **FEDERAL REGISTER** CITATION].	52.2064(b)(1).
Novipax (formerly referenced as W. R. Grace and Co.—FORMPAC Div and W. R. Grace and Co.—Reading Plant).	06–05036	Berks	12/19/17	October 19, 2020, [INSERT **FEDERAL REGISTER** CITATION].	52.2064(b)(2).
Sunoco Partners Marketing & Terminals (formerly referenced as Sunoco, Inc. (R&M); Marcus Hook Plant).	23–00119	Delaware	1/20/17	October 19, 2020, [INSERT **FEDERAL REGISTER** CITATION].	52.2064(b)(3).

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
Global Advanced Metals USA, Inc. (formerly reference as Cabot Performance Materials—Boyertown).	46–00037	Montgomery ...	3/10/17	October 19, 2020, [INSERT **FEDERAL REGISTER** CITATION].	52.2064(b)(4).

[1] The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

■ 3. Amend § 52.2064 by adding paragraph (b) to read as follows:

§ 52.2064 EPA-approved Source-Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X).

* * * * *

(b) Approval of source-specific RACT requirements for 1997 and 2008 8-hour ozone national ambient air quality standards for the facilities listed below are incorporated as specified below. (Rulemaking Docket No. EPA–OAR–2020–0189).

(1) Transco—Salladasburg Station 520—Incorporating by reference Permit No. 41–00001, issued June 6, 2017, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 41–0005A, issued August 9, 1995, except for Conditions 3, 4, 6, 8, 14, and 18, which remain as RACT requirements applicable to the three 2050 hp Ingersoll Rand engines #1, 2, and 3 (Source IDs P101, P102, P103). See also § 52.2063(d)(1)(i) for prior RACT approval.

(2) Novipax—Incorporating by reference Permit No. 06–05036, issued December 19, 2017, as redacted by Pennsylvania, which supersedes the prior RACT Plan Approval No. 06–1036, issued May 12, 1995 to W. R. Grace and Co. FORMPAC Division, except for Conditions 3, 4 (applicable to two pentane storage tanks, Source IDs 101 and 101A), 5 (applicable to extruders, Source ID 102, and facility wide to Source IDs 103, 104, 105, 106, 106B, 106C, 107, and 108), 7 (applicable to Source IDs 101, 101A, and 102) and 8 (applicable to Source IDs 101, 101A, and 102), which remain as RACT requirements applicable to the indicated sources, and Plan Approval No. 06–315–001, issued June 4, 1992 to W. R. Grace and Co.—Reading Plant, except for Conditions 4 (applicable to Source ID 102), 5 (applicable to Source IDs 101 and 101A), and 6 (applicable to Source IDs 101, 101A, and 102), which remain as RACT requirements applicable to the indicated sources. See also § 52.2063(c)(108)(i)(B)(6) for prior RACT approvals.

(3) Sunoco Partners Marketing & Terminals—Incorporating by reference Permit No. 23–00119, issued January 20, 2017, as redacted by Pennsylvania, which supersedes the prior RACT Compliance Permit No. CP–23–0001, issued June 8, 1995 and amended on August 2, 2001, except for Conditions 5E (applicable to diesel engine and stormwater pumps, Source ID 113), 6A (applicable to marine vessel loading, Source ID 115), 6B (tank truck loading), 6C (applicable to cooling tower 15–2B, Source ID 139), and 6D (applicable to waste water treatment, Source 701), which remain as RACT requirements applicable to the indicated sources. See also § 52.2063(c)(179)(i)(B)(6) for prior RACT approval.

(4) Global Advanced Metals USA, Inc.—Incorporating by reference Permit No. 46–00037, issued March 10, 2017, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. OP–46–0037, issued April 13, 1999, except for condition 15, which remains as a RACT requirement applicable to the tantalum salts process (Source ID 102), the extraction process (Source ID 124), the wastewater treatment plant (Source ID 201), and fugitive emissions from ethanol transfer and storage (Source 109). See also § 52.2063(c)(143)(i)(B)(20) for prior RACT approval.

[FR Doc. 2020–21438 Filed 10–16–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0356; FRL–10015–03–Region 7]

Air Plan Approval; Missouri; Removal of Control of Emissions From Polyethylene Bag Sealing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Missouri on January 15, 2019, and supplemented by letter on July 11, 2019. In the proposal, EPA proposed removal of a rule related to the control of emissions from polyethylene bag sealing operations in the St. Louis, Missouri area from its SIP. This removal does not have an adverse effect on air quality. The EPA's approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 18, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0356. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: David Peter, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7397; email address: *peter.david@epa.gov*.

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

Table of Contents

I. What is being addressed in this document?

The EPA is approving the removal of 10 Code of State Regulation (CSR) 10–

5.360, *Control of Emissions from Polyethylene Bag Sealing Operations,* from the Missouri SIP.

As explained in detail in EPA's proposed rule, Missouri has demonstrated that removal of 10 CSR 10–5.360 will not interfere with attainment of the NAAQS, reasonable further progress [1] or any other applicable requirement of the CAA because the only two sources subject to the rule are no longer subject and the removal of the rule will not cause VOC emissions to increase. (85 FR 45568, July 29, 2020). The EPA solicited but did not receive any comments on this proposed rule. Therefore, the EPA is finalizing its proposal to remove 10 CSR 10–5.360 from the SIP.

II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from May 15, 2018, to August 2, 2018, and received eleven comments from the EPA that related to Missouri's lack of an adequate demonstration that the rule could be removed from the SIP in accordance with section 110(l) of the CAA, whether the rule applied to new sources and other implications related to rescinding the rule. Missouri's July 11, 2019 letter and December 3, 2018 response to comments on the state rescission rulemaking addressed the EPA's comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is the EPA taking?

The EPA is taking final action to approve Missouri's request to remove 10 CSR 10–5.360 from the SIP.

IV. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulation from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

V. Statutory and Executive Order Reviews

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

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2020.

James Gulliford,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

[1] RFP is not applicable to the St. Louis Area because for marginal ozone nonattainment areas, such as the St. Louis Area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9).

Subpart AA—Missouri

§ 52.1320 [Amended]

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–5.360'' under the heading ''Chapter 5-Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area''.

[FR Doc. 2020–21150 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1503 and 1552

[EPA–HQ–OARM–2015–0657; FRL–10012–65–OMS]

Environmental Protection Agency Acquisition Regulation (EPAAR); Scientific Integrity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final rule to address scientific integrity requirements in the creation of a contract clause for inclusion in solicitations and contracts when the Contractor may be required to perform, communicate, or supervise scientific activities or use scientific information to perform advisory and assistance services. This clause will complement the EPA's Scientific Integrity Policy to ensure all scientific work developed and used by the Government is accomplished with scientific integrity.

DATES: This final rule is effective on October 19, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OARM–2015–0657; FRL–10012–65–OMS. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Holly Hubbell, Policy, Training, and Oversight Division, Acquisition Policy and Training Branch (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1091; email address: *hubbell.holly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA's Scientific Integrity Policy is based on a Presidential Memorandum for the Heads of Executive Departments and Agencies, Subject Line: Scientific Integrity, Dated: March 9, 2009. The memorandum directs the Director of the Office of Science and Technology Policy (OSTP) to work with the Office of Management and Budget (OMB) and agencies to develop policies to ensure all scientific work developed and used by the Government is done so with scientific integrity. OSTP issued further guidance in the Scientific Integrity memorandum dated December 17, 2010.

This final rule requires EPA contractors to ensure that all personnel within their organization, subcontractors and consultants, that perform, communicate, or supervise scientific activities or use scientific information to perform advisory and assistance services under their specified contracts with EPA, have read and understand their compliance responsibilities regarding the EPA's Scientific Integrity Policy.

The proposed rule was published in the **Federal Register** (83 FR 48581–48584) on September 26, 2018, providing for a 60-day comment period. Interested parties were afforded the opportunity to participate in the making of this rule.

II. Public Comments on the Proposed Rule

The following is a summary of the public comments received on the proposed rule and the EPA's response to these comments.

1. *Comment:* Several commenters expressed concerns about the costs of making scientific information available online and also that requiring scientific information to be available online could compromise confidentiality of the scientific information.

Response: The proposed clause requirement at EPAAR § 1552.203–72(c)(1)(x) to make scientific information available online has been deleted.

2. *Comment:* One commenter suggested that the EPA inform contractors of their need to evaluate computer models in adherence to the EPA Models Guidance.

Response: This requirement is described in general terms because listing specific guidance may not be all-inclusive or the guidance may change in the future.

3. *Comment:* One commenter noted that preventing intimidation or coercion of scientists to alter their scientific findings is a crucial element of the EPA's Scientific Integrity Policy and proposed adding the terms ''*attempted or actual* intimidation or coercion'' to the clause to clarify that both attempted or actual intimidation or coercion would be a loss of scientific integrity.

Response: The EPA agrees and has added the terms ''attempted or actual'', defining intimidation or coercion to EPAAR 1552.203–72(c)(2)(i).

4. *Comment:* One commenter expressed concern that the proposed rule does not explicitly address whether an individual employee of a contractor has an obligation to report loss or potential loss of scientific integrity to the contracting officer, his or her supervisor, or both, or to whom and how to report.

Response: In this final rule, the EPA does clarify in paragraph (d) of the clause that an employee of the contractor must report any loss or potential loss of scientific integrity in writing to the contractor who must communicate it to the EPA.

5. *Comment:* Concern was expressed that there is no explicit mechanism for resolving a dispute if the contractor, or an individual contractor employee, feels that the contracting officer has reached an incorrect conclusion or is applying an inappropriate remedy with regard to a loss of scientific integrity.

Response: The EPA agrees that a party who has been accused of a loss of scientific integrity should be able to respond to the Agency's decision regarding the loss of scientific integrity and the remedy. Section (e)(5) of the clause has been edited to state that if the party who has been accused of a loss of scientific integrity feels that the Agency has reached an incorrect conclusion or the Agency has applied an inappropriate remedy, that party may provide a written response to the Contracting Officer, Scientific Integrity Official, and/or Office of Inspector General (OIG).

6. *Comment:* One commenter noted that it was not clear if the proposed rule intended to cover a situation where a contractor, or employee of a contractor, became aware of a loss or suspected loss of scientific integrity by an EPA employee, but suggested the rule should cover this situation. Further, the commenter suggested such a loss or suspected loss of scientific integrity by an EPA employee be reported to someone other than the contracting officer or the contracting officer's representative.

Response: EPA agrees and has revised paragraph (d) of the clause to clarify that the final rule addresses the situation where a contractor, or employee of a contractor, becomes aware of an actual or suspected loss of scientific integrity by an EPA employee. Language has been added to state that, if the actual or potential loss of scientific integrity is by an EPA employee, the contractor may inform the EPA's Scientific Integrity Official in addition to the contracting officer or contracting officer's representative. An employee of the contractor must report any actual or potential loss of scientific integrity to the contractor who must communicate it to the EPA.

7. *Comment:* One commenter stated that the two clauses need to be further emphasized to prevent bias during scientific inquiry.

Response: To clarify, there is only one clause, EPAAR § 1552.203–72. EPAAR § 1503.1071 is the prescription for the use of the clause. The EPA believes that there is sufficient emphasis in the clause requirements to prevent bias during scientific inquiries. Additionally, contractors are legally bound to adhere to all terms of the clause, if it is included in their contract(s).

8. *Comment:* One commenter noted that the proposed rule requires EPA contractors to adhere to the standards set forth in the EPA's Scientific Integrity Policy, but the commenter was concerned that contractors cannot comply with standards if they don't know about them. The commenter suggested additional language be added to the clause noting all the guidance upon which the EPA's Scientific Integrity Policy is built.

Response: The EPA believes such additional language is not necessary. Contractors are notified of the scientific integrity requirements, which includes a link to the EPA's Scientific Integrity Policy, when this clause is included in the solicitation and contract.

9. *Comment:* One commenter suggested that the rule should be designated as ''significant'' under Executive Order (E.O.) 12866, as other agencies may not require contractor compliance with the EPA's Scientific Integrity Policy, which could create serious inconsistencies when the EPA is working with the other agencies on matters of interest to both agencies. The commenter was also concerned that contractor adherence to the EPA's Scientific Integrity Policy could also raise legal or policy issues arising out of legal mandates, the President's priorities, or E.O. 12866.

Response: The Office of Management and Budget determines if a rule is a significant regulatory action. The EPA's Scientific Integrity Policy is based on OSTP guidance and developed in conjunction with OMB's approval.

10. *Comment:* One commenter expressed concern that the proposed rule provides that it is the contracting officer who decides when the Scientific Integrity clause applies and when it should be inserted in a contract. The commenter was concerned that while some examples of activities that may trigger the rule's application are listed in the clause, the list of examples is not exhaustive, and the applicability may be misinterpreted by the contractor officer.

Response: The EPA agrees that the technical experts regarding applicability would be the EPA program office. Therefore, this final rule adds language so the contracting officer will consult with the program office regarding inclusion of the Scientific Integrity clause in a contract.

11. *Comment:* One commenter proposed adding language requiring contractors to use the most refined species location maps and best actual sampling and test data available.

Response: The EPA believes this language is redundant to what is already stated in the clause § 1552.203–72(c)(1)(i), which states the contractor agrees to produce scientific products of the highest quality, rigor and objectivity.

12. *Comment:* Several respondents that provided comments expressed their support of the scientific integrity requirement for contractors.

Response: EPA appreciates the support of the respondents.

III. Final Rule

The final rule amends FAR Part 1503—Improper Business Practices and Personal Conflicts of Interests, Subpart 1503.10—Contractor Code of Business Ethics and Conduct, by adding EPAAR § 1503.1070—*Scientific integrity* and 1503.1071—*Contract clause.* FAR Part 1552—Solicitation Provisions and Contract Clauses is amended by adding EPAAR clause § 1552.203–72—*Scientific Integrity*.

1. EPAAR § 1503.1070 explains the basis for the subsection.

2. EPAAR § 1503.1071 establishes the prescription for use of EPAAR clause § 1552.203–72 in all solicitations and contracts when the contractor may be required to perform, communicate, or supervise scientific activities, or use scientific information to perform advisory and assistance services.

3. EPAAR § 1552.203–72—*Scientific Integrity* clause states the applicability, term definitions as used in this clause, compliance requirements, reporting requirements, if an actual or suspected loss of scientific integrity is detected, and potential remedies.

IV. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act 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. For purposes of assessing the impact of this final rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' 5

U.S.C. 503 and 604. Thus, 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, or otherwise has a positive economic effect on all the small entities subject to the rule. This action establishes a new EPAAR clause that will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications as specified in Executive Order 13175.

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

Executive Order 13045, entitled ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

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

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28335 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C. 272 note) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment in the general public.

K. Congressional Review Act

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

List of Subjects in 48 CFR Parts 1503 and 1552

Environmental protection, Government procurement, Antitrust, Conflict of interest, Reporting and recordkeeping requirements.

Kimberly Patrick,

Director, Office of Acquisition Solutions.

For the reasons stated in the preamble, EPA amends 49 CFR parts 1503 and 1552 as follows:

PART 1503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTERESTS

■ 1. The authority citation for part 1503 is revised to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 1707.

■ 2. Add section 1503.1070 to read as follows:

1503.1070 Scientific integrity.

The EPA's Scientific Integrity Policy is based on a Presidential Memorandum for the Heads of Executive Departments and Agencies, Subject Line: Scientific Integrity, Dated: March 9, 2009. The memorandum directs the Director of the Office of Science and Technology Policy (OSTP) to work with the Office of Management and Budget (OMB) and agencies to develop policies to ensure all scientific work developed and used by the Government is done with scientific integrity. OSTP issued further guidance in the Scientific Integrity memorandum dated December 17, 2010.

This section and clause complement the EPA's Scientific Integrity Policy.

■ 3. Add section 1503.1071 to read as follows:

1503.1071 Contract clause.

Contracting Officers, with advisement from the program office, must insert the contract clause at 1552.203–72—*Scientific Integrity,* in solicitations and contracts when the Contractor may be required to perform, communicate, or supervise scientific activities, or use scientific information to perform advisory and assistance services. Examples of such scientific activities include, but are not limited to, computer modeling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for part 1552 is revised to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 1707.

■ 5. Add section 1552.203–72 to read as follows:

1552.203–72 Scientific integrity.

As prescribed in § 1503.1071, insert the following clause:

Scientific Integrity (Month Year)

(a) *Applicability.* This contract will require the Contractor to perform, communicate, or supervise scientific activities or use scientific information to perform advisory and assistance services. When performing, communicating, supervising, or utilizing scientific activities or scientific information, the Contractor must adhere to the EPA's Scientific Integrity Policy.

(b) *Definitions.* The following definitions apply:

Advisory and assistance services (*see* 48 CFR 2.101).

Scientific activities means those activities leading to the systematic knowledge of the physical or material world, largely consisting of observation and experimentation. It also includes the supervision, utilization, and communication of these activities.

Scientific information means factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge, such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page but does not include the provision of hyperlinks on a web page to information that others disseminate. This definition excludes opinions, where the agency's presentation makes clear that an individual's opinion, rather than a statement of fact or of the agency's findings and conclusions, is being offered.

Scientific Integrity means the adherence to professional values and practices, that is, the codes of ethics and behaviors in the scientists' fields of study, when conducting, supervising, communicating, and utilizing the results of science and scholarship. It ensures objectivity, clarity, reproducibility, and utility. It also provides insulation from bias, fabrication, falsification, plagiarism, improper outside interference, and censorship.

(c) *Compliance with policy.* Prior to beginning performance under this contract, the Contractor must ensure that all personnel within their organization, including subcontractors and consultants, that perform, communicate, or supervise scientific activities, or use scientific information to perform advisory and assistance services under this contract, have read and understand their compliance responsibilities with the *EPA's Scientific Integrity Policy.* This requirement applies to any personnel that will supervise, conduct, utilize, or communicate scientific activities or scientific information. Examples of such scientific activities include, but are not limited to, computer modeling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

(1) Consistent with the objective of promoting a culture of scientific integrity and transparency, as discussed in the EPA's Scientific Integrity Policy, the Contractor agrees to:

(i) Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA information quality policy, quality assurance policy, and peer review policy;

(ii) Prohibit suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions;

(iii) Adhere to the *Peer Review Handbook,* current edition, for the peer review of scientific and technical work products generated through this contract;

(iv) Act honestly and refrain from acts of research misconduct, including publication or reporting, as described in EPA Order 3120.5 Policy and Procedures for Addressing Research Misconduct. Research misconduct does not include honest error or differences of opinion;

(v) Require that reviews of the content of a scientific product be based only on scientific quality considerations, *e.g.,* the methods used are clear and appropriate, the presentation of results and conclusions is impartial;

(vi) Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by subcontractors and consultants who assist with developing or applying the results of scientific activities;

(vii) Include an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections when communicating scientific findings, if applicable;

(viii) Document the use of independent validation of scientific methods; and

(ix) Document any independent review of the Contractor's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.

(2) To assure protection of Contractor staff supported by this contract, consistent with the objectives described in the EPA's Scientific Integrity Policy, the Contractor agrees to:

(i) Prohibit attempted or actual intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, the Contractor agrees to inform its employees, subcontractors, and consultants, including scientists and managers, of their responsibility not to knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; and

(ii) Prohibit retaliation or other punitive actions toward employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. The Contractor must afford employees who have allegedly engaged in scientific or research misconduct the due process protections provided by law, regulation, and applicable collective bargaining agreements, prior to any action. The Contractor must ensure that all employees, subcontractors, and consultants are familiar with these protections and avoid the appearance of retaliatory actions.

(d) *Loss of Scientific Integrity.* If during performance of this contract the Contractor becomes aware of an actual or suspected loss of scientific integrity, the Contractor must immediately inform the Contracting Officer and the Contracting Officer's Representative with a description of the actual or suspected issue in writing. If the actual or suspected loss of scientific integrity is by an EPA employee, the Contractor may inform the Agency's Scientific Integrity Official, in addition to the Contracting Officer and Contracting Officer's Representative. The Contractor must ensure that its employees are aware of their responsibility to immediately report any actual or suspected loss of scientific integrity to the Contractor, who must communicate it to the EPA in writing. The Contracting Officer and the Contracting Officer's Representative must consult with the Agency's Scientific Integrity Official on all issues related to an actual or suspected loss of scientific integrity under this contract and with the EPA Office of Inspector General (OIG), in accordance with EPA Order 3120.5 *Policy and Procedures for Addressing Research Misconduct,* on all issues related to research misconduct. The Agency's Scientific Integrity Official and/or OIG must advise the Contracting Officer and Contracting Officer's Representative on the appropriate remedy for any actual or suspected loss of scientific

integrity. The Contractor bears the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred under the contract in association with its own institution. However, the EPA retains the ultimate oversight authority for the EPA-supported research. The Contractor must take the actions required as described in EPA Order 3120.5 *Policy and Procedures for Addressing Research Misconduct* when research misconduct is suspected or found under its contract.

(e) *Remedies.* The Contracting Officer in consultation with the Scientific Integrity Official and OIG, if applicable, will make the final determination on any remedy to an actual or suspected loss of scientific integrity. Potential remedies include:

(1) Acceptance of the Contractor's proposed mitigation plan to the scientific integrity issue;

(2) Acceptance of an alternate mitigation plan negotiated by the parties listed in the first paragraph of this section;

(3) Termination for convenience, in whole or in part, if no mitigation plan will adequately resolve the actual or suspected loss of scientific integrity; or

(4) Termination for default or cause, in whole or in part, if the Contractor was aware of an actual or suspected loss of scientific integrity under this contract and did not disclose it or misrepresented relevant information to the EPA. Additionally, the Government may debar or suspend the Contractor from Government contracting or pursue other remedies as may be permitted by law or this contract.

(5) *Opportunity to Respond*—If the party who has been accused of a loss of scientific integrity feels that the Agency has reached an incorrect conclusion or the Contracting Officer has applied an inappropriate remedy, the party may provide a written response to the Contracting Officer, Scientific Integrity Official, and/or OIG.

(f) *Subcontractors and Consultants.* The Contractor agrees to insert language in any subcontract or consultant agreement placed hereunder which must conform substantially to the language of this clause, including this paragraph (f), unless otherwise authorized in advance in writing by the Contracting Officer.

(g) *Additional Resources.* For more information about the EPA's Scientific Integrity Policy, an introductory video can be accessed at: *https://youtu.be/FQJCy8BXXq8.* A training video is available at: *https://youtu.be/Zc0T7fooot8.*

(End of clause)

[FR Doc. 2020–20665 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180625576–8999–02]

RIN 0648–BK14

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–2020 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial groundfish fisheries. This action is intended to allow commercial fishing vessels to access more abundant groundfish stocks while protecting rebuilding and depleted stocks.

DATES: This final rule is effective October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, phone: 206–526–6147 or email: *Gretchen.Hanshew@noaa.gov.*

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at 50 CFR part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2019–2020 biennium for most species managed under the PCGFMP on December 12, 2018 (83 FR 63970).

Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL] and harvest guidelines [HG]) based on the best scientific information available at that time (50 CFR 660.60(b)). The harvest specifications and management measures developed for the 2019–2020 biennium used data through the 2017 fishing year. In general, the management measures (*e.g.,* trip limits, area closures, and bag limits) set at the start of the biennial harvest specifications cycle help catch in the various sectors of the fishery reach, but not exceed, the limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal. At its September 11, and 14–18, 2020 webinar, the Council recommended increasing the limited entry fixed gear (LEFG) and open access (OA) trip limits for sablefish north of 36° North latitude (N lat.) and increasing the incidental landing limit for Pacific halibut in the LEFG primary sablefish fishery. Each of the adjustments discussed below are based on updated fisheries information that was unavailable when the Council completed the initial analysis for the current harvest specifications.

Since spring 2020, declines in Asian markets and restrictions for domestic restaurants, among other factors, have led to a decline in markets and therefore an overall decline in fishing effort. The combination of these factors has resulted in estimated year-end catches that are lower than was anticipated under normal market conditions. The following changes were requested by industry to increase access to available harvestable quotas for sablefish and incidentally caught Pacific halibut.

Increases to Limited Entry Fixed Gear and Open Access Trip Limits for Sablefish

Sablefish is an important commercial species on the west coast with vessels targeting sablefish using both trawl and fixed gear (longlines and pots/traps). Sablefish is managed with a coast-wide ACL that is apportioned north and south of 36° N lat. with 73.8 percent going to the north and 26.2 percent going to the south. In 2020, the portion of the ACL for sablefish north of 36° N lat. is 5,723 mt with a commercial HG of 5,113 mt. The commercial HG north of 36° N lat. is further divided between the limited entry and OA sectors with 90.6 percent, or 4,632 mt, going to the limited entry

sector and 9.4 percent, or 481 mt, going to the OA sector. The limited entry share of the commercial HG is further divided between trawl (58 percent, or 2,687 mt), and fixed gear (42 percent, or 1,946 mt). The limited entry fixed gear share is further divided between the primary (85 percent, or 1,654 mt), and daily trip limit (15 percent, or 292 mt) fisheries.

Sablefish north of 36° N lat. is anticipated to have catches through the end of the year lower than anticipated at the start of the 2020 fishery, resulting in sablefish harvest of approximately 71 percent of the sablefish north ACL.

At the September 2020 Council meeting, members of industry requested increases to sablefish trip limits to address the lower than anticipated harvest of sablefish in 2020. Under the current trip limits, total catch in the LEFG and OA fisheries north of 36° N lat. is projected to be less than 172 mt, or 62 percent of the LEFG catch share, and less than 237 mt, or 52 percent of the OA catch share. Increasing the trip limits as described in Option 2, Table 1, for the LEFG and OA fisheries north of 36° N lat. for the remainder of the fishing year is projected to increase total mortality. Harvest in the LEFG fishery may increase by 69 mt, or 89 percent of the LEFG catch share, and in the OA fishery by 32 mt, or 67 percent of the OA catch share. The trip limit changes are described in Table 1.

Table 1 -- Status Quo and the Council's Recommended Increased LEFG and OA Trip Limits for Sablefish North of 36° N. lat.

Option	Sector	Geographic Area	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
Option 1: Status Quo Trip Limits	LE	North of 36° N. lat.	1,300 lb (590 kg)/week, not to exceed 3,900 lb (1,769 kb)/2 months		1,500 lb (680 kg)/week, not to exceed 4,500 lb (2,041 kg)/2 months			
	OA	North of 36° N. lat.	300 lb (136 kg)/day, or one landing per week, up to 1,200 lb (544 kg), not to exceed 2,400 lb (1,089 kg)/2 months		300 lb (136 kg)/day, or one landing per week up to 1,500 lb (680 kg), not to exceed 3,000 lb (1,361 kg)/2 months			
Option 2: Increased Trip Limits Implemented in This Rule	LE	North of 36° N. lat.	1,300 lb (590 kg)/week, not to exceed 3,900 lb (1,769 kg)/2 months		1,500 lb (680 kg)/week, not to exceed 4,500 lb (2,041 kg)/2 months		2,500 lb (1,134 kg)/week, not to exceed 7,500 lb (3,402 kg)/2 months	
	OA	North of 36° N. lat.	300 lb (136 kg)/day, or one landing per week, up to 1,200 lb (544 kg), not to exceed 2,400 lb (1,089 kg)/2 months		300 lb (136 kg)/day, or one landing per week up to 1,500 lb (680 kg), not to exceed 3,000 lb (1,361 kg)/2 months		600 lb (272 kg)/day or one landing per week up to 2,000 lb (907 kg), not to exceed 4,000 lb (1,814 kg)/2 months	

Trip limit increases for sablefish are intended to allow for increased attainment of the limited entry fixed gear and open access harvest guidelines (4,631 mt and 481 mt, respectively), by allowing for increased harvest opportunities from October through December 2020. Increasing the trip limits is expected to increase total mortality by approximately 100 mt. Sablefish harvest through the end of the year is still expected to be below the ACL, with harvest of approximately 73 percent of the 5,723 mt ACL for Sablefish north of 36° N lat. Therefore, the Council recommended and NMFS is implementing, by modifying Tables 2 (North) and 2 (South) to part 660, Subpart E, an increase to sablefish trip limits for the LEFG fishery north of 36° N lat. to ''2,500 lb (1,134 kg)/week, not to exceed 7,500 lb (3,402 kg)/2 months'' and, by modifying Tables 3 (North) and 3 (South) to part 660, Subpart F, an increase to the sablefish trip limits for the OA fishery north of 36° N lat. to ''600 lb (272 kg)/day or one landing per week up to 2,000 lb (907 kg), not to exceed 4,000 lb (1,814 kg)/2 months''.

Increases to Limited Entry Fixed Gear Incidental Landing Limits for Pacific Halibut

Under the authority of the Northern Pacific Halibut Act of 1982, the Council developed a Catch Sharing Plan for the International Pacific Halibut Commission Regulatory Area 2A. The Catch Sharing Plan allocates the Area 2A annual total allowable catch (TAC) among fisheries off Washington, Oregon, and California. Pacific halibut is generally a prohibited species for vessels fishing in Pacific coast groundfish fisheries, unless explicitly allowed in groundfish regulations and authorized by the Pacific halibut Catch Sharing Plan. In years where the Pacific halibut TAC is above 900,000 lb (408 mt), the Catch Sharing Plan allows the LEFG sablefish primary fishery an incidental retention limit for Pacific halibut north of Point Chehalis, WA (46°53.30′ N lat.).

On May 1, 2020, NMFS implemented a 2020 Area 2A TAC of 1,500,000 lb (680.4 mt) (85 FR 25317; May 1, 2020). Consistent with the provisions of the Catch Sharing Plan, the LEFG sablefish primary fishery north of Pt. Chehalis, WA has an incidental total catch limit of 70,000 lb (31.8 mt) for 2020. Current regulations at § 660.231(b)(3)(iv) provide for Pacific halibut retention by vessels fishing in the LEFG sablefish primary fishery from April 1 through October 31 with a landing limit of 200 lb (91 kg) dressed weight of Pacific halibut, for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to an additional two Pacific halibut in excess of this limit.

At the September 2020 Council meeting, members of industry requested increases to the landing limit for incidentally caught Pacific halibut in the sablefish primary fishery north of Point Chehalis, WA (46°53.30′ N lat.). As noted above, overall fishing effort for sablefish has been lower than expected this year, and so has the incidental harvest of Pacific halibut in this fishery. Under the current incidental landing limit, total catch of Pacific halibut in this fishery through the end of the season is projected to be less than 65,000 lbs, or 93 percent of the allocation (70,000 lbs or 31,751 kg). Increasing the incidental landing limit as described in Option 2, Table 2, for the remainder of the fishing season, scheduled to close at noon on October 31, is projected to increase total mortality to over 69,000 lbs, or 99 percent of the allocation.

Table 2 -- Status Quo and the Council's Recommended Increased Landing Limit for Pacific Halibut in the Sablefish Primary Fishery North of Point Chehalis, WA

Option	Sector	Geographic Area	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
Option 1: Status Quo Landing Limit	LEFG	North of Point Chehalis, WA	Closed	200 lbs (91 kg) of Pacific halibut for every 1,000 lbs (454 kg) of sablefish[1/]				Closed
Option 2: Landing Limit	LEFG	North of Point Chehalis, WA	Closed	200 lbs (91 kg) of Pacific halibut for every 1,000 lbs (454 kg) of sablefish[1/]			250 lbs (113 kg) of Pacific halibut for every 1,000 lbs (454 kg) of sablefish[1/2/]	Closed

1/ All weights are dressed weights. A vessel may have an additional two Pacific halibut that are in excess of the limit.

2/ Increased limit would be effective on the date of publication of the **Federal Register** notice through noon on October 31, 2020.

Incidental landing limit increases for Pacific halibut are intended to allow for more Pacific halibut to be retained and landed for vessels targeting sablefish in the primary sablefish fishery north of Point Chehalis, WA. Under the Council's recommendation, increasing the trip limits is expected to increase landings by up to 4,500 lbs (2,041 kg). This is expected to allow increased attainment of the Pacific halibut allocation which would otherwise be discarded. Therefore, in order to allow increased incidental Pacific halibut catch in the sablefish primary fishery, the Council recommended and NMFS is revising incidental Pacific halibut retention regulations at § 660.231(b)(3)(iv) to increase the catch limit to ''250 lb (113 kg) dressed weight of halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed and up to two additional halibut in excess of the 250 lb (113 kg) per 1,000 lb (454 kg) limit per landing.''

Classification

This action is taken under the authority of 50 CFR 660.60(c) and the Northern Pacific Halibut Act of 1982 and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Gretchen Hanshew in NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *https://www.fisheries.noaa.gov/species/west-coast-groundfish.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document ease restrictive trip limits on commercial fisheries in Washington, Oregon, and California to allow fisheries to harvest more fish while still staying within harvest limits. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2019–2020 harvest specifications and management measures which published on December 12, 2018 (83 FR 63970).

At its September 2020 webinar, the Council recommended the increases to the commercial trip limits for the LEFG and OA sectors be implemented as soon as possible so that harvesters may be able to take advantage of these higher limits before the end of the year. Each of the adjustments to commercial management measures in this rule will create more harvest opportunity and allow fishermen to catch species that are currently under attained without causing any impacts to the fishery that were not anticipated during development of the 2019–20 biennial harvest specifications. Each of these recommended adjustments also rely on new catch data that were not available and thus not considered during the 2019–2020 biennial harvest specifications process. New catch information through summer 2020 was used to inform model projections. Models estimate that attainment of sablefish will be low in 2020 and, even with these increases to trip limits, most sectors are unlikely to come close to attaining their shares of the sablefish ACL. These adjustments to LEFG and OA fishery trip limits could provide up to an additional $885,000 in ex-vessel revenue to harvesters off Washington, Oregon, and California. Based on recent fishery data, best estimates also indicate that the sablefish primary fishery will not harvest its entire share of the Area 2A Pacific halibut total allowable catch. These adjustments to Pacific halibut management measures could provide up to an additional $13,500 in ex-vessel revenue to harvesters fishing off the Washington coast.

Additional economic benefits would also be seen for processors and the fishing support businesses; however, these are more difficult to quantify. Delaying implementation to allow for public comment would likely reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry. If the notice and comment rulemaking process took 90 days to complete, the increase would not be in place until December when the fishing year is almost over. Therefore, providing a comment period for this action could limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

The NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by increasing opportunity and relieving participants of the more restrictive trip limits. These adjustments were requested by the Council's advisory bodies, as well as members of industry during the Council's September 2020 meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2019–2020 (82 FR 63970; December 12, 2018).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: October 14, 2020.

Jennifer M. Wallace,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.231, paragraph (b)(3)(iv) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(iv) Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30′ N lat.). From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N lat.) may possess and land up to 250 lbs (113 kg) dressed weight of Pacific halibut for every 1,000 lbs (454 kg) dressed weight of sablefish landed and up to two additional Pacific halibut in excess of the 250-lbs-per-1,000-pound limit per landing. ''Dressed'' Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

* * * * *

■ 3. Table 2 (North) to part 660, subpart E is revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/01/2020

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	6,000 lb/2 month		8,000 lb/2 month			
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	1,300 lb week, not to exceed 3,900 lbs/2months		1,500 lb/ week, not to exceed 4,500 lbs/ 2 months		2,500 lb/week, not to exceed 7,500 lb/2 months	
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month		10,000 lb/ month			
10		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
11	**Whiting**	10,000 lb/ trip					
12	**Minor Shelf Rockfish[2/], Shortbelly, & Widow rockfish**	200 lb/ month		800 lb/ month			
13	**Yellowtail rockfish**	1,000 lb/ month		3,000 lb/ month			
14	**Canary rockfish**	300 lb/ 2 months		3,000 lb/ 2 months			
15	**Yelloweye rockfish**	CLOSED					
16	**Minor Nearshore Rockfish, Washington Black rockfish & Oregon Black/blue/deacon rockfish**						
17	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
18	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish			
19	**Lingcod[5/]**						
20	North of 42°00' N. lat.	2,600 lb/2 months		4,000 lb/ 2 months			
21	42°00' N. lat. - 40°10' N. lat.	1,400 lb/2 months		2,000 lb/ 2 months			
22	**Pacific cod**	1,000 lb/ 2 months					
23	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Longnose skate**	Unlimited					
25	**Other Fish[6/]& Cabezon in California**	Unlimited					
26	**Oregon Cabezon/Kelp Greenling**	Unlimited					
27	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Table 2 (South) to part 660, subpart E is revised to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/01/2020

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish		40,000 lb/ 2 months, of which no more than 5,500 lb may be blackgill rockfish			
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	1,300 lb week, not to exceed 3,900 lbs/2months		1,500 lb/ week, not to exceed 4,500 lbs/ 2 months		2,500 lb/week, not to exceed 7,500 lb/2 months	
7	South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**						
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month		10,000 lb/ month			
13		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
14	**Whiting**	10,000 lb/ trip					
15	**Minor Shelf Rockfish[2/], Shortbelly rockfish, Widow rockfish (including Chilipepper between 40°10' - 34°27' N. lat.)**						
16	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.		8,000 lb/ 2 months, of which no more than 500 lbs may be vermilion rockfish			
17	South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED	5,000 lb/ 2 months, of which no more than 4,000 lb may be vermilion rockfish			
18	**Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly and widow rockfish limits - - See above					
20	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA		4,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA			
21	**Canary rockfish**						
22	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months		3,500 lb/ 2 months			
23	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	3,500 lb/ 2 months			
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					

TABLE 2 (South)

Table 2 (South) continued 10/01/2020

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
27	**Bocaccio**						
28	40°10' N. lat. - 34°27' N. lat.	1,500 lb/ 2 months			6,000 lb/ 2 months		
29	South of 34°27' N. lat.	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months	6,000 lb/ 2 months		
30	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
31	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
32	Deeper nearshore[5/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
33	**California Scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
34	**Lingcod[6/]**	1,200 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
35	**Pacific Cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Other Fish[7/] & Cabezon in California**	Unlimited					
39	**Big Skate**	Unlimited					

TABLE 2 (South) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. Table 3 (North) to part 660, subpart F is revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/01/2020

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	500 pounds/month		1,000 lb/ month			
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	300 lb day; or one landing per week up to 1,200 lb, not to exceed 2,400 lb/2 months		300 lb day; or one landing per week up to 1,500 lb, not to exceed 3,000 lb/2 months		600 lb/day or one landing per week up to 2,000 lb, not to exceed 4,000 lb/2 months	
7	**Shortpine thornyheads**	50 lb/ month					
8	**Longspine thornyheads**	50 lb/ month					
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.		5,000 lb/ month			
10		South of 42° N. lat., when fishing for "Other Flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Whiting**	300 lb/ month					
12	**Minor Shelf Rockfish[2/], Shortbelly rockfish, & Widow rockfish**	200 lb/ month		800 lb/ month			
13	**Yellowtail rockfish**	500 lb/ month		1,500 lb/ month			
14	**Canary rockfish**	300 lb/ 2 months		1,000 lb/ 2 months			
15	**Yelloweye rockfish**	CLOSED					
16	**Minor Nearshore Rockfish, Washington Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
17	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish [4/]					
18	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish			
19	**Lingcod[5/]**						
20	North of 42°00' N. lat.	1,200 lb/month		2,000 lbs/ month			
21	42°00' N. lat. - 40°10' N. lat.	600 lb/ month		1,000 lb/ month			
22	**Pacific cod**	1,000 lb/ 2 months					
23	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Longnose skate**	Unlimited					
25	**Big skate**	Unlimited					
26	**Other Fish[6/] & Cabezon in California**	Unlimited					
27	**Oregon Cabezon/Kelp Greenling**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued — 10/01/2020

TABLE 3 (North) cont'd

28	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*	
29	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 5 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.
30	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*	
31	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 6. Table 3 (South) to part 660, subpart F is revised to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/01/2020

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish		10,000 lb/ 2 months, of which no more than 1,500 lb may be blackgill rockfish			
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb day; or one landing per week up to 1,200 lb, not to exceed 2,400 lb/2 months		300 lb day; or one landing per week up to 1,500 lb, not to exceed 3,000 lb/2 months		600 lb/day or one landing per week up to 2,000 lb, not to exceed 4,000 lb/2 months	
7	South of 36°00' N. lat.	300 lb day; or one landing per week up to 1,600 lb not to exceed 4,800 lb/2 months					
8	**Shortpine thornyheads and longspine thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.		5,000 lb/ month			
12		*South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.*					
13	**Whiting**	300 lb/ month					
14	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
15	40°10' N. lat. - 34°27' N. lat.	400 lb/ 2 months	CLOSED	4,000 lb/ 2 months, of which no more than 400 lbs may be vermilion rockfish			
16	South of 34°27' N. lat.	1,500 lb/ 2 months		3,000 lb/ 2 months, of which no more than 1,500 lbs may be vermilion rockfish			
17	**Canary rockfish**	300 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
18	**Yelloweye rockfish**	CLOSED					
19	**Cowcod**	CLOSED					
20	**Bronzespotted rockfish**	CLOSED					
21	**Bocaccio**	500 lb/ 2 months	CLOSED	500 lb/ 2 months	4,000 lb/ 2 months		
22	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
23	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
24	Deeper nearshore[5/]	1,200 lb/ 2 months	CLOSED	2,000 lb/ 2 months			
25	**California scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
26	**Lingcod[6/]**	500 lb/month	CLOSED	700 lb/ month			
27	**Pacific cod**	1,000 lb/ 2 months					
28	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
29	**Longnose skate**	Unlimited					
30	**Big skate**	Unlimited					
31	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South). Continued 10/01/2020

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
32	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
33	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
34		*40° 10' N. lat. - 38° 00' N. lat.*	*100 fm line 1/ - 200 fm line 1/*	*100 fm line 1/ - 150 fm line 1/*				*100 fm line 1/ - 200 fm line 1/*
35		*38° 00' N. lat. - 34° 27' N. lat.*	*100 fm line 1/ - 150 fm line 1/*					
36		*South of 34° 27' N. lat.*	*100 fm line 1/ - 150 fm line 1/ along the mainland coast; shoreline - 150 fm line 1/ around islands*					
37			Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
38	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
39		South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2020–23078 Filed 10–16–20; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XA517]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to fully use the 2020 total allowable catch of Pacific ocean perch specified for the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2020, through 2400 hrs, A.l.t., December 31, 2020. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 3, 2020.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2019–0074, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-00874,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) exclusive economic zone 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.

NMFS closed directed fishing for Pacific ocean perch (POP) in the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) (85 FR 13553, March 9, 2020).

NMFS has determined that approximately 2,000 metric tons of POP remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2020 total allowable catch of POP in the Bering Sea subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for POP in Bering Sea subarea of the BSAI, effective 1200 hrs, A.l.t., October 15, 2020, through 2400 hrs, A.l.t., December 31, 2020. This will enhance the socioeconomic well-being of harvesters dependent on POP in this area.

The Administrator, Alaska Region considered the following factors in reaching this decision: (1) The current catch of POP in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

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 opening of directed fishing for POP 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 9, 2020.

Without this inseason adjustment, NMFS could not allow the fishery POP in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 3, 2020.

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

Dated: October 13, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–22979 Filed 10–14–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 202
Monday, October 19, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206- AO10

Prevailing Rate Systems; Abolishment of the Special Wage Schedules for Ship Surveyors in Puerto Rico

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to abolish the special wage schedule pay plan practice previously established for nonsupervisory and supervisory ship surveyor positions in Puerto Rico. The Department of the Navy no longer has such positions in Puerto Rico. This change is based on a recent consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC).

DATES: Send comments on or before November 18, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing a proposed rule to abolish a special wage schedule pay plan practice previously used for nonsupervisory and supervisory ship surveyor positions in Puerto Rico. This special wage schedule is no longer being used. The Department of Defense recommended that OPM abolish this special wage schedule because the Department of the Navy has not had Federal Wage System (FWS) employees in ship surveyor positions since 2001, and it does not have plans to reestablish the ship surveyor position in the future.

FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by consensus. This change would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Since there are no FWS employees remaining in the special wage schedule for ship surveyor positions, this proposed rule removes section 532.275 from title 5, Code of Federal Regulations.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Reducing Regulation and Controlling Regulatory Costs

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

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business ''Regulatory Enforcement Fairness Act of 1996'' (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.275 [Removed]

■ 2. Remove § 532.275.

[FR Doc. 2020–22319 Filed 10–16–20; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–20–0063; SC20–927–1 PR]

Pears Grown in Oregon and Washington; Modification of the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the handling regulation prescribed under the marketing order for pears grown in Oregon and Washington (Order). This action would decrease the maximum acceptable pressure for early season Beurre D'Anjou (Anjou) variety pears shipped throughout the Continental United States and to Canada. In addition, this rule would remove the handling requirement exemption for small shipments of Anjou pears.

DATES: Comments must be received by December 18, 2020.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. 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.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be 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 rule 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: Dale Novotny, 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: *DaleJ.Novotny@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 to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927 (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 growers and handlers of pears operating within the production area, and a public member.

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 order or to be exempted therefrom. Such 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.

This proposed rule would modify the handling regulation prescribed under the marketing order for pears grown in Oregon and Washington. This action would decrease, from 14 pounds to 13 pounds, the maximum acceptable pressure for early season Anjou variety pears shipped throughout the Continental United States and to Canada during the period August 15 to November 1. The maximum pressure for Anjou pear shipments to Mexico during this period would remain at 14 pounds. In addition, this action would remove the exemption from handling requirements for Anjou pear shipments of 8,800 pounds or less. The Committee recommended these actions at its May 26, 2020, meeting.

Section 927.51 provides authority for the Committee, with the approval of USDA, to regulate the handling of pears grown within the production area of Oregon and Washington. Section 927.52 stipulates the prerequisites for recommendations made by the Committee with regards to the issuance, modification, suspension, or termination of handling regulation established under the authority of § 927.51. Section 927.316 sets forth the handling requirements for fresh Anjou pears.

The Committee met on May 26, 2020, and recommended modification of the handling regulation for the 2021–2022 and subsequent fiscal periods. The Committee's recommendation was not unanimous but met the requirements of § 927.52 for recommendations to modify the Order's handling regulation. For recommendations to change the handling regulations, the Committee vote is weighted by volume. The Order provision allocates Committee members one vote for each 25,000 boxes of the average quantity of such variety or subvariety produced in their district and shipped therefrom during the immediately preceding three fiscal periods. The provision further requires that recommendations for changes to the handling regulations shall be affirmed by members representing no less than 80 percent of the volume of the variety or subvariety affected.

Based on the above calculation, there were 397 votes cast at the meeting. The Committee voted 343 (86 percent) in favor of the recommendation, 48 votes (12 percent) opposed, with 6 votes (2 percent) abstaining. The voters in opposition expressed concern that the modification of the handling regulation could hamper total sales of early season Anjou pears. The members abstaining

represented very little, if any, Anjou production.

The Committee had discussed the modification of the handling regulation specific to early season Anjou pears several times in the past. The Committee established a subcommittee to talk with industry members and researchers to weigh the benefits of different regulatory options. Research conducted using Committee funds has demonstrated that Anjou pears harvested at higher pressures tend to not ripen properly. Most North American consumers prefer a pear that will ripen and be ready to eat quickly after purchase. Lowering the maximum pressure requirement by 1 pound, from 14 pounds to 13 pounds for the Continental United States and Canada would help ensure consumers in those areas consistently receive the product they prefer. International market and consumer research conducted for the Committee has demonstrated that the Mexican market is more receptive to a firmer pear, which led to the decision to leave the pressure at 14 pounds for early season shipments to Mexico.

In addition, removing the 8,800 minimum quantity exemption would ensure that even small shipments of early season Anjou pears conform to the maximum pressure requirements and that all product shipped during this period is of similar quality.

The Committee derived its recommendation to modify the handling regulation from lengthy discussions with industry members at multiple public meetings, from subcommittee input, and from research conducted using Committee funds.

This proposed rule would lower the acceptable pressure, from 14 pounds to 13 pounds, of early season Anjou pear shipments destined for the Continental United States and Canada, and would remove the minimum quantity exemption for all early season Anjou shipments. It is the Committee's determination that this modification would increase consumer preference for Anjou pears in the fresh fruit market by delivering a better eating experience and would provide increased returns to handlers and growers.

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 838 growers of pears for the fresh market in the regulated area and approximately 32 handlers of pears who are subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the most recent data from the National Agricultural Statistics Service (NASS), the national average producer price for non-Bartlett fresh pears for the 2017 marketing year (the most current year for NASS pear data) ranged from $748 to $788 per ton or $16.46 to $17.34 per 44-pound standard box. The Committee reported that for the same full year of records, total shipments of non-Bartlett pears for the fresh market from the production area were 11,875,202 boxes. Using the NASS price range from the 2017 marketing year, the total 2017 farm gate value of the fresh, non-Bartlett pear crop could therefore be estimated to be between at $195,465,825 and $205,916,003. Dividing the crop value by the estimated number of growers (838) yields an estimated average receipt per producer of between $233,253 and $245,723, which is well below the SBA threshold for small producers.

USDA Market News reported a freight on board (FOB) average price (including palletizing and cooling) of $24.45 per 44-pound box or equivalent of pears shipped in 2019. Multiplying this average FOB price by the Committee recorded total 2019 shipments of 13,811,500 44-pound boxes of fresh pears results in an estimated gross value of fresh pear shipments of $337,691,175. Dividing this figure by the number of handlers (32) yields estimated average annual handler receipts of $10,552,849, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, and assuming a normal distribution, the majority of producers and handlers of pears in the production area may be classified as small entities.

This proposal would decrease, from 14 pounds to 13 pounds, the maximum acceptable pressure for early season Anjou variety pears shipped throughout the Continental United States and to Canada from during the period August 15 to November 1. The maximum pressure for Anjou pear shipments to Mexico during this period would remain unchanged at 14 pounds. In addition, this action would remove the handling requirement exemption for early season Anjou pear shipments of 8,800 pounds or less. All other requirements in the Order's handling regulations would remain unchanged. Authority for this action is contained in § 927.51.

This proposed rule is expected to benefit the growers, handlers, and consumers of fresh pears. The Committee anticipates that this modification would lead to greater returns to handlers and growers by encouraging repeat consumption of fresh Anjou pears due to an improved eating experience.

Prior to arriving at its recommendation to modify the handling regulation, the Committee discussed various alternatives, including maintaining the current handling regulation, decreasing the acceptable pressure further, shortening the regulation period, and extending the requirement to shipments to Mexico. After several failed motions and much deliberation, the Committee determined that the recommended modification would most benefit the industry and consumers of pears.

The Committee's meeting was widely publicized throughout the northwest pear industry. All interested persons were invited to attend the meeting. Like all Committee meetings, the May 26, 2020, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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 the OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. 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 pear 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. 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.

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 proposed rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 927

Marketing agreements, Reporting and recordkeeping requirements, Pears.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 927.316 is revised to read as follows:

§ 927.316 Handling Regulation.

During the period August 15 through November 1, no person shall handle any fresh Beurre D'Anjou variety pears unless such pears meet the following requirements:

(a) Shipments of fresh Beurre D'Anjou variety pears throughout the Continental United States or to Canada shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and any such pears have an average pressure test of 13 pounds or less.

(b) Shipments of fresh Beurre D'Anjou variety pears to Mexico shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and any such pears have an average pressure test of 14 pounds or less.

(c) The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Fresh Pear Committee.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–22169 Filed 10–16–20; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket Nos. PRM–72–7; NRC–2012–0266; NRC–2014–0067]

Spent Fuel Cask Certificate of Compliance Format and Content

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of petition for rulemaking; discontinuation of rulemaking activity.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the withdrawal of Petition for Rulemaking PRM–72–7 (PRM; petition), and discontinuation of the associated rulemaking activity, ''Spent Fuel Cask Certificate of Compliance Format and Content.'' The NRC will no longer track this rulemaking activity or PRM.

DATES: The docket for the rulemaking is closed on October 19, 2020. The petition was withdrawn on February 25, 2020.

ADDRESSES: Please refer to Docket IDs NRC–2012–0266 or NRC–2014–0067 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–2012–0266 or NRC–2014–0067. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Instructions about obtaining materials referenced in this document are provided in the Availability of Documents section of this document.
- Attention: The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mary Anderson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7126; email: *Mary.Anderson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Discussion

On October 3, 2012, the NRC received PRM–72–7 from the Nuclear Energy Institute (NEI; petitioner). The petition requested that the NRC revise part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,'' to add a new rule governing spent fuel storage cask certificate of compliance format and content and make other changes to NRC oversight of dry cask storage activities.

The petition was noticed in the **Federal Register** for public comment on February 5, 2013. The NRC received five comment letters, all supporting the petition. On July 18, 2014, the NRC announced that the six issues raised in the petition were appropriate for consideration in the rulemaking process. The petition issues were identified as follows:

Issue No. 1: The petition requested an amendment to 10 CFR part 72, subpart L, ''Approval of Spent Fuel Storage Casks,'' to provide specific criteria for the format and content of the certificate of compliance for a spent fuel storage cask.

Issue No. 2: The petition requested an amendment to § 72.62 to provide backfit protection to certificate of compliance holders in addition to licensees.

Issue No. 3: The petition requested an amendment to 10 CFR part 72, subpart

K, ''General License for Storage of Spent Fuel at Power Reactor Sites,'' to remove the requirement in § 72.212(b)(6) for general licensees to perform a review of the NRC's safety evaluation report for the certificate of compliance or amended certificate of compliance prior to use by a general licensee.

Issue No. 4: The petition requested an amendment to 10 CFR part 72, subpart K, to clarify the requirement to review various plans and programs that are governed by other NRC regulations.

Issue No. 5: The petition requested an amendment to 10 CFR part 72, subpart L, to remove the requirement in § 72.236(k)(3) to mark the empty weight on each storage cask.

Issue No. 6: The petition requested an amendment to § 72.124(c) to expand the scope of activities for which criticality monitoring is not required.

NRC's review of these six issues showed that they did not address safety, environmental, or security concerns. Accordingly, the rulemaking was assigned a medium priority.

II. NRC Analysis

NRC staff evaluated the issues raised by the petitioner in accordance with its rulemaking process. The staff's early assessment of the petition issues determined that Issue No. 1 pertaining to the certificate of compliance format and content was the most consequential for improving the efficiency of the licensing process.

In 2016 and 2017, the NRC staff engaged with external stakeholders through a series of public workshops to explore options for achieving the efficiency improvements raised by Issue No. 1. The information obtained from those workshops supported development of qualitative risk-informed graded approach criteria that could be used to streamline the format and content of certificates of compliance and focus the certificate of compliance content on the most risk significant aspects. The graded approach criteria help determine the level of detail and location of information that should be included in a certificate of compliance for a spent fuel dry storage cask design. This graded approach is described in Regulatory Issue Resolution Protocol I–16–01.

On June 29, 2017, TN Americas LLC (formerly AREVA) submitted an application for Renewed Amendment 16 [1] to the Standardized NUHOMS® Horizontal Modular Storage System (NUHOMS®) Certificate of Compliance No. 1004 to pilot the application of the graded approach criteria. Chapter 2 of the preliminary safety evaluation report for the amendment discusses the development of the graded approach criteria in more detail, including information on the public meetings that were held and how the criteria were applied in review of the amendment request. After completing a safety review of the application, the staff, by letter dated January 8, 2020, endorsed the use of the pilot study's graded approach criteria by other cask vendors. This letter noted that NRC will continue to explore the use of risk information and enhancements to the dry storage licensing process. On June 30, 2020 (85 FR 39049), the NRC published the rulemaking for this pilot amendment with a direct final rule and companion proposed rule in the **Federal Register***;* as corrected on July 17, 2020 (85 FR 43419).

While the TN Americas LLC renewed amendment was under development, the staff, in the summer of 2019, identified potential rulemaking alternatives for the petition items and performed a preliminary cost-benefit analysis in support of the rulemaking plan. These assessments determined that resolution of Issue No. 1 could result in substantial averted costs (benefits) to the NRC, certificate of compliance holders, and licensees and could be achieved without rulemaking. The remaining Issues 2–6 were estimated to produce negligible net benefits that, without the benefits of Issue No. 1, would not justify the costs of rulemaking. Furthermore, other staff assessments indicated that, in addition to Issue No. 1, some of the other issues raised by the petition could be satisfactorily addressed outside of the rulemaking process using non-rulemaking approaches.

On November 18, 2019, the NRC staff held a public meeting on the status of the rulemaking associated with PRM–72–7. At the meeting, the petitioner, NEI, supported non-rulemaking alternatives to gain certificate of compliance efficiencies as soon as possible. The transcript and public meeting summary from this meeting are listed in Section III, Availability of Documents, of this notice.

Subsequently, in a letter dated February 25, 2020, NEI withdrew the petition. In this letter, NEI stated that Issue No. 1 was ''the central purpose of PRM 72–7,'' and that this issue was addressed through the NRC's endorsement of the graded approach criteria. In addition, NEI indicated that, with this central purpose addressed, ''none of the other issues raised in the petition, on their own merits, warrant the dedication of specific [NRC] resources to a rulemaking.''

With the development and endorsement of the graded approach criteria, the NRC finds that the primary intent of the petition has been satisfied. Additionally, a preliminary cost-benefit analysis demonstrates that rulemaking is not cost-justified for the remaining issues. Accordingly, the NRC is taking no further action on the petition and is discontinuing the rulemaking effort.

III. Availability of Documents

The documents identified in the following table are related to this action and are available to interested persons through one or more of the following methods, as indicated.

Document	Adams Accession No./ **Federal Register** Citation
Petition for rulemaking from the Nuclear Energy Institute, October 3, 2012	ML12299A380
Federal Register notice for receipt and request for comment, ''Spent Fuel Cask Certificate of Compliance Format and Content,'' February 5, 2013.	78 FR 8050
Letters, Public Comments on PRM–72–7, May 15, 2014	ML14134A072 (package)
Federal Register notice for consideration in rulemaking process, ''Spent Fuel Cask Certificate of Compliance Format and Content,'' July 18, 2014.	79 FR 41935
Letter, ''Proposed RIRP Issue Screening Form and Resolution Plan for Improving the Efficiency of the Regulatory Framework for Dry Storage of Spent Nuclear Fuel,'' April 12, 2016.	ML16158A048

[1] On December 3, 2017, the NRC issued the renewals of initial certificate; Amendment Nos. 1 through 11 and 13, Revision 1; and Amendment No. 14 of Certificate of Compliance No. 1004 for the Standardized NUHOMS® System. Subsequently, Renewed Amendment No. 15 was issued on December 14, 2018. The certificates were renewed for an additional 40-year period. The TN Americas LLC Certificate of Compliance No. 1004, its amendments, and all future amendments to the certificate are referred to as Renewed Amendments.

Document	Adams Accession No./ **Federal Register** Citation
Letter, ''Regulatory Issue Resolution Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP–I–16–01),'' May 12, 2017.	ML17138A119
Letter, ''Response to Nuclear Energy Institute's Letter Regarding Regulatory Issue Resolution Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP–I–16–01),'' June 5, 2017.	ML17150A458
Letter, ''Application for Amendment 16 to Standardized NUHOMS® Certificate of Compliance No. 1004 for Spent Fuel Storage Casks, Revision 0 (Docket No. 72–1004),'' June 29, 2017.	ML17191A235
Letter, ''Application for Amendment No. 16 to Standardized NUHOMS® Certificate of Compliance No. 1004—Accepted for Review,'' July 21, 2017.	ML17206A045
Preliminary Safety Evaluation Report, ''TN Americas LLC Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel Docket No. 72–1004 NUHOMS® System Amendment No. 16,'' September 18, 2019.	ML19262E161
Letter, ''Industry White Paper—Defining Spent Fuel Performance Margins,'' November 8, 2019	ML19318D970
Public Meeting Documentation, November 18, 2019	ML19324C657 (package)
Summary, November 18, 2019 Public Meeting, December 18, 2019	ML19340A414
Transcript, ''Public Meeting to Discuss the Issues Contained in PRM–72–7 and Additional Staff-Identified Changes to 10 CFR Part 72,'' November 18, 2019	ML20079H441
Letter, Endorsement of Graded Approach, January 8, 2020	ML19353D337 (package)
Letter, Request to Withdraw PRM–72–7, February 25, 2020	ML20058B100
FEDERAL REGISTER notice for direct final rule, ''TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16,'' June 30, 2020.	85 FR 39049
FEDERAL REGISTER notice correction, ''TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16,'' July 17, 2020.	85 FR 43419

IV. Conclusion

The NRC is withdrawing PRM–72–7 and is no longer pursuing the Spent Fuel Cask Certificate of Compliance Format and Content rulemaking for the reasons discussed in this document. If the NRC decides to pursue a similar or related rulemaking in the future, it will inform the public through a new rulemaking entry in the Unified Agenda of Regulatory and Deregulatory Activities.

Dated: October 2, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2020–22268 Filed 10–16–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153 and 157

[Docket No. RM20–18–000]

Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Environmental Protection Agency's Clean Water Act Section 401 Certification Rule and Executive Order 13868, the Federal Energy Regulatory Commission (Commission) is proposing rules to categorically establish a reasonable period of time for a certifying authority to act on a water quality certification request related to natural gas and liquified natural gas projects for which either an application filed pursuant to section 3 or section 7(c) of the Natural Gas Act (NGA) is pending with the Commission. The Commission is amending its regulations to define when the certification requirements of section 401(a)(1) of the Clean Water Act (CWA) have been waived as a result of the failure of the state or other authorized certifying agency to act on a request for CWA certification filed by an applicant for a Commission-issued section 7 certificate of public convenience and necessity or section 3 authorization under the NGA. The Commission is allowing CWA certifying authorities up to one year after the certifying authority's receipt of a request for section 401 water quality certification to grant or deny the applicant's request for certification.

DATES: Comments are due November 18, 2020.

ADDRESSES: You may send comments, identified by RM20–18–000, by either of the following methods:

- *Agency website:* Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail:* Those unable to file electronically may mail comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

FOR FURTHER INFORMATION CONTACT:

David Swearingen (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6173, *david.swearingen@ferc.gov.*

Karin Larson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8236, *karin.larson@ferc.gov.*

Rachael Warden (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8717, *rachael.warden@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Paragraph Numbers

I. Background

1. On April 10, 2019, Executive Order 13868 entitled *Promoting Energy Infrastructure and Economic Growth* was issued with the stated goal of enabling timely construction of energy infrastructure and reducing regulatory uncertainties from the permitting process for infrastructure projects. The Executive Order directed the Environmental Protection Agency (EPA) to update its regulations governing water quality certification under section 401 of the Clean Water Act (CWA).[1] CWA section 401 is a direct grant of authority to states [2] to review for compliance with appropriate federal, state, and tribal water quality requirements any discharge into a water of the United States that may result from a proposed activity that requires a federal license or permit. Section 401(a)(1) of the CWA requires that an applicant for a federal license or permit to conduct activities that may result in a discharge into the navigable waters of the United States, such as a Federal Energy Regulatory Commission (Commission) hydroelectric project license or a Natural Gas Act (NGA) certificate of public convenience and necessity for a natural gas pipeline that crosses a navigable water, must provide the federal permitting agency a water quality certification from the state in which the discharge originates or evidence of waiver thereof.[3] If the state ''fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request,'' then certification is waived.[4]

2. In compliance with the Executive Order, on June 1, 2020, the EPA issued the Clean Water Act Section 401 Certification Rule (Certification Rule), which revises its regulations under 40 CFR part 121. The rule was published in the **Federal Register** on July 13, 2020, and becomes effective 60 days after publication on September 11, 2020. The Certification Rule applies prospectively to certification requests submitted after the effective date of the rule. The Executive Order mandates that ''[w]ithin 90 days of [EPA's issuance of revised regulations], if necessary, the heads of each 401 Implementing Agency [5] shall initiate a rulemaking to ensure their respective agencies' regulations are consistent with'' the EPA's Certification Rule and ''with the policies set forth in section 2 of this order.'' [6]

3. Section 121.6(a) of the Certification Rule requires federal permitting agencies [7] to establish the reasonable period of time for the certifying authority [8] to act on a water quality certification request, which period may not exceed one year from receipt. If the certifying authority fails or refuses to act on a certification request within the reasonable period of time, then the certification requirement for a license or permit is waived.[9] The reasonable period of time may be set either categorically or on a case-by-case basis.[10]

4. The Commission's practice has been to deem the one-year waiver period to commence when the certifying agency receives the request. In 1987, the Commission promulgated subsections 4.34(b)(5)(iii) and 5.23(b)(2) [11] of its regulations governing hydropower licensing proceedings to provide that a certifying agency is deemed to have waived certification if it has not denied or granted certification by one year after the date it received a written certification request.[12] Accordingly, subsections 4.34(b)(5)(iii) and 5.23(b)(2) [13] of the Commission's regulations establish for hydroelectric projects a categorical ''reasonable period of time'' of one year.

5. While no comparable regulation exists for NGA infrastructure proceedings, the Commission's practice is to also categorically apply a one-year waiver period for water quality certification applications filed in connection to a proposed natural gas or liquefied natural gas infrastructure project application.[14]

II. Proposed Revisions

6. We continue to believe that the benefits of setting a categorical waiver period of one year, as permitted by the CWA, best serves the public interest by avoiding uncertainty associated with open-ended and varying certification deadlines.[15] Considering the historical complexity of proposed projects and the nature and potential need for studies of the discharge, the Commission proposes to continue to use the categorical one-year waiver period as the ''reasonable period of time'' within which the certifying authority must act and to codify this waiver period for natural gas and liquified natural gas projects by adding the categorical one-year waiver period to its regulations governing applications for authorizations under sections 3 and 7 of the NGA for liquefied natural gas and natural gas facilities in parts 153 and 157. Given that it would be administratively inefficient and a potential source of controversy to establish reasonable time periods on a case-by-case basis; that state certifying agencies may vary in terms of their procedures for reviewing requests for water quality certification; and that natural gas projects before the Commission include highly complex proposals that may well take a state a significant time to review, we find that providing the maximum time permitted under the CWA, *i.e.,* a categorical one-year waiver period, is reasonable.

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[1] 33 U.S.C. 1341(a)(1).

[2] Indian tribes that have been approved for ''treatment as a state'' status may also have the authority under section 401 to issue water quality certifications.

[3] 33 U.S.C. 1341(a)(1).

[4] *Id.*

[5] ''Implementing agency'' is defined as a federal agency that issues permits or licenses subject to the certification requirements of section 401 of the CWA.

[6] E.O. 13868 of Apr 10, 2019, 84 FR 15495, 15496 (Apr. 15, 2019).

[7] The Certification Rule defines ''Federal Agency'' as any federal government agency to which application is made for a license or permit that is subject to the requirements of CWA section 401. Clean Water Act Section 401 Certification Rule, 85 FR 42210, 42285 (July 13, 2020) (to be codified at 40 CFR pt. 121).

[8] The Certification Rule defines ''Certifying Authority'' as the agency with the responsibility to certify compliance with applicable requirements for water quality under CWA section 401. *Id.* The Commission's regulations refer to a ''Certifying Authority'' as a ''Certifying Agency.''

[9] *Id.* at 42286.

[10] *See id.* at 42285. In setting the reasonable period of time the Certification Rule calls for the federal agency to consider the complexity of the proposed project, the nature of any potential discharge and the potential need for studies of the effects from the proposed discharge. *See id.* at 42286.

[11] 18 CFR 4.34(b)(5)(iii) and 5.23(b)(2). Part 4 of the Commission's regulations governs applicants using the traditional licensing process and part 5 governs applicants using the integrated license application process.

[12] *Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act,* Order No. 464, 52 FR 5446 (Feb. 23, 1987), FERC Stats. & Regs. ¶ 30,730 (1987).

[13] 18 CFR 4.34(b)(5)(iii) and 5.23(b)(2).

[14] *Constitution Pipeline Co., LLC,* 162 FERC ¶ 61,014, at P 16 (explaining that since 1987 the Commission has consistently determined, both by regulation and in our orders on proposed projects, that the reasonable period of time for action under section 401 is one year after the date the certifying agency receives a request for certification), *reh'g denied,* 164 FERC ¶ 61,029 (2018).

[15] *Constitution Pipeline Co., LLC,* 162 FERC ¶ 61,014 at PP 16–17, 20 (determining that setting a one-year waiver period yields substantial benefits to the applicant, the certifying agency, and the Commission); *Constitution Pipeline Co., LLC,* 164 FERC ¶ 61,029 at P 10 (same). *See* Order No. 464, FERC Stats. & Regs. ¶ 30,730 (concluding that giving the certifying agencies the maximum period allowed by the CWA will not unduly delay Commission processing of license applications and would achieve a major objective of the rule—obtaining early certainty as to when certification would be deemed waived and avoiding open-ended certification deadlines).

III. Regulatory Requirements

A. Information Collection Statement

7. The Paperwork Reduction Act [16] requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (*i.e.,* reporting, recordkeeping, or public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in proposed rules published in the **Federal Register**.[17] This proposed rule does not contain any information collection requirements. The Commission is therefore not required to submit this rule to OMB for review.

B. Environmental Analysis

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant effect on the human environment.[18] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment, including the promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[19] This proposed rule proposes to categorically establish a reasonable period of time for a certifying agency to act on a water quality certification request for natural gas and liquified natural gas projects with an application pending with the Commission. Because this proposed rule is procedural in nature, preparation of an Environmental Assessment or an Environmental Impact Statement is not required.

C. Regulatory Flexibility Act

9. The Regulatory Flexibility Act of 1980 (RFA) [20] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[21] In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.[22] The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[23] The SBA has established a size standard for pipelines transporting natural gas, stating that a firm is small if its annual receipts (including its affiliates) are less than $30 million.[24]

10. If enacted, this proposed rule would apply to entities, a small number of which may be small businesses, with an application for a project pending with the Commission under section 3 or 7 of the NGA that require a water quality certification under section 401(a)(1) of the CWA. However, the proposed rule would have no effect on these entities, regardless of their status as a small entity or not, as the rule imposes no action or requirement on those entities. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Comment Procedures

11. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 18, 2020. Comments must refer to Docket No. RM20–18–000, and must include the commenter's name, the organization they represent, if applicable, and their address.

12. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

13. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

14. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

E. Document Availability

15. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

16. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

17. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects

18 CFR Part 153

Exports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: September 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission is proposing to amend parts 153 and 157, chapter I, title 18, *Code of Federal Regulations,* as follows:

[16] 44 U.S.C. 3501–3521.

[17] *See* 5 CFR 1320.11.

[18] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 41 FERC ¶ 61,284 (1987).

[19] 18 CFR 380.4(a)(2)(ii).

[20] 5 U.S.C. 601–612.

[21] *Id.* 603(c).

[22] *Id.* 605(b).

[23] 13 CFR 121.101.

[24] 13 CFR 121.201, subsection 486.

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485; 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

■ 2. Revise § 153.4 to read as follows:

§ 153.4 General requirements.

The procedures in §§ 157.5, 157.6, 157.8, 157.9, 157.10, 157.11, 157.12, 157.22, and 157.23 of this chapter are applicable to the applications described in this subpart.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 33 U.S.C. 1341(a)(1); 42 U.S.C. 7101–7352.

■ 2. Revise § 157.22 to read as follows:

§ 157.22 Schedule for final decisions on a request for a Federal authorization.

(a) For an application under section 3 or 7 of the Natural Gas Act that requires a Federal authorization—*i.e.,* a permit, special use authorization, certification, opinion, or other approval—from a Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law.

(b) For requests for a water quality certification submitted pursuant to section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act) in connection with a project for which authorization is sought from the Commission under section 3 or 7 of the Natural Gas Act, the reasonable period of time during which the certifying agency may act on the water quality certification request is one year from the certifying agency's receipt of the request. A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification.

[FR Doc. 2020–20327 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0424]

RIN 1625–AA00

Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish permanent safety zones for certain waters of Vieques, Puerto Rico. This action is necessary to provide for the safety of life on the navigable waters near the island of Vieques, Puerto Rico due to unexploded ordnances. This proposed rulemaking would prohibit mariners from anchoring, dredging, or trawling in the designated areas. It would also prohibit persons and vessels from being in the safety zones during clearance operations, unless authorized by the Captain of the Port San Juan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before November 18, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0424 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Natallia Lopez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2380, email *Natallia.M.Lopez@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
PR Puerto Rico
§ Section
U.S.C. United States Code
UXO Unexploded Ordnance

II. Background, Purpose, and Legal Basis

On April 30, 2020, contractors on behalf of the U.S. Navy contacted the Coast Guard requesting the establishment of permanent safety zones surrounding unexploded ordnances (UXO) in Vieques, PR. The Navy has implemented long-term plans for the deactivation and removal of the UXOs, but safety zones are needed until those operations are completed. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the UXOs would be a safety concern for anyone within the designated areas.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the designated areas until the complete deactivation and removal of all UXOs. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish permanent safety zones in the navigable waters east of Vieques, Puerto Rico. UXOs from past military training operations remain present in the waters of east Vieques, Puerto Rico. The U.S. Navy is currently in the process of planning, retrieving, and properly disposing of the UXOs in this area. These operations will be ongoing for the next 20 years. Accordingly, ordnance clearing operations will be held at various times on the waters of East Vieques, Puerto Rico. UXOs will be retrieved by several divers working for the U.S. Navy.

This proposed safety zones area encompasses waters in East Vieques, Puerto Rico. In areas where UXOs are known to be in shallow waters, where mariners have been known to anchor which creates risk for the unintended detonation of UXOs. The safety zones would prohibit vessels from anchoring, dredging, or trawling in the designated areas at all times. Further, no vessel or person would be permitted to enter, transit through, or remain in the safety zones during clearance operations due to increased risk of explosion and fragmentation hazards.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the proposed permanent safety zones by contacting the Captain of the Port San

Juan by VHF–FM radio on Channels 16 and 22A, by calling Sector San Juan Command Center at (787) 289–2041, or via email to *ssjcc@uscg.mil.* If authorization to enter, transit through, or remain in the zones during ordnance clearing operations or anchor, dredge, or trawl at any time is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the safety zones will be in effect by providing advance notice of scheduled arrivals and departure of liquefied gas carriers via a Marine Broadcast Notice to Mariners.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and restrictions of the safety zones. Vessels will be permitted to enter the safety zones when UXO operations are not being conducted so long as they do not anchor, dredge, or trawl.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would 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 zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a regulated navigation area. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and

will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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

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

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons stated in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.787 to read as follows:

§ 165.787 Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico.

(a) *Regulated area.* The following regulated areas are established as a safety zones: (1) All waters of East Vieques, Vieques, Puerto Rico encompassed within the following points: starting at Point 1 in position 18° 08′ 56.48″ N, 065° 20′ 10.69″ W; thence north to point 2 in position 18° 09′ 10.72″ N, 065° 20′ 04.11″ W; thence east to Point 3 in position 18° 08′ 50.19″ N, 065° 17′ 05.78″ W; thence south to Point 4 in position 18° 08′ 05.79″ N, 065° 16′ 16.70″ W.

(2) All waters of East Vieques, Vieques, Puerto Rico encompassed within the following points: starting at Point 1 in position 18 07′ 38.60″ N, 065° 17′ 45.95″ W; thence south to point 2 in position 18° 07′ 23.73″ N, 065° 17′ 58.34″ W; thence west to Point 3 in position 18° 07′ 18.77″ N, 065° 18′ 29.64″ W; thence north to Point 4 in position 18° 07′ 34.47″ N, 065° 18′ 31.82″ W.

(b) *Regulations.* (1) No person or vessel may anchor, dredge, or trawl in the safety zones unless authorized by the Captain of the Port, San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zones must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

(2) No person or vessel may enter, transit or remain in the safety zones during Unexploded Ordnance clearance operations, unless authorized by the Captain of the Port San Juan or a designated representative.

(3) Vessels encountering emergencies, which require transit through the safety zones, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zones with a Coast Guard designated escort.

(4) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787–289–2041. The Coast Guard Patrol Commander enforcing the safety zones can be contacted on VHF–FM channels 16 and 22A.

(5) Coast Guard Sector San Juan will notify the marine community of periods during which these safety zones will be in effect by providing notice to mariners in accordance with § 165.7.

(6) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: October 9, 2020.

J.E. Diaz,

Captain, U.S. Coast Guard, Acting, Captain of the Port San Juan.

[FR Doc. 2020–22973 Filed 10–16–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0531]

RIN 1625–AA11

Regulated Navigation Area; NW Natural PGM Site, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a regulated naviagation area (RNA) at the NW Natural PGM Site on the Willamette River in Portland, OR. This action is necessary to preserve the integrity of an engineered sediment cap as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. This proposed rulemaking would prohibit activities in the RNA that could disturb or damage the engineered sediment cap. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before November 18, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0531 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PGM Portland Gas Manufacturing

§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard is proposing to establish a regulated navigation area to protect the engineered sediment cap located at the NW Natural PGM Site on the Willamette River in Portland, OR. This sediment cap is part of an Oregon Department of Environmental Quality (DEQ) required remedial action. The engineered sediment cap is designed to be compatible with normal vessel operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, grounding of vessels, deployment of barge spuds, etc. Such damage could disrupt the function or impact the effectiveness of the cap to contain the underlying contaminated sediment and soil in these areas.

The purpose of this rulemaking is to prevent disruption of the sediment cap which may result in hazardous conditions and harm to the marine environment. As such, this RNA is necessary to help ensure the sediment cap is protected and will do so by prohibiting maritime activities that could disturb or damage it. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The proposed rule would create a RNA adjacent to the NW Natural PGM Site on the Willamette River in Portland, OR encompassing all waters above the sediment cap. The RNA would prohibit activities which could disrupt or damage the sendiment cap on the riverbed such as anchoring, dragging, dredging, trawling, or other related activities. The proposed rule would also specify that operators who wish to engage in dredging, spudding, and vessel anchoring within the regulated navigation area must consult with the Oregon Department of Environmental Quality and obtain prior approval from the Coast Guard Captain of the Port Sector Columbia River (COTP) to prevent exposure of buried contamination and/or damage to the remedial cap. For convenience, the contact information for the Orgeon Department of Environmental Quality would be included in the regulations.

Additionally, this proposed rule would allow vessels or persons engaged in activities associated with remediation efforts in the NW Natural PGM Site to engage in dredging and related activities, provided that the Coast Guard Captain of the Port Sector Columbia River (COTP) is given advance notice of those activities by the Oregon Department of Envrionmental Quality. We also propose to include the COTP's contact information for reporting suspected violations of the regulations in proposed paragraph (b).

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM 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 fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for specified activities that may damage the engineered sediment cap. Additionally, operators who wish to engage in dredging, spudding, and vessel anchoring within the regulated navigation area must consult with the Oregon Department of Environmental Quality and obtain prior approval from the Coast Guard Captain of the Port Sector Columbia River (COTP) to prevent exposure of buried contamination and/or damage to the remedial cap.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves the creation of a RNA that prohibits certain maritime activities to protect an engineered sediment cap. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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

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

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1343 to read as follows:

§ 165.1343 Regulated navigation area; NW Natural PGM Site, Willamette River, Portland, OR.

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of the Willamette River adjacent to the NW Natural Portland Gas Manufacturing (PGM) site, encompassed by a line connecting the following points beginning at 45°31′33.8″ N, 122°40′11.6″ W; thence to 45°31′33.9″ N, 122°40′11.2″ W; thence to 45°31′32.7″ N, 122°40′10.7″ W; thence to 45°31′32.9″ N, 122°40′09.4″ W; thence to 45°31′32.2″ N, 122°40′08.8″ W; thence to 45°31′32.2″ N, 122°40′07.9″ W; thence to 45°31′31.4″ N, 122°40′07.6″ W; thence to 45°31′30.9″ N, 122°40′10.7″ W; and along the shoreline back to the beginning point. These coordinates are based on North American Datum 83 (NAD 83). Geographically this location starts on the west bank of the Willamette River at approximately river mile 12.2, 100 yards south of the Steel Bridge.

(b) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Sediment disturbance activities including dredging, spudding, and vessel anchoring require advance consultation with the Oregon Department of Environmental Quality and obtain prior approval from the Coast Guard Captain of the Port Sector Columbia River (COTP) to prevent exposure of buried contamination and/or damage to the remedial cap. Contact the Oregon Department of Environmental Quality at 503–229–5245, or alternatively, call 811 prior to any sediment disturbance activity. Any work within 10 feet of the seawall is prohibited unless there is advance consultation and approval by the City of Portland, DEQ and the Coast Guard Captain of the Port Sector Columbia River (COTP). All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the riverbed in the designated area. Vessels may otherwise transit or navigate within this area.

(2) The regulations described in paragraph (b)(1) of this section do not apply to vessels or persons engaged in activities associated with remediation efforts in the NW Natural PGM Site, provided that the Coast Guard Captain of the Port Sector Columbia River (COTP) is given advance notice of those activities by the Oregon Department of Envrionmental Quality.

(c) *Contact information.* If you observe violations of the regulations in this section, you may notify the COTP by email, at *D13-SMB-MSUPortlandWWM@uscg.mil.*

Dated: October 1, 2020.

A.J. Vogt,

Commander, RADM, U.S. Coast Guard, Thirteenth Coast Guard District.

[FR Doc. 2020–22277 Filed 10–16–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0370; FRL–10014–94–Region 4]

Air Plan Approval; KY; Updates to Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on December 9, 2019. The SIP revision updates the description and attainment status designations of geographic areas within the Commonwealth for several National Ambient Air Quality Standards (NAAQS or standards). The updates are being made to conform Kentucky's attainment status tables with the federal attainment status designations for these areas. EPA is proposing to approve Kentucky's SIP revision because it is consistent with the Clean Air Act (CAA or Act) and EPA's regulations.

DATES: Comments must be received on or before November 18, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0370 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9644. Ms. Sanchez can also be reached via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 108 and 109 of the CAA require EPA to set NAAQS for criteria air pollutants (ozone (O_3), particulate matter (PM), carbon monoxide, lead, sulfur dioxide (SO_2), and nitrogen dioxide) and to undertake periodic review of these standards. After EPA sets a new NAAQS or revises an existing standard, the CAA requires EPA to determine if areas of the country meet the new standards and to designate areas as either nonattainment, attainment, or unclassifiable.[1] Such designations inform the state's planning and implementation of requirements to achieve and maintain the NAAQS for each area within that state.

Section 107(d) of the CAA governs the process for these initial area designations. Under this process, states and tribes submit recommendations to EPA as to whether or not an area is attaining the NAAQS for criteria air pollutants. EPA then considers these recommendations as part of its obligation to promulgate the area designations for the new or revised NAAQS. EPA codifies its designations for areas within each state in 40 CFR part 81.[2] Under section 107(d) of the CAA, a designation for an area remains in effect until redesignated by EPA.

EPA is proposing to approve changes to Kentucky rule 401 Kentucky Administrative Regulation (KAR) 51:010, *Attainment status designations,* which update the description and attainment status designations of geographic areas within the Commonwealth with regard to a number of NAAQS. The Commonwealth of Kentucky last amended 401 KAR 51:010 in 2016.[3] Since that time, EPA promulgated the 2015 8-hour ozone NAAQS and redesignated several areas within the Commonwealth. Kentucky amended 401 KAR 51:010 in 2019 by updating the attainment status designations in Sections 7 through 9 for O_3, PM less than 2.5 microns in diameter ($PM_{2.5}$), and SO_2 to conform with EPA's attainment status designations in 40 CFR 81.318. Regulation 401 KAR 51:010 has also been amended by making one minor textual modification to the NECESSITY, FUNCTION, AND CONFORMITY section. The SIP submittal containing the updated Kentucky regulation can be found in the docket at *www.regulations.gov* and is summarized below.

II. Analysis of the Kentucky Submittal

On December 9, 2019, the Commonwealth of Kentucky, through KDAQ, submitted a revision to the Kentucky SIP. EPA is proposing to approve the December 9, 2019, submission which amends and updates the attainment status designations for O_3, $PM_{2.5}$, and SO_2.

The following are the specific changes made to Sections 7 through 9:

Section 7.—Attainment Status Designations for Ozone (O_3)

Table (4) was added to reflect the attainment status designation and classification of areas in the Commonwealth of Kentucky for the 2015 8-hour primary and secondary O_3 NAAQS.

Section 8.—Attainment Status Designations for $PM_{2.5}$

Table (1) was amended to reflect the attainment status designation of areas in the Commonwealth of Kentucky for the 1997 annual primary and secondary $PM_{2.5}$ NAAQS.

Table (2) was amended to reflect the attainment status designation of areas for the 2012 annual $PM_{2.5}$ primary NAAQS.

Section 9.—Attainment Status Designations for Sulfur Dioxide (SO_2)

Table (2) was amended to reflect the attainment status designation of areas in the Commonwealth of Kentucky for the 2010 primary SO_2 NAAQS.[4]

EPA has reviewed these changes to the Kentucky regulations for attainment status designations and is proposing to find that these changes are consistent with the attainment status designations in 40 CFR 81.318.

In addition to the change of attainment status designations in

[1] A nonattainment area is an area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS; an attainment area is an area that meets the NAAQS; and an unclassifiable area is an area that cannot be classified on the basis of available information as meeting or not meeting the NAAQS. *See* CAA section 107(d)(1)(A).

[2] EPA's attainment status designations for Kentucky are found at 40 CFR 81.318.

[3] EPA approved those amendments into the SIP in 2018. *See* 83 FR 65088 (December 19, 2018).

[4] Although Kentucky's December 9, 2019, SIP revision predates EPA's redesignation of the Jefferson County, Kentucky area to attainment for the SO_2 NAAQS, the table accurately reflects the current status of that area. *See* 85 FR 47670 (August 6, 2020).

Sections 7 through 9 of 401 KAR 51:010, the SIP submittal includes a minor textual modification to the NECESSITY, FUNCTION, AND CONFORMITY section that changes the word ''requires'' to ''authorizes'' in the first sentence.[5]

III. Incorporation by Reference

In this notice, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Kentucky regulation 401 KAR 51:010, *Attainment status designations,* state effective November 19, 2019, which was revised to be consistent with the federal attainment status designations for the areas within the Commonwealth. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the Commonwealth's December 9, 2019, SIP revision which contains updates to Kentucky regulation 401 KAR 51:010. The revised regulation amends and updates the attainment status designations for O_3, $PM_{2.5}$, and SO_2 to conform with EPA's attainment status designations in 40 CFR 81.318. EPA is proposing to approve these changes because they are consistent with the CAA and EPA regulations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 30, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–22127 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

[5] The revised sentence reads ''KRS 224.10–100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.''

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0186; FRL–10014–23–Region 4]

Air Plan Approval; North Carolina; Revisions to Construction and Operation Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), on July 10, 2019. The SIP revision seeks to modify the State's construction and operation permitting regulations by making minor changes that do not significantly alter the meaning of the regulations. EPA is proposing to approve this revision pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before November 18, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0186 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Williams can be reached via telephone at (404) 562–9144, or via electronic mail at *williams.pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2019, the State of North Carolina submitted changes to the North Carolina SIP for EPA approval. EPA is proposing to approve changes to the following regulations under 15A North Carolina Administrative Code (NCAC) Subchapter 02Q,[1] Section .0300, *Construction and Operation Permits:* Section .0301, *Applicability;* Section .0303, *Definitions;* Section .0304, *Applications;* Section .0305, *Application Submittal Content;* Section .0307, *Public Participation Procedures;* Section .0308, *Final Action on Permit Applications;* Section .0309, *Termination, Modification and Revocation of Permits;* Section .0310, *Permitting of Numerous Similar Facilities;* Section .0311, *Permitting of Facilities at Multiple Temporary Sites;* Section .0312, *Application Processing Schedule;* Section .0313, *Expedited Application Processing Schedule;* Section .0314, *General Requirements for All Permits;* Section .0315, *Synthetic Minor Facilities;* Section .0316, *Administrative Permit Amendments;* and Section .0317, *Avoidance Conditions*.[2]

II. Analysis of North Carolina's SIP Revision

The revision that is the subject of this proposed rulemaking make changes to construction and operating permitting regulations under Subchapter 2Q of the North Carolina SIP. These changes revise the applicability of permit exemptions, permit application and processing procedures, and revise related definitions. EPA is proposing to find that the changes do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement. Detailed descriptions of the changes are below:

1. Section .0301, *Applicability* is revised to make clarifying edits to the rule text, such as reformatting the regulatory citations and minor wording changes. In addition, changes are made to reflect that owners or operators of sources required to have permits under 15A NCAC 2Q Section .0300 (Construction and Operation Permits) are also subject to the requirements of 15A NCAC 2Q Section .0700 (Toxic Air Pollutant Procedures); these changes provide clarity that sources are subject to both regulations.

2. Section .0303, *Definitions* is revised to update the definitions ''modified facility,'' ''new facility,'' ''Title IV source,'' and ''Title V source''; to add the definition of ''responsible official''; and to alphabetize the definitions in this section. The term ''modified facility'' is revised to make administrative updates to the rule text and reformat a sentence. In addition, minor wording changes are made to the definition of ''New facility.'' The terms ''Title IV source'' and ''Title V source'' are revised to reformat the regulatory citations. The term ''Responsible official'' is added and defined in three subsections to include officials in different types of organizations: Corporations; partnerships or sole proprietorships; and government or public agencies. With respect to corporations, a responsible official is defined as a president, secretary, treasurer, or vice-president who is in charge of a principal business or any other person who performs similar policy or decision-making functions, or a duly-authorized representative of such person who meets certain criteria. With respect to partnerships or sole proprietorships, a responsible official is defined as a general partner or the proprietor, respectively. With respect to government or public agencies, a responsible official is defined as either a principal executive officer or ranking elected official; for purposes of a federal agency, a principal executive officer includes a chief executive officer having responsibility for overall operations of a principal geographic unit within the agency.

3. Section .0304, *Applications* is revised to make minor, clarifying edits to punctuation, to reformat the regulatory citations, and to adjust capitalization. In addition, minor changes are made to require that certain permit applications be signed by the ''responsible official'' as defined in the new definition at Section .0303. Edits that add clarity include changing ''letter'' to ''application'' and removing now redundant language regarding the signing of permit application, including a list of persons who must sign permit applications, as the requirements for signature are now identified with the requirements for the particular type of permit application (see *e.g.,* .0305(a)(1)(E)). 15A NCAC 02Q .0304(b)(3) is revised to require an applicant to use certain submission forms or systems to file emissions inventories. In addition, changes are made to remove duplicative language in .0304(d) (to remove language regarding applications for permit ownership change with no modifications) and .0304(j) (to remove language regarding signatures of application).

4. Section .0305, *Application Submittal Content* is revised to state that applications are considered incomplete for processing instead of ''returned'' if they do not contain specific required information and to allow for changes of ownership to be completed through a form provided by DAQ rather than by letter. This rulemaking is also proposing to amend minor changes, such as to revise the required number of copies needed for permit renewals, name changes, ownership changes, corrections of typographical errors and the application package. In addition, language is revised to clarify that if there is an ownership change and the seller and buyer choose to send notification letters to DAQ rather than the aforementioned form, the buyer and seller must sign such letters. Last, Section .0305 is revised to make minor clarifying edits; for example, to add punctuation, reformat regulatory citations, and update the regulation with defined terms instead of cross references.

5. Section .0307, *Public Participation Procedures* is revised to remove the requirement to pay for copies of permitting documents, to make minor wording changes and punctuation updates, to correct typographical errors, and to reformat the regulatory citations contained in this section. The changes also remove a provision regarding a mailing list for air permit notices.

6. Section .0308, *Final Action on Permit Applications* is revised to make minor changes, such as removing language specifying the type of document for name changes or ownership to reflect changes in .0305(a)(4), and to modify punctuation and wording. This rulemaking is also revised to include the state law citation that outlines guidelines for appeals of permit applications.

[1] In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02Q is referred to as ''Subchapter 2Q Air Quality Permits.''

[2] The State submitted the SIP revision following the readoption of several air regulations, including .0301, .0303, .0304, .0305, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0316, and .0317, pursuant to North Carolina's 10-year regulatory readoption process at North Carolina General Statute 150B–21.3A.

7. Section .0309, *Termination, Modification and Revocation of Permits* is revised to make minor changes to the rule text including changes to punctuation, capitalization, and regulatory citation format. In addition, minor wording changes are made. Last, this section is revised to clarify the circumstances in which the DAQ Director may terminate, modify, or revoke a permit; and to clarify the requirement for a permittee to furnish records to the Director.

8. Section .0310, *Permitting of Numerous Similar Facilities* is revised to remove unnecessary text. In addition, it makes minor clarifying edits to the rule text, such as simplifying the wording in a manner that does not change the requirements for such facilities or conditions under which the Director will issue single permits for more than one facility.

9. Section .0311, *Permitting of Facilities at Multiple Temporary Sites* is revised to make minor clarifying edits to the rule text, such as simplifying the wording in a manner that does not change the requirements for issuing single permits authorizing emissions from a facility or source at multiple temporary sites.

10. Section .0312, *Application Processing Schedule* is revised to make minor clarifying edits to the rule text, such as updating language, removing unnecessary language, reformatting regulatory citations, and altering punctuation. This section is updated to require the Director to cease processing permit applications when additional information is requested but not provided and when an application contains insufficient information to complete review; the changes also remove the schedule for processing certain requests for synthetic minor facility status.

11. Section .0313, *Expedited Application Processing Schedule* is revised to make minor clarifying edits to the rule text, such as minor wording changes, removing unnecessary language, and reformatting regulatory citations and capitalization.

12. Section .0314, *General Requirements for All Permits* is revised to revise the title from ''GENERAL PERMIT REQUIREMENTS'' to ''GENERAL REQUIREMENTS FOR ALL PERMITS.'' This section is also revised to make minor changes, such as punctuation changes, reformatting of regulatory citations, and clarifying edits.

13. Section .0315, *Synthetic Minor Facilities* is revised to make minor clarifying edits to the rule text, such as reformatting the regulatory citations. In addition, changes are made to clarify that that North Carolina's Title V major source operating permit requirements are not applicable to synthetic minor permits, to clarify that the applicant may request to have permit restrictions added to the permit; to clarify that a modification to a permit to remove synthetic minor conditions must follow the procedures of North Carolina's Title V regulations or Section .0315, and to clarify that a synthetic minor permit is issued pursuant to Section .0315.

14. Section .0316, *Administrative Permit Amendments* is revised to make minor clarifying edits to the rule text, such as updating punctuation. In addition, changes are made to the text of .0316(b)(2) to provide that the Director shall make administrative amendments using the criteria in paragraph (a) of the same rule.

15. Section .0317, *Avoidance Conditions* is revised to make minor clarifying edits to the rule text, such as reformatting regulatory citations and stating that the Director may require monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in a permit that includes an avoidance condition pursuant to Section .0317.

EPA has preliminarily determined that the changes to the regulations above provide clarity to the applicability of permit exemptions, permit application and processing procedures, and definitions. The changes are minor changes that do not significantly alter the meaning of the regulations. The revisions to the SIP satisfy CAA section 110(l) and do not interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act. Therefore, EPA is proposing approval of the changes to these regulations.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following sections of 15A NCAC Subchapter 2Q with a state-effective date of April 1, 2018: Section .0301, *Applicability;* Section .0303, *Definitions;* Section .0304, *Applications;* Section .0305, *Application Submittal Content;* Section .0307, *Public Participation Procedures;* Section .0308, *Final Action on Permit Applications;* Section .0309, *Termination, Modification and Revocation of Permits;* Section .0310, *Permitting of Numerous Similar Facilities;* Section .0311, *Permitting of Facilities at Multiple Temporary Sites;* Section .0312, *Application Processing Schedule;* Section .0313, *Expedited Application Processing Schedule;* Section .0314, *General Requirements for All Permits;* Section .0315, *Synthetic Minor Facilities;* Section .0316, *Administrative Permit Amendments;* and Section .0317, *Avoidance Conditions.* These changes are proposed to revise the applicability of permit exemptions, revise permit application and processing procedures, and amend definitions. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve North Carolina's July 10, 2019 SIP revision, which contains changes to the following regulations under 15A NCAC Subchapter 02Q, Section .0300, *Construction and Operation Permits:* Section .0301, *Applicability;* Section .0303, *Definitions;* Section .0304, *Applications;* Section .0305, *Application Submittal Content;* Section .0307, *Public Participation Procedures;* Section .0308, *Final Action on Permit Applications;* Section .0309, *Termination, Modification and Revocation of Permits;* Section .0310, *Permitting of Numerous Similar Facilities;* Section .0311, *Permitting of Facilities at Multiple Temporary Sites;* Section .0312, *Application Processing Schedule;* Section .0313, *Expedited Application Processing Schedule;* Section .0314, *General Requirements for All Permits;* Section .0315, *Synthetic Minor Facilities;* Section .0316, *Administrative Permit Amendments;* and Section .0317, *Avoidance Conditions.* The proposed changes are consistent with the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of

Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 1, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–19837 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 85, No. 202
Monday, October 19, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the South Carolina Advisory Committee (Committee) will hold a meeting via-teleconference on Tuesday, October 20, 2020, at 1:00 p.m. (EST) the purpose of the meeting is to plan next steps for its project on subminimum wages for people with disabilities.

DATES: The meeting will be held on Tuesday, October 20, 2020 at 1:00 p.m. (EST).

Public Call Information: Dial: 800–353–6461, conference ID: 2953750.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *bdelaviez@usccr.gov* or (202) 539–8246.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. 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 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit Office at (202) 539–8246.

Records generated from this meeting may be inspected and reproduced at the Regional Program Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmPAAQ* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Program Unit at the above email or phone number.

Agenda

1. Roll Call
2. Planning
3. Next Steps
4. Open Session
5. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the immediacy of the subject matter.

Dated: October 13, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–23023 Filed 10–16–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that the Tennessee Advisory Committee will hold a public meeting on Thursday, October 29, 2020, at 12:00 p.m. Central Time, to discuss civil rights in the state.

Public Call Information: Dial: 800–353–6461; Conference ID: 7186978.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer (DFO), at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 7186978. 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. Individual who is deaf, deafblind and hard of hearing 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 Midwestern Regional Office, U.S. Commission on Civil Rights, John C. Kluczynski Federal Building, 230 S Dearborn St., Suite 2120, Chicago, IL 60604. They may be faxed to the Commission at (312) 353–8324, or emailed to *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzm9AAA.* Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become

available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Opening Remarks
II. Discussion of Project Topics
III. Public Comments
IV. Adjournment

Dated: October 13, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–23025 Filed 10–16–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Monday November 9, 2020 at 3:30 p.m. Central time. The Committee will discuss panels for their study of qualified immunity in the state.

DATES: The meeting will take place on Monday November 9, 2020 at 3:30 p.m. Central Time.

Public Call Information: Dial: 800–360–9505, Confirmation Code: 199–536–0092.

Web Access: https://civilrights.webex.com/civilrights/j.php?MTID=m408d7d23d8f175d226928d34ed7406ed.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind and hard of hear hearing 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 confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Discussion: Qualified Immunity in Mississippi
III. Public comment
IV. Next steps
V. Adjournment

Dated: October 13, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–23024 Filed 10–16–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry And Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 4 and 5, 2020, at 1:00 p.m., Eastern Stardard Time. The meetings will be available via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, November 4:

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Wassenaar Proposals for 2021
4. Industry Presentation: Fixed Point Arithmetic
5. Industry Presentation: Machine Learning
6. Industry Presentation: ECCN 3C004 and Adsorbed Hydride Gases
7. Old Business

Thursday, November 5:

Closed Session

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

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than October 28, 2020.

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

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 18, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (l0)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and l0(a)(3). The remaining

portions of the meeting will be open to the public.

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

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–23068 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–904]

Forged Steel Fittings From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that forged steel fittings (FSF) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2670.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2020, Commerce published the *Preliminary Determination* in this investigation.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Period of Investigation

The period of investigation is October 1, 2018 through September 30, 2019.

Scope of the Investigation

The products covered by this investigation are forged steel fittings from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On May 20, 2020, we issued a Preliminary Scope Decision Memorandum.[3] Between June and July 2020, we received additional scope comments from several interested parties. In response to these comments, we have made changes to the scope of the investigation for this final determination. For a full discussion and analysis of the scope comments timely received, *see* the Final Scope Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are addressed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

Commerce normally verifies information relied upon in making final determination, pursuant to section 782(i)(1) of the Tariff Act of 1930, as amended (the Act). However, during the course of this investigation, Commerce was unable to conduct on-site verification due to travel restrictions. Accordingly, Commerce took additional steps in lieu of verification, as discussed further in the Issues and Decision Memorandum. Consistent with section 776(a)(2)(D) of the Act, Commerce relied on the information submitted on the record as facts available in making our final determination.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculations for Samyoung Fitting Co., Ltd. (Samyoung), the sole cooperative respondent in this investigation, since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an estimated weighted-average dumping margin for Samyoung that is not zero, *de minimis,* or based entirely on facts otherwise available. Commerce determined the all-others rate using the estimated weighted-average dumping margin calculated for Samyoung, the sole cooperative respondent.

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Samyoung Fitting Co., Ltd	17.08
Sandong Metal Industry Co., Ltd	** 198.38
ZEOtech Co., Ltd	** 198.38
Pusan Coupling Corporation	** 198.38
Shinchang Industries	** 198.38
Shinwoo Tech	** 198.38
Titus Industrial Korea Co, Ltd	** 198.38
All Others	17.08

** AFA

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any

[1] *See Forged Steel Fittings from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 32010 (May 28, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Forged Steel Fittings from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Forged Steel Fittings from India and the Republic of Korea: Scope Comments Preliminary Decision Memorandum,'' dated May 20, 2020 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Forged Steel Fittings from India and the Republic of Korea: Final Scope Decision Memorandum'' (Final Scope Decision Memorandum), dated concurrently with this final determination.

public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of FSF, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after May 28, 2020, the date of publication of the *Preliminary Determination* in this investigation in the **Federal Register**. Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

Pursuant to section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: October 13, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions (including hammer unions), and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. The scope includes integrally reinforced forged branch outlet fittings, regardless of whether they have one or more ends that is a socket welding, threaded, butt welding end, or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS–SP–97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and it does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casings. Pursuant to the applicable standards, fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of forged steel fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class rating (expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, nipples, and all fittings that have a maximum pressure rating of 300 pounds per square inch/PSI or less.

Also excluded from the scope are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B;
- American Society of Mechanical Engineers (ASME) B16.9;
- Manufacturers Standardization Society (MSS) SP–75;
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411;
- Hydraulic hose fittings (*e.g.,* fittings used in high pressure water cleaning applications, in the manufacture of hydraulic engines, to connect rubber dispensing hoses to a dispensing nozzle or grease fitting) made to ISO 12151–1, 12151–2, 12151–3, 12151–4, 12151–5, or 12151–6;
- Underwriter's Laboratories (UL) certified electrical conduit fittings;
- ASTM A153, A536, A576, or A865;
- Casing conductor connectors made to proprietary specifications;
- Machined steel parts (*e.g.,* couplers) that are not certified to any specifications in this scope description and that are not for connecting steel pipes for distributing gas and liquids;
- Oil country tubular goods (OCTG) connectors (*e.g.,* forged steel tubular connectors for API 5L pipes or OCTG for offshore oil and gas drilling and extraction);
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541; and
- International Organization for Standardization (ISO) ISO6150–B.

Also excluded from the scope are assembled or unassembled hammer unions that consist of a nut and two subs. To qualify for this exclusion, the hammer union must meet each of the following criteria: (1) The face of the nut of the hammer union is permanently marked with one of the following markings: ''FIG 100,'' ''FIG 110,'' ''FIG 100C,'' ''FIG 200,'' ''FIG 200C,'' ''FIG 201,'' ''FIG 202,'' ''FIG 206,'' ''FIG 207,'' ''FIG 211,'' ''FIG 300,'' ''FIG 301,'' ''FIG 400,'' ''FIG 600,'' ''FIG 602,'' ''FIG 607,'' ''FIG 1002,'' ''FIG 1003,'' ''FIG 1502,'' ''FIG 1505,'' ''FIG 2002,'' or ''FIG 2202''; (2) the hammer union does not bear any of the following markings: ''Class 3000,'' ''Class 3M,'' ''Class 6000,'' ''Class 6M,'' ''Class 9000,'' or ''Class 9M''; and (3) the nut and both subs of the hammer union are painted.

Also excluded from the scope are subs or wingnuts made to ASTM A788, marked with ''FIG 1002,'' ''FIG 1502,'' or ''FIG 2002,'' and with a pressure rating of 10,000 PSI or greater. These parts are made from AISI/SAE

4130, 4140, or 4340 steel and are 100 percent magnetic particle inspected before shipment.

Also excluded from the scope are tee, elbow, cross, adapter (or ''crossover''), blast joint (or ''spacer''), blind sub, swivel joint and pup joint which have wing nut or not. To qualify for this exclusion, these products must meet each of the following criteria: (1) Manufacturing and Inspection standard is API 6A or API 16C; and, (2) body or wing nut is permanently marked with one of the following markings: ''FIG 2002,'' ''FIG 1502,'' ''FIG 1002,'' ''FIG 602,'' ''FIG 206,'' or ''FIG any other number'' or MTR (Material Test Report) shows these FIG numbers.

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They may also be entered under HTSUS 7307.93.3010, 7307.93.3040, 7307.93.6000, 7307.93.9010, 7307.93.9040, 7307.93.9060, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–23110 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–874]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Final Results of Countervailing Duty Administrative Review, 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that Goodluck India Limited (Goodluck) and Tube Investments of India Ltd. (TII), producers/exporters of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India, received countervailable subsidies. The period of review is September 25, 2017 through December 31, 2018.

DATES: Applicable October 19, 2020.

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

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this review on March 5, 2020.[1] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[3] The deadline for the final results of this review is now October 21, 2020. For a complete description of the events that occurred since the Preliminary Results, *see* the Issues and Decision Memorandum.[4]

Scope of the Order

The products covered by this order are cold-drawn mechanical tubing. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

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

Changes Since the Preliminary Results

After evaluating the comments received from interested parties and record information, we have made no changes to the net subsidy rate calculated for Goodluck or TII. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period September 25, 2017 through December 31, 2018 to be as follows:

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Results of Countervailing Duty Administrative Review, 2017–2018,* 85 FR 12897 (March 5, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

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

[6] As discussed in the Issues and Decision Memorandum, Commerce has determined that this

Company	2017 subsidy rate (percent *ad valorem*)	2018 subsidy rate (percent *ad valorem*)
Goodluck India Limited[6]	5.86	5.21
Tube Investments of India Ltd[7]	4.27	5.17

Assessment Rate

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results. Commerce will instruct CBP to liquidate entries of subject merchandise produced and/or exported by Goodluck and TII, entered or withdrawn from warehouse for consumption from September 25, 2017 through December 31, 2018, at the *ad valorem* rate listed above for each respective company.

Cash Deposit Requirements

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above for 2018 for Goodluck and TII, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

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

Dated: October 13, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–23112 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 9, 2020. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. In addition, please email an electronic copy of any such written comments to *Dianne.Hanshaw@trade.gov.* Arrangements to review these applications can be made by contacting *Dianne.Hanshaw@trade.gov.*

Docket Number: 20–003. Applicant: Rice University, Department of Microengineering, 6100 Main Street, Houston, TX 77030. Instrument: Ultrasonic Linear Piezo Stage and Controller. Manufacturer: Xeryon, Belgium. Intended Use: According to the applicant, the instrument will be used to study automatic and large-scale surgical implantation of nanoelectrode threads into rodent and primate brains. Specifically, a platform is developed that can insert 8 ultraflexible nanoelectrode threads (uNETs) into the brain simultaneously and independently, while each insertion site is flexibly defined by the surgeons' and researchers' need and can be precisely researched by micromanipulators. Successful development of this technology will significantly reduce the time, errors and tissue trauma during brain surgery, meanwhile, it will open opportunities such as slow-speed insertion, flexibly targeting multiple regions and large-scale neural recordings. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 31, 2020.

Docket Number: 20–004. Applicant: Texas A&M University, AgriLife Research, 2147 TAMU, College Station, TX 77843–2147. Instrument: 3D Microfabrication System Photonic Professional GT. Manufacturer: Nanoscribe, Germany. Intended Use: According to the applicant, the instrument will be used to conduct research in the broad areas of material research, thin-film metal semiconductors, bio microfluidics, medical devices and optical/photonic devices, to name a few. These physical platforms will manifest in the forms of devices (ranging from 1–200 cm^2) that will then be taken to individual laboratories for further experimentation in the aforementioned fields under the guidance and scope of the Texas A&M University research communities. Justification for Duty-Free Entry:

[6] rate applies to the following entities: Goodluck India Limited (formerly Good Luck Steel Tubes Limited); Good Luck Steel Tubes Limited Good Luck House; and Good Luck Industries.

[7] Tube Investments of India Ltd. is also known as Tube Investments of India Limited.

According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 20, 2020.

Docket Number: 20–005. Applicant: University of Chicago Argonne LLC, Operator of National Laboratory 9700 South Cass Avenue, Lemont, IL 60439–4873. Instrument: Libera Brilliance+ ¾ with GDX module BPM electronics. Manufacturer: Instrumentation Technologies D.D, Solvenia. Intended Use: According to the applicant, the instrument will be used to study precision measurement for the particle beam position in the Advanced Photon Source Upgrade storage ring. The measurement information is used to steer the particle beam and photon beam that will be used as a three-dimensional X-ray microscope for experimental purposes. The materials/phenomena include material properties analysis, protein mapping for pharmaceutical companies, X-ray imaging and chemical composition determination and many others, but are not limited to grain structure, grain boundary and interstitial defects and morphology. These properties are not only studied at ambient environments, but also under high pressure, temperature, stress and strain. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 30, 2020.

Docket Number: 20–006. Applicant: University of Chicago Argonne LLC, Operator of National Laboratory 9700 South Cass Avenue, Lemont, IL 60439–4873. Instrument: Canted Undulator GRID Masks. Manufacturer: Strumenti Scientific CINEL S.R.L., Italy.

Intended Use: According to the applicant, the instrument will be used to study and assemble the new canted undulator front ends for the Advanced Photon Source upgrade. The front end consists of a series of components that connect the storage ring to the user beamline in order to deliver a photon beam that will be used as a three-dimensional X-ray microscope for experimental purposes. The materials/phenomena vary widely from material properties analysis, protein mapping for pharmaceutical companies, X-ray imaging and chemical composition determination to name a few. The properties of the materials are not limited to grain structure, grain boundary and interstitial defects and morphology. These properties are studied at ambient environments but also under high pressure, temperature, stress and strain. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 29, 2020.

Docket Number: 20–007. Applicant: University of Chicago Argonne LLC, Operator of National Laboratory 9700 South Cass Avenue, Lemont, IL 60439–4873. Instrument: Canted Undulator Premasks and Exit Masks. Manufacturer: Strumenti Scientific CINEL S.R.L., Italy. Intended Use: According to the applicant, the instrument will be used to study and assemble the new canted undulator front ends for the Advanced Photon Source upgrade. The front end consists of a series of components that connect the storage ring to the user beamline in order to deliver a photon beam that will be used as a three-dimensional X-ray microscope for experimental purposes. The materials/phenomena vary widely from material properties analysis, protein mapping for pharmaceutical companies, X-ray imaging and chemical composition determination to name a few. The properties of the materials are not limited to grain structure, grain boundary and interstitial defects and morphology. These properties are studied at ambient environments but also under high pressure, temperature, stress and strain. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 29, 2020.

Dated: October 7, 2020.

Richard Herring,

Acting Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2020–22997 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–891]

Forged Steel Fittings From India: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that forged steel fittings (FSF) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2670.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2020, Commerce published the *Preliminary Determination* in this investigation.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Period of Investigation

The period of investigation is October 1, 2018 through September 30, 2019.

Scope of the Investigation

The products covered by this investigation are forged steel fittings from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On May 20, 2020, we issued a Preliminary Scope Decision Memorandum.[3] Between June and July 2020, we received additional scope comments from several interested parties, including the petitioners. In response to these comments, we have made changes to the scope of the investigation for this final determination. For a full discussion and analysis of the scope comments timely received, *see* the Final Scope Decision Memorandum.[4]

[1] *See Forged Steel Fittings from India: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 32007 (May 28, 2020) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Forged Steel Fittings from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Forged Steel Fittings from India and the Republic of Korea: Scope Comments Preliminary Decision Memorandum,'' dated May 20, 2020 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Forged Steel Fittings from India and the Republic of Korea: Final Scope Decision Memorandum'' (Final Scope Decision Memorandum), dated October 13, 2020.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

Commerce normally verifies information relied upon in making final determination, pursuant to section 782(i)(1) of the Tariff Act of 1930, as amended (the Act). However, during the course of this investigation, Commerce was unable to conduct on-site verification due to travel restrictions and took additional steps in lieu of verification, as discussed in the Issues and Decision Memorandum. Consistent with section 776(a)(2)(D) of the Act, Commerce relied on the information submitted on the record as facts available in making our final determination.[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain changes to the margin calculations for Shakti Forge Industries Pvt. Ltd. (Shakti), the sole cooperative respondent in this investigation, since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use ''any reasonable method'' to establish the estimated weighted-average dumping margin for all other producers or exporters. One method contemplated by section 735(c)(5)(B) of the Act is ''averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

For this final determination, Commerce has determined that the estimated weighted-average dumping margin for Shakti is zero. In addition, Commerce has determined the estimated weighted-average dumping margins for Nikoo Forge and Pan entirely on the basis of facts otherwise available (*i.e.,* 293.40 percent).[6] Because we have no calculated rates that are not based entirely on facts available, zero, or *de minimis,* we have determined that a reasonable method for assigning a margin to all other producers or exporters is to average the weighted-average dumping margins calculated for the three mandatory respondents. The simple average of these rates is 195.60 percent, and, pursuant to section 735(c)(5)(B) of the Act, this is the rate we are assigning as the all-others rate. For a full discussion of the all-others rate methodology, *see* the Issues and Decision Memorandum.

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent) [7]
Shakti Forge Industries Pvt. Ltd [8]	* 0.00	Not Applicable
Nikoo Forge Pvt. Ltd	** 293.40	290.88
Pan International	** 293.40	290.88
Disha Auto Components Pvt. Ltd	** 293.40	290.88
Dynamic Flow Products	** 293.40	290.88
Kirtanlal Steel Pvt Ltd	** 293.40	290.88
Metal Forgings Pvt Ltd	** 293.40	290.88
Patton International Limited	** 293.40	290.88
Sage Metals Limited	** 293.40	290.88
Technotrak Engineers	** 293.40	290.88
All-Others	195.60	193.08

* (*de minimis*)
** (AFA)

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of

[5] *Id.*

[6] *See* Issues and Decision Memorandum.

[7] *See* Memorandum, ''Final Countervailing Duty Determination Calculations for Shakti Forge Industries Pvt. Ltd. and Shakti Forge,'' dated October 13, 2020.

[8] Shakti and Shakti Forge are a single entity. *See* Preliminary Decision Memorandum.

liquidation of all appropriate entries of FSF, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after May 28, 2020, the date of publication of the *Preliminary Determination* in this investigation in the **Federal Register**. Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

Pursuant to section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice. Because the rate for Shakti is zero, we will not instruct CBP to suspend liquidation of entries of subject merchandise produced and exported by Shakti or Shakti Forge or to require cash deposits on such entries.

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: October 13, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions (including hammer unions), and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. The scope includes integrally reinforced forged branch outlet fittings, regardless of whether they have one or more ends that is a socket welding, threaded, butt welding end, or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS–SP–97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and it does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casings. Pursuant to the applicable standards, fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of forged steel fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class rating (expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, nipples, and all fittings that have a maximum pressure rating of 300 pounds per square inch/PSI or less.

Also excluded from the scope are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B;
- American Society of Mechanical Engineers (ASME) B16.9;
- Manufacturers Standardization Society (MSS) SP–75;
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411;
- Hydraulic hose fittings (*e.g.,* fittings used in high pressure water cleaning applications, in the manufacture of hydraulic engines, to connect rubber dispensing hoses to a dispensing nozzle or grease fitting) made to ISO 12151–1, 12151–2, 12151–3, 12151–4, 12151–5, or 12151–6;
- Underwriter's Laboratories (UL) certified electrical conduit fittings;
- ASTM A153, A536, A576, or A865;
- Casing conductor connectors made to proprietary specifications;
- Machined steel parts (*e.g.,* couplers) that are not certified to any specifications in this scope description and that are not for connecting steel pipes for distributing gas and liquids;
- Oil country tubular goods (OCTG) connectors (*e.g.,* forged steel tubular connectors for API 5L pipes or OCTG for offshore oil and gas drilling and extraction);
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541; and
- International Organization for Standardization (ISO) ISO6150–B.

Also excluded from the scope are assembled or unassembled hammer unions that consist of a nut and two subs. To qualify for this exclusion, the hammer union must meet each of the following criteria: (1) The face of the nut of the hammer union is permanently marked with one of the following markings: ''FIG 100,'' ''FIG 110,'' ''FIG 100C,'' ''FIG 200,'' ''FIG 200C,'' ''FIG 201,'' ''FIG 202,'' ''FIG 206,'' ''FIG 207,'' ''FIG 211,'' ''FIG 300,'' ''FIG 301,'' ''FIG 400,'' ''FIG 600,'' ''FIG 602,'' ''FIG 607,'' ''FIG 1002,'' ''FIG 1003,'' ''FIG 1502,'' ''FIG 1505,'' ''FIG 2002,'' or ''FIG 2202''; (2) the hammer union does not bear any of the following markings: ''Class 3000,'' ''Class 3M,'' ''Class 6000,'' ''Class 6M,'' ''Class 9000,'' or ''Class 9M''; and (3) the nut and both subs of the hammer union are painted.

Also excluded from the scope are subs or wingnuts made to ASTM A788, marked with ''FIG 1002,'' ''FIG 1502,'' or ''FIG 2002,'' and with a pressure rating of 10,000 PSI or greater. These parts are made from AISI/SAE 4130, 4140, or 4340 steel and are 100 percent magnetic particle inspected before shipment.

Also excluded from the scope are tee, elbow, cross, adapter (or ''crossover''), blast joint (or ''spacer''), blind sub, swivel joint and pup joint which have wing nut or not. To qualify for this exclusion, these products

must meet each of the following criteria: (1) Manufacturing and Inspection standard is API 6A or API 16C; and, (2) body or wing nut is permanently marked with one of the following markings: ''FIG 2002,'' ''FIG 1502,'' ''FIG 1002,'' ''FIG 602,'' ''FIG 206,'' or ''FIG any other number'' or MTR (Material Test Report) shows these FIG numbers.

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They may also be entered under HTSUS 7307.93.3010, 7307.93.3040, 7307.93.6000, 7307.93.9010, 7307.93.9040, 7307.93.9060, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–23111 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA557]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council's (Council) will hold a meeting of the Snapper Grouper Advisory Panel (AP) on November 4–6, 2020.

DATES: The Snapper Grouper AP will meet from 1:30 p.m.–4:30 p.m. on November 4, 2020; 9 a.m. to 4 p.m. on November 5, 2020; and 9 a.m. to 12 p.m. on November 6, 2020.

ADDRESSES: The meeting will be held via webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

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 AP meeting is open to the public and will be available via webinar as it occurs. Registration is required. Webinar registration information, a public comment form, and other meeting materials will be posted to the Council's website at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings/* as it becomes available.

The Snapper Grouper AP will discuss and provide recommendations on the following topics: The need for conservation and management of eight snapper grouper species (cubera snapper, margate, sailor's choice, coney, yellowfin grouper, saucereye porgy, misty grouper, and blackfin snapper); management measures for red porgy, best fishing practices and use of descending devices; and recreational management issues in the South Atlantic region. In addition, the AP will provide information to develop a Fishery Performance Report for red snapper. The AP will also receive updates on the MyFishCount voluntary recreational reporting project, the Council's Citizen Science Program initiatives, potential regional efforts to address management challenges related to climate change, shark depredation, and other items as needed.

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 14, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23049 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA556]

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 Mackerel Cobia Advisory Panel (AP) on November 2, 2020.

DATES: The meeting will be held via webinar on November 2, 2020, from 1 p.m. until 5 p.m.

ADDRESSES:

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/.*

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Christina Wiegand, Fishery Social Scientist, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Mackerel Cobia AP will meet via webinar. Agenda items: An update on actions related the Coastal Migratory Pelagics (CMP) fishery including the Southeast Data, Assessment and Review (SEDAR) 78 stock assessment for South Atlantic Spanish mackerel currently in the planning stages and CMP Amendment 32 addressing Gulf of Mexico cobia. The AP will discuss the results of the SEDAR 38 Update for Atlantic king mackerel and proposed modifications to management measures and sector allocations. AP members will receive updates on Council involvement in activities related to climate change

and the Council's Citizen Science Program. The AP will provide recommendations for Council consideration as appropriate. Additionally, the AP will discuss nomination and election of a new Chair and Vice-Chair.

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 14, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23048 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA562]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Budget Committee will hold an online meeting to consider budget issues as outlined in the Budget Committee agenda for the November 2020 Council Meeting.

DATES: The online meeting will be held Wednesday, November 4, 2020, at 1 p.m. Pacific Standard Time.

ADDRESSES: This meeting will be held online. Specific meeting information including directions on how to join the meeting, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Patricia Crouse, Administrative Officer, Pacific Council; telephone: (503) 820–2408.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider and develop recommendations to the Pacific Council for the November 2020 Pacific Council meeting, particularly the Fiscal Matters agenda item.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: October 14, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–23050 Filed 10–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2020–HQ–0007]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Defense.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 18, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Civil Aircraft Landing Permit System; DD Form 2400, DD Form 2401, DD Form 2402; 0701–0050.

Type of Request: Regular.

Number of Respondents: 5,400.

Responses per Respondent: 1.

Annual Responses: 5,400.

Average Burden per Response: 0.17 hours.

Annual Burden Hours: 918 hours.

Needs and Uses: The collection of information is necessary to identify the aircraft operator and the aircraft to be operated; establish that purpose for use of military airfields; and protect the US Government against litigation. Access must be managed to ensure that security and operational integrity at the airfields are maintained and that the government is not held liable for accidents if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services. This collection will identify the services of legal responsibility if an unforeseen incident occurs on the landing airfield after an approval is granted.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to retain or obtain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23092 Filed 10–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2020–HQ–0016]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 18, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: The Department of Defense (DoD) cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to United States Army Installation Management Command Headquarters, 2405 Gun Shed Road, Bldg. 2261 JBSA-Fort Sam Houston, TX 78234, ATTN: Mrs. Kelly Frank, or call 210–466–1200.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Installation Management Command Survivor Outreach Service System (SOS IMCOM); OMB Control Number 0702–XXXX.

Needs and Uses: The SOS Module allows authorized staff members to collect program-specific information and record SOS Support Coordinator and Financial Counselor activities with/on behalf of Survivors and the program. The Module records details about each Survivor interaction which allows SOS staff to build better relationships with their Survivors and determine the overall effectiveness of their services. This Army-wide program includes Regular Army, United States Army National Guard, and Reserves patrons who provide dedicated and comprehensive support services to all Family members of Soldiers who die while on Active Duty. The collection instrument is completed by SOS staff members who input data collected from Survivors in to the application. The staff members are required to make periodic communication with Survivors—at a minimum of one contact annually—to conduct well-being checks and milestone management reviews or determine level of Support Survivor desires. SOS staff members collect the information from the Survivors and document the information as a direct contact within the SOS application case notes.

Affected Public: Individuals and households.

Annual Burden Hours: 54,013.3.

Number of Respondents: 72,307.

Responses per Respondent: 2.49.

Annual Responses: 180,044.

Average Burden per Response: 18 minutes.

Frequency: On occasion.

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23094 Filed 10–16–20; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2020–HQ–0015]

Proposed Collection; Comment Request

AGENCY: U.S. Army Research Institute for the Behavioral and Social Sciences (ARI)

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Research Institute for the Behavioral and Social Sciences announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 18, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: The Department of Defense (DoD) cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Research Institute for the Behavioral and Social

Sciences, 6000 6th Street, Fort Belvoir, VA 22060, ATTN: Dr. Alisha Ness, or call 703–545–2398.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: ARI Game Evaluation; OMB Control Number 0702–XXXX.

Needs and Uses: This information collection will follow best practices in assessment development by collecting feedback about the ease of use, clarity, and usability from individuals who complete the Systems Thinking Abilities game and by collecting demographic information about those individuals to ensure they are similar to the intended end users. The game players are freelance workers from Amazon's Mechanical Turk (MTurk) site who will be paid to play the Systems Thinking Abilities game and respond to the questions included in this information collection. Participants will be master Amazon MTurk workers (workers that demonstrate excellence in a range of MTurk tasks) with a minimum age of 18 years old and a maximum age of 55 years old with normal color vision. Participants will be located in the United States and high school graduates. Respondents will not be sent invitations to participate, instead they can sign up to participate through the MTurk website. Each participant will complete the Systems Thinking Abilities game, the evaluation questions and the demographic information using his or her computer from a location of his or her choice. The ARI Game Evaluation Form will be linked through the MTurk site and responses will be entered and returned online. Once participants complete their assigned section(s) they will be paid for their time through MTurk. Data will be analyzed following completion of data collection activities.

Evaluation Questions: Participants will respond to a series of multiple choice and open-ended questions to capture their experience with the Systems Thinking Abilities game. These questions are included on the ARI Game Evaluation Form. The collected data will be retrieved and processed by Personnel Decisions Research Institutes (PDRI), a contractor working for ARI. Summary statistics will be generated and the open-ended feedback will be content coded. The information collected on participant feedback will be used to identify modifications needed to the software to improve the clarity or ease of use. Findings will be documented in a technical report.

Demographic Questions: Participants will complete questions through an online survey format regarding demographics and background experiences. Demographic questions include age, gender, ethnicity, race, education attainment, and experience questions related to past experience with computer technology. These questions are included on the ARI Game Evaluation Form. The collected data will be retrieved and processed by PDRI. The demographic information will be documented in a technical report describing the initial testing.

Affected Public: Individuals or households.

Annual Burden Hours: 23.3.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: 14 minutes.

Frequency: One-time collection.

The U.S. Army Research Institute for the Behavioral and Social Sciences (ARI) is developing an innovative game-based assessment to evaluate an individual's systems thinking abilities. Systems thinking is important for job success in areas such as cyber security, engineering, and mission planning. As an assessment, the Systems Thinking Abilities game needs to be evaluated to ensure it measures what is intended and relates to performance in jobs that require systems thinking. This Information Collection will follow best practices in assessment development by collecting feedback about the ease of use, clarity, and usability from individuals who complete the Systems Thinking Abilities game and by collecting demographic information about those individuals to ensure they are similar to the intended end users.

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23093 Filed 10–16–20; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[Docket ID: DOD–2020–OS–0085]

Proposed Collection; Comment Request

AGENCY: Defense Threat Reduction Agency (DTRA), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Threat Reduction Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 18, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: The Department of Defense (DoD) cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6210, Fort Belvoir, VA 22060–6201 Attn: LCDR James D. Franks, USN; or call (800) 462–3683.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Nuclear Test Personnel Review Forms; DTRA Form 150, DTRA Form 150A, DTRA Form 150B, DTRA Form 150C, DTRA Form 150D, DTRA Form 150E; OMB Control Number 0704–0447.

Needs and Uses: The information collection requirement is necessary to provide recognition, verify participation, and/or collect irradiation scenario information from nuclear test participants to perform radiation dose assessments. This information is used to award the Atomic Veterans Service Certificate (AVSC) to eligible veterans

and to process claims submitted by veterans seeking radiogenic disease compensation from the Department of Veterans Affairs (VA) and/or the Department of Justice (DOJ). This information may also be used in approved veteran epidemiology studies that study the health impact of nuclear tests on U.S. veterans. Respondents include Veterans and civilian test participants, and their representatives, who apply for the AVSC or file radiogenic disease compensation claims with the VA or DOJ and require information from the Department of Defense.

Affected Public: Individuals or households.

Annual Burden Hours: 94.5.

Number of Respondents: 163.

Responses per Respondent: 1.

Annual Responses: 163.

Average Burden per Response: 1 Hour.

Frequency: On occasion.

Veterans and their representatives routinely contact DTRA (by phone and mail) to request information regarding participation in U.S atmospheric nuclear testing or apply for the AVSC. A release form is required to certify the identity of the request and authorize the release of Privacy Act information (to the veteran or a 3rd party). DTRA is also required to collect irradiation scenario information from nuclear test participants to accurately determine their radiation dose assessment.

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23106 Filed 10–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–OS–0086]

Proposed Collection; Comment Request

AGENCY: Defense Counterintelligence and Security Agency, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Counterintelligence and Security Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 18, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: The Department of Defense (DoD) cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Counterintelligence and Security Agency, 27130 Telegraph Road, Quantico, VA 22134; ATTN: Ms. Eleanor Rempfer or call (571) 305–6392.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Industrial Security System (NISS) OMB Control Number 0704–0571.

Needs and Uses: The information collection requirement is necessary for DCSA to oversee the National Industrial Security Program (NISP) pursuant to Executive Order 12829. The National Industrial Security System (NISS) is the repository of records related to the maintenance of information pertaining to contractor facility security clearances (FCL) and contractor capabilities to protect classified information in its possession.

Affected Public: Business or Other For-Profit, Federal Government, and Not-For-Profit Institutions.

Annual Burden Hours: 11,671.

Number of Respondents: 11,671.

Responses per Respondent: 1.

Annual Responses: 11,671.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23096 Filed 10–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–OS–0062]

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 18, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation); OMB Control Number 0704–XXXX.

Type of Request: New.

Number of Respondents: 300,000.

Responses per Respondent: 1.

Annual Responses: 300,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 50,000.

Needs and Uses: Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government

customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. DoD will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve. DoD will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. DoD may also utilize observational techniques to collect this information.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23097 Filed 10–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–HA–0043]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 18, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personnel Accountability and Assessment for a Public Health Emergency; DD Form 3112; OMB Control Number 0720–0067 (formerly 0704–0590).

Type of Request: New.

Number of Respondents: 100,000.

Responses per Respondent: 1.

Annual Responses: 100,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 25,000.

Needs and Uses: The principal purpose of the DD form 3112, ''Personnel Accountability and Accountability for a Public Health Emergency,'' form is to collect information used to protect the health and safety of individuals working in, residing on, or assigned to DoD installations, facilities, field operations, and commands, and to protect the DoD mission. When authorized by DoD, this form may be used to provide information about individuals who are infected or otherwise impacted by a public health emergency or similar occurrence or when there is an isolated incident in which an individual learns they have been exposed to a contagious disease or hazardous substance/agent. The form will also be used to document personnel accountability for and status of DoD-affiliated personnel in a natural or man-made disaster, or when directed by the Secretary of Defense. Such events could include severe weather events, acts of terrorism or severe destruction. The collection of this information is necessary to support the DoD in protecting the health and safety of DoD-affiliated individuals and maintain the DoD mission.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. James Crowe.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23098 Filed 10–16–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2020–HQ–0004]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Secretary of the Navy, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 18, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* MyNavy Career Center Omni-Channel Telephony System; OMB Control Number 0703–XXXX.

Type of Request: New.

Number of Respondents: 16,799.

Responses per Respondent: 1.

Annual Responses: 16,799.

Average Burden per Response: 8.1 minutes (0.135 hours).

Annual Burden Hours: 2,268.

Needs and Uses: The information collection requirement is necessary to obtain unique personally identifiable information such as DoD ID or SSN to positively identify individuals who contact MyNavy Career Center regarding a variety of questions.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 14, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–23095 Filed 10–16–20; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of 229 Boundary Revision for the East Tennessee Technology Park (Formerly the Oak Ridge Gaseous Diffusion Plant, K–25)

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of 229 Boundary Revisions for the East Tennessee Technology Park (ETTP) (formerly the Oak Ridge Gaseous Diffusion Plant, K–25).

SUMMARY: Notice is hereby given that the U.S. Department of Energy, pursuant to Section 229 of the Atomic Energy Act of 1954, as amended, as implemented by DOE's regulations regarding Trespassing on Department of Energy Property which published in the **Federal Register** (FR) on August 26, 1963, prohibits the unauthorized entry, and the unauthorized introduction of weapons or dangerous materials, into or upon the following described facilities of the ETTP of the United States Department of Energy.

FOR FURTHER INFORMATION CONTACT: Ms. Marla J. Larsen-Williams, Real Estate Contracting Officer, 9800 S Cass Avenue, Building 201, Lemont, IL 60439, Email: *marla.larsen-williams@science.doe.gov.* Telephone: (865) 227–3332.

SUPPLEMENTARY INFORMATION:

The following amendments are made:

The U.S. Department of Energy installation known as the ETTP is located in the Second Civil District of Roane County, Tennessee, within the corporate limits of the city of Oak Ridge, on the north side of Highway 58 (Oak Ridge Turnpike) approximately one mile east of Gallaher Bridge which spans the Clinch River. The previous ETTP 229 Security Boundary contained 4 areas which totaled 168.7 acres. This revised ETTP 229 Security Boundary for ETTP is divided into 4 areas totaling 50.0 acres. *Area 1 is* 15.5 acres and is known as the Disposal Area. *Area 2* is 6.5 acres and is known as the K–1070–B Area. *Area 3* is 24.8 acres known as K–1070–C & -D Area. *Area 4 is* 3.2 acres known as the K–1650 Area. The 229 Security Boundary for these areas is indicated by fencing and/or cable and post configuration which surrounds each of the four areas.

This security boundary is designated pursuant to Section 229 of the Atomic Energy Act of 1954. This revised boundary supersedes and/or re-describes the entries previously contained in the **Federal Register** notice published October 19, 1965 at 30 FR 13285; amended on March 30, 1967 at 32 FR 5384; and April 21, 1983 at 48 FR 17134; and January 23, 2008 at 73 FR 3950; and June 25, 2014 at 79 FR 36044, for the ETTP of the United States Department of Energy.

Signing Authority

This document of the Department of Energy was signed on October 13, 2020, by Marla J. Larsen-Williams, Real Estate Contracting Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the

document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 14, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–23082 Filed 10–16–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1720–001.
Applicants: Southern California Edison Company.
Description: Compliance filing: SCE Update Appendix IX, Attachment 2 Formula Rate Compliance Order 864 to be effective 1/27/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5038.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER20–2888–001.
Applicants: Townsite Solar, LLC.
Description: Tariff Amendment: Townsite Solar, LLC MBR Supplement to be effective 9/17/2020.
Filed Date: 9/29/20.
Accession Number: 20200929–5157.
Comments Due: 5 p.m. ET 10/20/20.

Docket Numbers: ER20–3011–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Errata to ISA, SA No. 5757; Queue No. AC1–161 in Docket No. ER20–3011 to be effective 8/28/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5045.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–76–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–10–09_SA 3340 Iris Solar-Entergy Louisiana 1st Rev GIA (J1184) to be effective 9/25/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5024.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–77–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5804; Queue No. AF2–280 to be effective 9/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5034.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–78–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Amendment to CED Solar Development (Timberland Solar) Amended and Restated LGIA to be effective 9/12/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5088.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–79–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Establish Minimum TCR Collateral Requirements to be effective 5/1/2021.
Filed Date: 10/9/20.
Accession Number: 20201009–5099.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–80–000.
Applicants: San Diego Gas & Electric Company.
Description: Compliance filing: Certificate of Concurrence in LGIA Sun Streams (CAISO Service Agreement No. 62) to be effective 10/7/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5105.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–81–000.
Applicants: Appalachian Power Company.
Description: § 205(d) Rate Filing: APCo-Town of Bedford Letter Agreement Temporary Install Backup Mobile Substation to be effective 10/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5112.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–82–000.
Applicants: Soldier Creek Wind, LLC.
Description: Baseline eTariff Filing: Soldier Creek Wind, LLC & Irish Creek Wnd, LLC SIFCA to be effective 10/24/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5114.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–83–000.
Applicants: Potomac Electric Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PEPCO submits Revisions to OATT, Att. H–9A re: Depreciation Rates to be effective 1/1/2021.
Filed Date: 10/9/20.
Accession Number: 20201009–5124.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–84–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmision submits Revised IA SA No. 4577 to be effective 12/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5127.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–85–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits ECSAs, SA Nos. 5705, 5706, 5707, 5708, 5709 an 5721 to be effective 12/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5133.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–86–000.
Applicants: Orange County Energy Storage 2 LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 12/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5135.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–87–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits Operating and Interconnection Agreement Revised SA No. 4578 to be effective 12/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5136.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–88–000.
Applicants: Orange County Energy Storage 3 LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 12/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5137.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER21–89–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA No. 5795; Queue No. AF1–259 to be effective 9/10/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5158.
Comments Due: 5 p.m. ET 10/30/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–1–000.
Applicants: New Hampshire Transmission, LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, et al. of New Hampshire Transmission, LLC.
Filed Date: 10/9/20.
Accession Number: 20201009–5134.
Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ES21–2–000.
Applicants: DesertLink, LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DesertLink, LLC.
Filed Date: 10/9/20.
Accession Number: 20201009–5155.
Comments Due: 5 p.m. ET 10/30/20.
Docket Numbers: ES21–3–000.
Applicants: Republic Transmission, LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Republic Transmission, LLC.
Filed Date: 10/9/20.
Accession Number: 20201009–5156.
Comments Due: 5 p.m. ET 10/30/20.
Docket Numbers: ES21–4–000.
Applicants: Silver Run Electric, LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Silver Run Electric, LLC.
Filed Date: 10/9/20.
Accession Number: 20201009–5157.
Comments Due: 5 p.m. ET 10/30/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–23055 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 13, 2020.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–7–000.
Applicants: Sun Streams 2, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Sun Streams 2, LLC.
Filed Date: 10/9/20.
Accession Number: 20201009–5191.
Comments Due: 5 p.m. ET 10/30/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–47–012; ER12–1540–010; ER12–1541–010; ER12–1542–010; ER12–1544–010; ER17–1930–004; ER17–1931–004; ER17–1932–004; ER14–594–014; ER11–46–015; ER11–41–012; ER12–2343–010; ER13–1896–016; ER16–323–008; ER17–2088–002; ER16–2035–002; ER20–2000–001; ER10–2596–010; ER12–2200–006; ER12–1400–007; ER11–2029–007.
Applicants: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Wheeling Power Company, Public Service Company of Oklahoma, AEP Texas Inc., Southwestern Electric Power Company, Ohio Power Company, AEP Energy Partners, Inc., AEP Retail Energy Partners LLC, AEP Energy, Inc., AEP Generation Resources Inc., Ohio Valley Electric Corporation, Apple Blossom Wind, LLC, Black Oak Wind, LLC, Clyde Onsite Generation, LLC, Flower Ridge II Wind Farm LLC, Mehoopany Wind Energy LLC, Flat Ridge 2 Wind LLC, Cedar Creek II, LLC.
Description: Notice of Non-Material Change in Status of the AEP Companies, et al.
Filed Date: 10/9/20.
Accession Number: 20201009–5187.
Comments Due: 5 p.m. ET 10/30/20.
Docket Numbers: ER19–460–006.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Order No. 841 Compliance Filing in Response to July 2020 Order to be effective 8/5/2021.
Filed Date: 10/13/20.
Accession Number: 20201013–5144.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER19–469–004.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing Pursuant to July 16, 2020 Order re Order No. 841 to be effective 12/3/2019.
Filed Date: 10/13/20.
Accession Number: 20201013–5174.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER19–1960–004.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–10–13_Attachment X Additional Compliance for Order 845 to be effective 12/20/2019.
Filed Date: 10/13/20.
Accession Number: 20201013–5328.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER19–2546–002.
Applicants: Tuscola Wind II, LLC.
Description: Compliance filing: Tuscola Wind II, LLC, Docket No. ER19–2546 to be effective 10/1/2019.
Filed Date: 10/13/20.
Accession Number: 20201013–5155.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER20–1449–002.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC.
Description: Tariff Amendment: 2020–10–13_Entergy NOL Amendment to be effective 6/1/2020.
Filed Date: 10/13/20.
Accession Number: 20201013–5228.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER21–90–000.
Applicants: Sun Streams 2, LLC.
Description: Initial rate filing: Market-Based Rate Application to be effective 12/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5171.
Comments Due: 5 p.m. ET 10/30/20.
Docket Numbers: ER21–91–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 20–00014, NPC and Open Mountain to be effective 12/12/2020.
Filed Date: 10/13/20.
Accession Number: 20201013–5001.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER21–92–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 20–00016 NPC and Open Mountain to be effective 12/12/2020.
Filed Date: 10/13/20.
Accession Number: 20201013–5002.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER21–93–000.
Applicants: MidAmerican Energy Company.
Description: § 205(d) Rate Filing: First Amended and Restated Facilities Agreement to be effective 9/22/2020.
Filed Date: 10/13/20.
Accession Number: 20201013–5003.
Comments Due: 5 p.m. ET 11/3/20.
Docket Numbers: ER21–94–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Tri-State Rate Schedule No. 70 to be effective 10/14/2020.
Filed Date: 10/13/20.

Accession Number: 20201013–5175.

Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: ER21–95–000.

Applicants: Citizens Sunrise Transmission LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing October 2020 to be effective 1/1/2021.

Filed Date: 10/13/20.

Accession Number: 20201013–5176.

Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: ER21–96–000.

Applicants: Citizens Sycamore-Penasquitos Transmission LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing October 2020 to be effective 1/1/2021.

Filed Date: 10/13/20.

Accession Number: 20201013–5178.

Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: ER21–97–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5796; Queue No. AC2–112 to be effective 9/10/2020.

Filed Date: 10/13/20.

Accession Number: 20201013–5191.

Comments Due: 5 p.m. ET 11/3/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–23060 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–86–000]

Orange County Energy Storage 2 LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Orange County Energy Storage 2 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 2, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–23053 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3452–017]

Erie Boulevard Hydropower, L.P.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license for the Oak Orchard Hydroelectric Project No. 3452 (Oak Orchard Project), located adjacent to the New York State Canal Corporation's barge canal in the Village of Medina, Orleans County, New York, and has prepared an Environmental Assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental impacts of the Oak Orchard Project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA 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 the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13,

2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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. The first page of any filing should include docket number P–3452–017.

For further information, contact Laurie Bauer at (202) 502–6519, or at *Laurie.Bauer@ferc.gov.*

Dated: October 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23063 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15045–000]

Current Hydro Project 19, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 28, 2020, Current Hydro Project 19, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the existing U.S. Army Corps of Engineers' New Cumberland Locks and Dam located on the Ohio River in Jefferson County, Ohio and Hancock County, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed New Cumberland Locks and Dam Hydroelectric Project would consist of the following: (1) A new 250-foot-wide, 170-foot-long reinforced concrete powerhouse to be located downstream along the left bank looking downstream; (2) a new 250-foot-wide, 150-foot-long forebay intake area enclosed by reinforced concrete retaining walls immediately downstream of the dam; (3) four 5.275-megawatt (MW) turbine-generator units with a total generating capacity of 21.1 MW; (4) a new 300-foot-wide by 300-foot-long tailrace; (5) a 1,200-foot-long access road; (6) a new 60-foot-long by 60-foot-wide substation with a three-phase step-up transformer; (7) a new 0.3-mile-long, 36.7-kilovolt transmission line; and (8) appurtenant facilities. The proposed project would have an estimated annual generation of 151 gigawatt-hours.

Applicant Contact: Joel Herm/Jan Borchert, Current Hydro, LLC, PO Box 224, Rhinebeck, NY 12572; phone: (917) 244–3607.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, 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.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15045) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23066 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 13, 2020.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR21–1–000.

Applicants: Gulf Coast Express Pipeline LLC.

Description: Tariff filing per 284.123(b),(e)+(g): Petition for NGPA Section 311 Rate Approval to be effective 11/1/2020.

Filed Date: 10/1/2020.

Accession Number: 202010015123.

Comments Due: 5 p.m. ET 10/22/2020.

284.123(g) Protests Due: 5 p.m. ET 11/30/2020.

Docket Number: PR21–2–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: COH Rates effective 9–28–2020 to be effective 9/28/2020.

Filed Date: 10/9/2020.

Accession Number: 202010095027.

Comments/Protests Due: 5 p.m. ET 10/30/2020.

Docket Numbers: RP20–1097–001.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: Compliance filing DEQP–BHE Transition Compliance filing to be effective 11/1/2020.

Filed Date: 10/9/20.

Accession Number: 20201009–5041.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–41–000.
Applicants: Egan Hub Storage, LLC.
Description: § 4(d) Rate Filing: Egan LINK URL Conversion Filing to be effective 11/15/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5000.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–42–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: § 4(d) Rate Filing: SGSC LINK URL Conversion Filing to be effective 11/15/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5001.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–43–000.
Applicants: Southeast Supply Header, LLC.
Description: § 4(d) Rate Filing: SESH LINK URL Conversion Filing to be effective 11/15/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5002.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–44–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: § 4(d) Rate Filing: Housekeeping and Metadata Cleanup to be effective 11/9/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5044.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–45–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100920 Negotiated Rates—NextEra Energy Marketing, LLC R–4015–09 to be effective 11/1/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5073.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–46–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100920 Negotiated Rates—NextEra Energy Marketing, LLC R–4015–10 to be effective 11/1/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5074.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–47–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100920 Negotiated Rates—Castleton Commodities Merchant Trading L.P. R–4010–22 to be effective 12/1/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5094.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–48–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100920 Negotiated Rates—Castleton Commodities Merchant Trading L.P. R–4010–21 to be effective 12/1/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5095.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–49–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100920 Negotiated Rates—Castleton Commodities Merchant Trading L.P. R–4010–25 to be effective 12/1/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5098.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–50–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100920 Negotiated Rates—Castleton Commodities Merchant Trading L.P. R–4010–26 to be effective 11/1/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5101.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–51–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Intitial Rates Leidy South Project to be effective 11/11/2020.
Filed Date: 10/9/20.
Accession Number: 20201009–5106.
Comments Due: 5 p.m. ET 10/21/20.

Docket Numbers: RP21–52–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing Annual Interruptible Storage Revenue Credit filed 10–9–20.
Filed Date: 10/9/20.
Accession Number: 20201009–5109.
Comments Due: 5 p.m. ET 10/21/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–23057 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR21–1–000]

Husky US Marketing, LLC and Phillips 66 Company v. TransCanada Keystone Pipeline, LP; Notice of Complaint

Take notice that on October 9, 2020, pursuant to sections 306, and 309 of the Federal Power Act, 16 U.S.C. 825e, and 825h, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Husky US Marketing LLC and Phillips 66 Company (Joint Complainants or Complainants) filed a formal complaint against TransCanada Keystone Pipeline, LP (Keystone or Respondent), challenging the lawfulness of rates charged by Keystone for transportation of crude oil within the United States under committed rates calculated pursuant to terms contained in Transportation Service Agreements between Keystone and the Joint Complainants, all as more fully explained in the complaint.

The Complainants certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file

electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 9, 2020.

Dated: October 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23062 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–531–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

Take notice that on September 29, 2020, Equitrans, L.P. (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.213 of the Commission's regulations under the Natural Gas Act and its blanket certificate issued in Docket No. CP96–532–000 for authorization to sell base gas in the existing Mobley Storage Field located in Wetzel County, West Virginia. Specifically, Equitrans plans to sell 348 million cubic feet of base gas to facilitate its ability to operate the Mobley Storage Field. The Mobley Storage Field has exhibited no signs of gas migration or loss throughout its operating life.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Matthew Eggerding, Assistant General Counsel, at Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317; by phone at (412) 553–5786; or by email to *MEggerding@equitransmidstream.com.*

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene, or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: October 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23070 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–532–000]

Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, FLNG Liquefaction 3, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on September 30, 2020, Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC (Freeport LNG), 333 Clay Street, Suite 5050, Houston, TX 77002, filed an application under section 3(a) of the Natural Gas Act (NGA), and Part 153 of the

Commission's regulations requesting authorization for a limited amendment to the authorization granted by the Commission on July 7, 2016 in Docket No. CP15–518–000 (July 7 Order). Freeport LNG requests that the Commission revise Ordering Paragraph (A) of the July 7 Order to reflect the Liquefaction Project's maximum LNG production capacity on an annual basis, rather than a daily basis. Freeport LNG does not seek authorization for construction activities or an increase in annual production and export capacity. Freeport LNG asserts that there is no cost associated with this request, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to John Tobola, Freeport LNG Development, L.P., 333 Clay Street, Suite 5050, Houston, TX 77002, by phone at (713) 980–2888, or by email at *jtobola@freeportlng.com;* or Lisa M. Tonery, Partner, Orrick, Herrington & Sutcliffe LLP, 51 West 52nd Street, New York, N.Y. 10019 by phone at (212) 506–3710, or by email at *ltonery@orrick.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

[1] 18 CFR 157.9.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 30, 2020.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 30, 2020.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP20–532–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP20–532–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is October 30, 2020. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances,

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

please reference the Project docket number CP20–532–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP20–532–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 700 Louisiana Street, Suite 700, Houston, Texas or at *alexander_kass@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on October 30, 2020.

Dated: October 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–23058 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–88–000]

Orange County Energy Storage 3 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Orange County Energy Storage 3 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 2, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–23061 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3023–000]

Blackstone Hydro, Inc.; Notice of Authorization for Continued Project Operation

On October 1, 2018, Blackstone Hydro, Inc, licensee for the Blackstone Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Blackstone Hydroelectric Project is located on the Blackstone River in Providence County, Rhode Island and Worcester County, Massachusetts. There are no federal or tribal lands within the project boundary.

The license for Project No. 3023 was issued for a period ending September 30, 2020. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3023 is issued to Blackstone Hydro, Inc. for a period effective October 1, 2020 through September 30, 2021, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September 30, 2021, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Blackstone Hydro, Inc. is authorized to continue operation of the Blackstone Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: October 13, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23072 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–44–000]

Altavista Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Altavista Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 2, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–23054 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Revision to Power Marketing Policy Kerr-Philpott System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of revision to power marketing policy.

SUMMARY: Southeastern Power Administration (Southeastern or SEPA) announces revision to the power marketing policy for the Kerr-Philpott System of Projects (Kerr-Philpott System). The Kerr-Philpott System power marketing policy was published on July 29, 1985, and is reflected in contracts for the sale of system power, which are maintained in Southeastern's headquarters office. Pursuant to the Procedure for Public Participation in the Formulation of Marketing Policy, published in the **Federal Register** of July 6, 1978, Southeastern published on November 15, 2019, a notice of intent to revise the power marketing policy to include provisions regarding renewable energy certificates (RECs) from the Kerr-Philpott System. The proposed revision

to the Kerr-Philpott System Power Marketing Policy was published in the **Federal Register** on June 19, 2020. A virtual web based public information and comment forum was held on August 18, 2020, with written comments due on or before September 2, 2020.

DATES: The power marketing policy revision will become effective upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Spencer, Engineer, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635, (706) 213–3855, Email: *douglas.spencer@sepa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: Southeastern published a ''Notice of Issuance of Final Power Marketing Policy Kerr-Philpott System of Projects'' in the **Federal Register** on July 29, 1985, 50 FR 30751. The policy establishes the marketing area for system power and addresses the utilization of area utility systems for essential purposes. The policy also addresses wholesale rates, resale rates, and conservation measures, but does not address renewable energy certificates.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the U. S. Army Corps of Engineers. Furthermore, Southeastern must transmit and dispose of power and energy in such a manner as to encourage the most widespread use at the lowest possible rates to consumers consistent with sound business principles. Rate schedules are developed with regard to the recovery of the cost of producing and transmitting such electric energy.

The Kerr-Philpott System consists of two projects, the John H. Kerr Project (Kerr) and the Philpott Project (Philpott). The power from the projects is currently marketed to Preference Customers located in the service areas of Dominion Energy, Duke Energy Progress, American Municipal Power, and American Electric Power.

Both the Kerr and Philpott Projects are located within the regional footprint served by the regional transmission organization PJM Interconnection, L.L.C. (PJM), as are the Virginia-based Preference Customers with power allocations. Southeastern owns no transmission assets and relies on PJM transmission resources to dispose of power and energy from the projects. As such, Southeastern joined PJM in 2005.

As the projects are located within the PJM region and potentially satisfy Renewable Portfolio Standards in a number of states, Southeastern has subscribed to the Generation Attribute Tracking System (GATS) of PJM Environmental Information Services, Inc. The GATS provides an unbundled, certificates-based tracking system that reports certain operating attributes of electricity generators selling energy through the PJM Market Settlement System. The attributes are unbundled from the megawatt-hour of energy produced and recorded onto a certificate. As indicated in Section (2) of the GATS TERMS OF USE, dated January 22, 2020, these certificates may be used by electricity suppliers and other energy market participants to comply with relevant state policies and regulatory programs and to support voluntary ''green'' electricity markets.

Under the following revision of the 1985 power marketing policy, Southeastern will distribute the GATS-created certificates to current Preference Customers with allocations of power from the Kerr-Philpott System.

Public Notice and Comment

Southeastern published a proposed revision in the **Federal Register**, 85 FR 37092, dated June 19, 2020. Southeastern held a web-based information and comment forum, on August 18, 2020. The forum was held virtually due to travel restrictions related to the COVID–19 pandemic. Southeastern received comments from Blue Ridge Power Agency, Tennessee Valley Public Power Association, and Southeastern Federal Power Customers, Inc.

Public Comments

Written and oral comments are summarized below. Southeastern's responses follow each comment.

Comment 1: Tennessee Valley Public Power Association requested ''that prior to SEPA setting any policies, procedures or administrative controls regarding the ownership or use of Renewable Energy Credits associated with additional hydro generation as a result of Section 212 funding, that SEPA consult with and incorporate comments from the Preference Customers that authorized the Section 212 funding.''

Response 1: TVPPA has referenced ''Section 212 funding''. ''Section 212 funding'' refers to section 212 of the Water Resources Development Act of 2000, Public Law 106–541, which amended section 216 of the Water Resources Development Act of 1996 (codified at 33 U.S.C. 2321a). The provision allows the Secretary of the Army to accept and use funds for use in hydroelectric power project uprating provided by preference customers through contracts related to the marketing of power. Therefore, funds provided by certain preference customers may increase energy at the John H. Kerr and Philpott projects. Southeastern has considered comments of customers participating in the Section 212 customer funding program. Any increase in energy due to the Section 212 program will be distributed in accordance with this published revision of the Kerr-Philpott power marketing policy.

Comment 2: Blue Ridge Power Agency members expressed appreciation they will have the choice on how to use the RECs to provide benefits for their customers. They support Southeastern's proposed policy to distribute RECs based on existing power allocations, and to separate out energy from each generator. They indicate enabling customers to take RECs from each project is the fairest way to proceed, and allowing each customer to designate whether the RECs are transferred to a third party or directly to the customer is important. They encourage Southeastern to work aggressively on state REC registrations for each generator.

Response 2: Southeastern acknowledges Blue Ridge Power Agency members' comments regarding distribution of RECs in the Kerr-Philpott System. Southeastern continues to pursue state REC registrations for both the Kerr and Philpott projects.

Comment 3: Southeastern Federal Power Customers, Inc. (SeFPC), expressed general support for the revision and addressed three areas of concern which include: (1) The revision for the Kerr-Philpott System should be clear that it will not establish controlling precedent on policies for the allocations for RECs that SEPA may adopt in the future for other marketing areas; (2) The revision should include language from the response to comments to the notice of intent to revise the power marketing policy that stated that the revision will not change the Administrator's prior determinations regarding power allocation within the marketing area; and (3) That SEPA should further clarify ''SEPA reserves the right to distribute RECs that have been declined at a later date.''

Response 3: Southeastern acknowledges SeFPC's comments regarding distribution of RECs to Kerr-Philpott Preference Customers. Southeastern added language to the

Power Marketing Policy Revision to address SeFPC's concerns.

Summary of Changes to the Power Marketing Policy Revision

Southeastern made further changes to the Power Marketing Policy Revision as a result of comments received during the comment period and public forum. Southeastern added language stating the revision will only apply to the Kerr-Philpott marketing area and Southeastern may revise other marketing policies through a public process at a later date. Southeastern added language to state the revision will not change the Administrator's prior decisions regarding the power allocations within the Kerr-Philpott marketing area. Southeastern clarified distributions may occur outside of the quarterly distributions when preference entities have failed to submit proper distribution information or when RECs collected prior to the implementation of the policy are distributed. Southeastern amended the language regarding the initial quarterly transfer to allow for the transfer to occur in 2020.

Revision to the Power Marketing Policy

Southeastern revises the Power Marketing Policy for the Kerr-Philpott System to include the following additional provisions for RECs associated with hydroelectric generation.

Kerr-Philpott System: The Kerr-Philpott System Power Marketing Policy inclusion of procedures to distribute RECs applies only to the Kerr-Philpott marketing area. At a later date, Southeastern may revise other marketing policies through a public process.

Renewable Energy Certificates (RECs): The GATS of PJM Environmental Information Services, Inc. (PJM–EIS) creates and tracks certificates reporting generation attributes, by generating unit, for each megawatt-hour (MWh) of energy produced by registered generators. PJM–EIS is a wholly-owned subsidiary of PJM Connext, L.L.C., itself a subsidiary of PJM. Both the Kerr and Philpott projects are registered generators within GATS. The RECs potentially satisfy Renewable Portfolio Standards, state policies, and other regulatory or voluntary clean energy standards in a number of states. Southeastern will proceed with state REC registrations of both the Kerr and Philpott projects. Southeastern has subscribed to GATS and has an account in which RECs are collected and tracked for each MWh of energy produced from the Kerr and Philpott projects. Within GATS, certificates can be transferred to other GATS subscribers or to a third-party tracking system.

As defined by the PJM–GATS Terms, ''Certificates'' refers to a GATS electronic record of generation data representing all of the Attributes from one MWh of electricity generation from a Generating Unit registered with the GATS tracking system. The GATS will create exactly one Certificate per MWh of generation. These certificates may be used by electricity suppliers and other energy market participants to comply with relevant state policies and regulatory programs and to support voluntary ''green'' electricity markets.

Southeastern will distribute the GATS-created RECs to Preference Customers with allocations of power from the Kerr-Philpott System. The Kerr-Philpott System procedures for distributing renewable energy certificates will not change the Administrator's prior decisions regarding the power allocations within the Kerr-Philpott marketing area.

RECs Distribution: Southeastern shall maintain an account with GATS and collect RECs from the generation at the Kerr and Philpott projects. Southeastern will verify the total amount of RECs each month. Preference Customers with an allocation of power from the Kerr-Philpott System are eligible to receive RECs by transfer from Southeastern's GATS account to their GATS account or that of their agent. GATS (or a successor application) will be the transfer mechanism for all RECs related to the Kerr-Philpott System. Any further transfer, sale, use, or trade transaction would be the sole responsibility of a Preference Customer. Southeastern will summarize RECs by month for calendar year, quarterly distribution to customers through GATS. Southeastern will determine a total number of RECs to transfer to each customer based on the customer's monthly invoices during the same three-month period. RECs will be project-specific based on the customer's applicable contractual arrangements. Thus, customers receiving energy from Philpott will receive equivalent RECs from Philpott, and customers receiving energy from Kerr will receive equivalent RECs from Kerr.

All RECs distributed by Southeastern shall be transferred within thirty days of the end of the calendar year quarter (quarterly distribution month). Each customer should submit to Southeastern, by the tenth day of a quarterly distribution month, the name, contact information, and identification number of the GATS account to which the RECs are to be transferred initially and for any quarterly distribution month in which the account for transfer changes. The account may be held by a third party. If the customer fails to designate an account by the tenth day of the quarterly distribution month, those RECs may not be distributed until the following quarter. Any RECs that were not transferred because a transfer account was not provided to Southeastern may be forfeited if they become non-transferrable in the GATS Terms of Use procedures, policies, or definitions of Reporting and Trading Periods, or any subsequent procedures for transfers as established.

The initial quarterly transfer process in GATS will be accomplished by the thirtieth day after the publication of the final policy revision. Any balance of RECs that exist in Southeastern's GATS account after the first quarterly transfer may also be transferred to Preference Customers according to the customer's invoiced energy at the time of the REC creation. Southeastern reserves the right to distribute RECs to a Preference Customer at a later date for RECs declined by failure to provide a GATS account for distribution and for RECs currently existing in Southeastern's GATS account as part of the initial implementation of the revised marketing policy in a manner consistent with the distribution method in the policy revision.

Effect of Costs on Rates: No rates shall be established by Southeastern for RECs transferred to Preference Customers. Any cost to Southeastern, such as the GATS subscription, will be incorporated into marketing costs and included in recovery through the energy and capacity rates of the Kerr-Philpott System.

Environmental Impact: Southeastern has reviewed the possible environmental impacts of the marketing policy revision under consideration and has concluded that, because the RECs policy would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, as amended, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Determination Under Executive Order 12866

Southeastern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of the **Federal Register** notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on October 8, 2020,

by Virgil G. Hobbs III, Administrator, Southeastern Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 14, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–23113 Filed 10–16–20; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2013–0620 and EPA–HQ–OAR–2014–0128; FRL–10015–76–76–ORD]

Final Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a final document titled, ''Final Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' (EPA/600/R–20/278). The document was prepared by the Center for Public Health and Environmental Assessment (CPHEA) within EPA's Office of Research and Development (ORD) as part of the review of the secondary (welfare-based) national ambient air quality standards (NAAQS) for oxides of nitrogen, oxides of sulfur, and particulate matter. This ISA represents an update of the 2008 Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Ecological Criteria (EPA/600/R–08/082F) and the 2009 Integrated Science Assessment for Particulate Matter (EPA/600/AR–08/139F). The ISA, in conjunction with additional technical and policy assessments, provides the basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards.

DATES: The document will be available on or about October 16, 2020.

ADDRESSES: The ''Final Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' will be available primarily via the internet on EPA's Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter page at *https://www.epa.gov/isa/integrated-science-assessment-isa-oxides-nitrogen-oxides-sulfur-and-particulate-matter* or the public docket at *http://www.regulations.gov,* Docket ID: [EPA–HQ–ORD–2013–0620 and EPA–HQ–OAR–2014–0128]. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''Final Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Tara Greaver; phone: 919–541–2435; or email: *Greaver.Tara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain air pollutants, emissions of which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare''; and to issue air quality criteria for them. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . .''. Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d)(1) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the NAAQS review process, see *https://www.epa.gov/naaqs*).

EPA has established NAAQS for six criteria pollutants. Presently the EPA is reviewing the secondary air quality criteria and NAAQS for oxides of nitrogen, oxides of sulfur, and particulate matter. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA provides the scientific basis for EPA's decisions, in conjunction with additional technical and policy assessments, on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the EPA's air quality criteria.

On August 21, 2013 (78 FR 53452), EPA formally initiated its current review of the air quality criteria for the ecological effects of oxides of nitrogen and oxides of sulfur, and the associated secondary (welfare-based) NAAQS, requesting the submission of recent scientific information on specified topics. Similarly, on December 3, 2014 (79 FR 71764), EPA formally initiated its current review of the air quality criteria for the particulate matter NAAQS. EPA conducted two workshops—the first on March 4–6, 2014, for oxides of nitrogen and oxides of sulfur (79 FR 8644, February 13, 2014), and the second on February 11, 2015 (79 FR 71764, December 3, 2014), for particulate matter—to gather input from invited scientific experts, both internal and external to EPA, as well as from the public, regarding key science and policy issues relevant to the review of the these secondary NAAQS. Teleconference workshops with invited scientific experts, both internal and external to EPA, were held on August 25–27, 2015 (80 FR 48316, August 12, 2015), and June 13, 2016 (81 FR 89262, May 11, 2016), to discuss initial draft materials prepared in the development of the draft ISA.

These science and policy issues were incorporated into EPA's ''Draft Integrated Review Plan for the Secondary National Ambient Air Quality Standard for Oxides of Nitrogen and Oxides of Sulfur'' as well as the ''Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.'' The Draft Integrated Review Plan (IRP) for oxides of nitrogen and oxides of sulfur was available for public comment (80 FR 69220, Monday, November 9, 2015) and discussion by the CASAC via publicly accessible

teleconference consultation (80 FR 65223, February 10, 2016). The Draft IRP for particulate matter was available for public comment (81 FR 2297, April 19, 2016) and discussion by the CASAC via publicly accessible teleconference consultation (81 FR 13362, March 14, 2016) prior to release of the final document (81 FR 87933, December 6, 2016). The ''First External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' was available for public comment (82 FR 15703, March 30, 2017) and discussed by CASAC and the public at meetings on May 24–25, 2017 (82 FR 15701, March 30, 2017).

The ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' was available for public comment (83 FR 29786, June 26, 2018) and discussed by CASAC and the public at meetings on September 5–6, 2018 (83 FR 31755, July 9, 2018), and April 27, 2020 (85 FR 16093, March 20, 2020). Subsequently, CASAC provided a letter of their review on May 5, 2020, to the EPA Administrator, which can be viewed at: *https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReports LastMonthCASAC/66330096471849 EE85258561006CC856/$File/EPA-CASAC-20-004.pdf.* The Administrator responded to the CASAC's letter on the Second External Review Draft on June 15, 2020, and the letter is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/0/66330096471849 EE85258561006CC856/$File/EPA-CASAC-20-004.Response.pdf.* EPA has considered comments by the CASAC and by the public in preparing this final ISA.

Dated: October 13, 2020.

Vanessa Holt,

Acting Director, Center for Public Health and Environmental Assessment.

[FR Doc. 2020–23100 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–10–2020–0141; FRL–10015–33–Region 10]

Proposed CERCLA Prospective Purchaser Agreement; TriStar North Inc. Former Kaiser Smelter Site, Mead, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed prospective purchaser agreement concerning the Former Kaiser Smelter Site, Mead, Washington, with the following settling party: TriStar North, Inc. The agreement requires the settling party to provide full cooperation with the Environmental Protection Agency's (EPA) cleanup activities, provide access to the property, and exercise appropriate care with regard to existing contamination, in addition to making a payment of $50,000 to EPA. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the agreement. The Agency will consider all comments and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available electronically for public inspection at *https://www.regulations.gov.*

DATES: Comments must be submitted on or before November 18, 2020.

ADDRESSES: The proposed agreement is available electronically for public inspection at *https://semspub.epa.gov/src/collection/10/SC39959.* Submit your comments, identified by EPA Docket No. CERCLA–10–2020–0141, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email:* Brooks Stanfield, Federal On-SceneCoordinator, at *stanfield.brooks@epa.gov.*
- Written comments submitted by mail are temporarily suspended, and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov.*

Instructions: Direct your comments to EPA Docket No. CERCLA–10–2020–0141. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://semspub.epa.gov/src/collections/10/AR/WAN001020091* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available electronically in *https://semspub.epa.gov/src/collections/10/AR/WAN001020091.*

EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed, and information

in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

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

FOR FURTHER INFORMATION CONTACT: Brooks Stanfield, Federal On-Scene Coordinator, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, 13–J07, Seattle, WA 98101, (206) 553–4432, email: *stanfield.brooks@epa.gov;* and/or Kristin Leefers, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, M/S: 11–C07, Seattle, WA 98101, (206) 553–1532, email: *leefers.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: This agreement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with CERCLA, 42 U.S.C. 9601–9675. The agreement requires the settling party to provide full cooperation with EPA's cleanup activities, provide access to the property, and exercise appropriate care with regard to existing contamination, in addition to making a payment of $50,000 to EPA. The agreement also includes a covenant not to sue the settling party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

Authority: 42 U.S.C. 9601–9657.

Dated: October 13, 2020.

Calvin Terada,

Division Director, Superfund and Emergency Management Division, Region 10.

[FR Doc. 2020–23036 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10015–63]

Pesticide Registration Review; Pesticide Dockets Opened for Review and Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the EPA's preliminary work plans for the following chemicals: Aminocyclopyrachlor, cetylpyridinium chloride, and flutriafol. With this document, the EPA is opening the public comment period for registration review for these chemicals.

DATES: Comments must be received on or before December 18, 2020.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

Registration review is the EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the agency may consider during the course of registration reviews. As part of the registration review process, the Agency has completed preliminary workplans for all pesticides listed in the Table in Unit IV. Through this program, the EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

The EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of

pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. Registration Reviews

A. What action is the agency taking?

A pesticide's registration review begins when the agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. Pursuant to 40 CFR 155.50, this notice announces the availability of the EPA's preliminary work plans for the pesticides shown in the following table and opens a 60-day public comment period on the work plans.

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Aminocyclopyrachlor Case Number 7279	EPA–HQ–OPP–2020–0384	Andrew Muench, *muench.andrew@epa.gov,* (703) 347–8263.
Cetylpyridinium chloride Case Number 3013	EPA–HQ–OPP–2020–0380	Michael McCarroll, *mccarroll.michael@epa.gov*, (703) 347–0147.
Flutriafol Case Number 7060	EPA–HQ–OPP–2020–0080	Theodore Varns, *varns.theodore@epa.gov,* (703) 347–8589.

B. Docket content

The registration review docket contains information that the agency may consider in the course of the registration review. The agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the agency is asking that interested persons identify any additional information they believe the agency should consider during the registration reviews of these pesticides. The agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

The registration review final rule at 40 CFR 155.50(b) provides for a minimum 60-day public comment period on all preliminary registration review work plans. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary changes to a pesticide's workplan. All comments should be submitted using the methods in **ADDRESSES** and must be received by the EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Table in Unit IV. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

The agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The final registration review work plan will explain the effect that any comments had on the final work plan and provide the agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 6, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–23071 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10015–52–Region 5]

Public Meeting of the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting of the Great Lakes Advisory Board.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Environmental Protection Agency (EPA) is announcing a public meeting of the Great Lakes Advisory Board (GLAB) on October 29, 2020 from 9:00 a.m. to 12:00 p.m. Central Daylight Time to be conducted via remote/virtual participation only. Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days' notice.

DATES: This remote/virtual public meeting will be held on October 29, 2020 from 9:00 a.m. to 12:00 p.m. Central Daylight Time. Members of the public seeking to view the meeting (but who do not desire to provide oral comments) must register by 3:00 p.m. Central Daylight Time on October 28, 2020. Members of the public who desire to make oral comments during the remote/virtual meeting must register and request to make oral comments by contacting the Designated Federal Officer (DFO) directly by 3:00 p.m. Central Daylight Time on October 22, 2020 to be placed on a list of registered commenters and receive special instructions for participation. For information on how to register, please see ''How do I participate in the remote public meeting?'' below.

FOR FURTHER INFORMATION CONTACT: Edlynzia Barnes, Designated Federal Officer (DFO), at *Barnes.Edlynzia@epa.gov* or 312–886–6249.

SUPPLEMENTARY INFORMATION:

I. General Information

The GLAB is chartered in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix 2, as amended) and 41 CFR 102–3.50(d). The GLAB provides advice and recommendations on matters related to the Great Lakes Restoration Initiative

and on domestic matters related to implementation of the Great Lakes Water Quality Agreement between the U.S. and Canada. The major objectives of the GLAB are to provide advice and recommendations on: Great Lakes protection and restoration activities; long-term goals, objectives, and priorities for Great Lakes protection and restoration; and other issues identified by the Great Lakes Interagency Task Force/Regional Working Group.

II. How do I participate in the remote public meeting?

A. Remote Meeting

This meeting will be conducted as a remote/virtual meeting on October 29, 2020 from 9:00 a.m. to 12:00 p.m. Central Daylight Time. You must register by 3:00 p.m. Central Daylight Time on October 28, 2020 to receive information on how to participate. You may also submit written or oral comments for the committee by contacting the DFO directly per the processes outlined below.

B. Registration

To register and receive information on how to attend this remote/virtual meeting, please send an email to the DFO at *Barnes.edlynzia@epa.gov* with the SUBJECT line of ''Request to Register for October 2020 GLAB Meeting'' and include the following information: Name, Title, Organization, Email, and Phone Number. Attendees must register by 3:00 p.m. Central Daylight Time on October 28, 2020 to receive instructions for participation.

C. Procedures for Providing Public Comments

Oral Statements: In general, oral comments at this remote virtual meeting will be limited to the ''Public Comments'' portion of the meeting agenda. During the ''Public Comments'' portion of the meeting agenda, members of the public may provide oral comments no longer than three minutes duration per individual or group and submit further information in written comments. Persons interested in providing oral statements should contact the DFO directly at *Barnes.edlyzia@epa.gov* by 3:00 p.m. Central Daylight Time on October 22, 2020 with the SUBJECT line of ''Request to Register for October 2020 GLAB Meeting—Provide Oral Statement'' to be placed on the list of registered speakers and receive special instructions for participation. The following information should be included in the email: Name, Title, Organization, Email, and Phone Number. Oral commenters will be provided an opportunity to speak in the order in which their request was received by the DFO and to the extent permitted by the number of comments and the scheduled length of the meeting. Persons not able to provide oral comments during the meeting, will be given an opportunity to provide written comments after the meeting.

Written Statements: Persons interested in providing written statements pertaining to this committee meeting may email them to the DFO prior to 3:00 p.m. Central Daylight Time on October 22, 2020 with the SUBJECT line of ''Request to Register for October 2020 GLAB Meeting—Provide A Written Statement''. The following information should be included in the email: Name, Title, Organization, Email, and Phone Number.

D. Availability of Meeting Materials

The meeting agenda and other materials for the virtual conference will be posted on the GLAB website at *www.glri.us/glab.*

E. Accessibility

Persons with disabilities who wish to request reasonable accommodations to participate in this event may contact the DFO at *Barnes.edlynzia@epa.gov* or 312–886–6249 by 3:00 p.m. Central Standard Time on October 22, 2020. All final meeting materials will be posted to the GLAB website in an accessible format following the meeting, as well as a written summary of this meeting.

Kurt Thiede,

Regional Administrator, Great Lakes National Program Manager.

[FR Doc. 2020–23005 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10015–61]

Pesticide Registration Review; Draft Human Health and/or Ecological Risk Assessments for Zinc Phosphide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of zinc phosphide.

DATES: Comments must be received on or before December 18, 2020.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through

regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in the following table and opens a 60-day public comment period on the risk assessments.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Zinc Phosphide Case 0026	EPA–HQ–OPP–2016–0140	Kent Fothergill, *fothergill.kent@epa.gov*, (703) 347–8299.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 6, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–23090 Filed 10–16–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 17148]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration.

SUMMARY: The Association of Public-Safety Communications Officials-International, Inc. (APCO) and CTIA have each filed a Petition for Reconsideration in the Commission's Wireless E911 Location Accuracy rulemaking proceeding, PS Docket 07–114.

DATES: Oppositions to the Petitions must be filed on or before November 3, 2020. Replies to an opposition must be filed on or before November 13, 2020.

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

FOR FURTHER INFORMATION CONTACT: John Evanoff, *john.evanoff@fcc.gov,* of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, (202) 418–0848.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, released on October 8, 2020 (DA 20–1175). The Petitions may be accessed online via the Commission's Electronic Comment Filing System at: *https://www.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801 because no rules are being adopted by the Commission.

Subject. Wireless E911 Location Accuracy Requirements, Report and Order, FCC 20–98, published at 85 FR 53234, August 28, 2020, in PS Docket No. 07–114. This Notice is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–22981 Filed 10–16–20; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2020–10; Docket No. 2020–0002; Sequence No. 39]

Notice of Intent To Prepare an Environmental Assessment for the Lease and Operation of a Community Based Outpatient Clinic

AGENCY: Office of Public Buildings Service (PBS); General Services Administration, (GSA).

ACTION: Notice of Intent.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, and the GSA PBS NEPA Desk Guide, GSA is issuing this notice to advise the public that an Environmental Assessment (EA) will be prepared for the lease and operation of a Community Based Outpatient Clinic (CBOC) for the Department of Veterans Affairs (VA) in the Hampton Roads region of Virginia.

DATES: Agencies and the public are encouraged to provide written comments regarding the scope of the EA. Comments must be received on or before November 18, 2020.

ADDRESSES: Submit comments in response to Notice–PBS–2020–10, by any of the following methods:

- *Mail:* General Services Administration, Portfolio Division ATTN: VA Hampton Roads CBOC. General Services Administration, 100 South Independence Mall W, Philadelphia, PA 19106, Room 2191.
- *Email: VA.HamptonRoads.CBOC@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: General Services Administration, Mid-Atlantic Region, ATTN: Todd Glodek, PHONE: (215) 606–1757, EMAIL: *VA.HamptonRoads.CBOC@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration intends to prepare an Environmental Assessment (EA) to analyze the potential impacts resulting from the development of a new leased Community-Based Outpatient Clinic (CBOC) in the Hampton Roads region of southeast Virginia. The new site is intended to support the growing veteran population in the Hampton Roads region by providing increased levels of health and wellness services. While an existing 13,000 square foot CBOC is in operation in Virginia Beach, Virginia, this site cannot support necessary expansion to support increased levels of health care service.

The Proposed Action would consist of acquiring property to construct a stand-alone building to provide primary care, mental health, and eye clinic services. A selected developer would be responsible for acquiring the selected site, constructing the proposed facility, and assuming ownership and maintenance of the site.

Alternatives Under Consideration

The EA will consider Action Alternatives for the proposed CBOC on available sites offered by developers within the Hampton Roads region as well as the No Action Alternative. The Action Alternatives will analyze the development and operation of the CBOC. The CBOC would be developed to support identified program requirements for approximately 186,200 square feet within two contiguous floors and 1,050 parking spaces within a contiguous site. Under the No Action Alternative, no CBOC would be developed.

Scoping Process

Scoping will be accomplished through public notifications in the Virginian Pilot and direct mail correspondence to appropriate federal, state, and local agencies; surrounding property owners; and private organizations and citizens who have previously expressed or are known to have an interest in the Project.

The primary purpose of the scoping process is for the public to assist GSA in determining the scope and content of the environmental analysis.

Dated: October 9, 2020.

John Calhoun,

Director, Portfolio Management Division (3PT).

[FR Doc. 2020–23038 Filed 10–16–20; 8:45 am]

BILLING CODE 6820–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1021]

Notice to Public of Website Location of Center for Devices and Radiological Health Fiscal Year 2021 Proposed Guidance Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the website location where the Agency will post two lists of

guidance documents that the Center for Devices and Radiological Health (CDRH or the Center) intends to publish in fiscal year (FY) 2021. In addition, FDA has established a docket where interested persons may comment on the priority of topics for guidance, provide comments and/or propose draft language for those topics, suggest topics for new or different guidance documents, comment on the applicability of guidance documents that have issued previously, and provide any other comments that could benefit the CDRH guidance program and its engagement with stakeholders. This feedback is critical to the CDRH guidance program to ensure that we meet stakeholder needs.

DATES: Submit either electronic or written comments by December 18, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 18, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 18, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–1021 for ''Notice to Public of Website Location of CDRH Fiscal Year 2021 Proposed Guidance Development.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 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.

FOR FURTHER INFORMATION CONTACT: Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–6353.

SUPPLEMENTARY INFORMATION:

I. Background

During negotiations on the Medical Device User Fee Amendments of 2012, Title II, Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), FDA agreed to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. Among these commitments included:

- Annually posting a list of priority medical device guidance documents that the Agency intends to publish within 12 months of the date this list is published each fiscal year (the ''A-list''), and
- Annually posting a list of device guidance documents that the Agency intends to publish, as the Agency's guidance-development resources permit each fiscal year (the ''B-list'').

The Medical Device User Fee Amendments of 2017 (MDUFA IV), FDA Reauthorization Act of 2017 (Pub. L. 115–52), maintained these commitments.

In addition, to ensure that final guidance documents continue to provide stakeholders with the Agency's current thinking, CDRH annually conducts a staged review of previously issued final guidances in collaboration with stakeholders. CDRH intends to annually provide lists of previously issued final guidances that are subject to review through FY 2025 so that by 2025, FDA and stakeholders will have assessed the applicability of all guidances older than 10 years. For instance, in the annual notice for FY 2022, CDRH expects to provide a list of the final guidance documents that issued in 2012, 2002, 1992, and 1982; the annual notice for FY 2023 is expected to provide a list of the final guidance documents that issued in 2013, 2003, 1993, and 1983, and so on.

FDA welcomes comments on any or all of the guidance documents on the

lists as explained in 21 CFR 10.115(f)(5). FDA has established Docket No. FDA–2012–N–1021 where comments on the FY 2021 lists, draft language for guidance documents on those topics, suggestions for new or different guidances, and relative priority of guidance documents may be submitted and shared with the public (see **ADDRESSES**). FDA believes this docket is a valuable tool for receiving information from interested persons. FDA anticipates that feedback from interested persons will allow CDRH to better prioritize and more efficiently draft guidances to meet the needs of the Agency and our stakeholders.

In addition to posting the lists of prioritized device guidance documents, CDRH has identified as a priority, and has devoted resources to, finalization of draft guidance documents. To assure the timely completion or reissuance of draft guidances, in FY 2015 CDRH committed to performance goals for current and future draft guidance documents. For draft guidance documents issued after October 1, 2014, CDRH committed to finalize, withdraw, reopen the comment period, or issue new draft guidance on the topic for 80 percent of the documents within 3 years of the close of the comment period and for the remaining 20 percent, within 5 years. As part of MDUFA IV commitments, FDA reaffirmed this commitment, as resources permit.

Fulfillment of these commitments will be reflected through the issuance of updated guidance on existing topics, withdrawal of guidances that no longer reflect FDA's current thinking on a particular topic, and annual updates to the A-list and B-list announced in this notice.

II. CDRH Guidance Development Initiatives

A. Metrics for FY 2020 A-List and B-List Publication

Stakeholder feedback on guidance priorities is important to ensure that the CDRH guidance program meets the needs of stakeholders. The feedback received on the FY 2020 list was mostly in agreement, and CDRH continued to work toward issuing the guidances on this list. Some guidances requested for inclusion in the FY2020 list by stakeholders have been included as part of the FY 2021 list. In FY 2020, CDRH published 14 of 27 guidances on the FY 2020 list (12 from the A-list, 2 from the B-list). In addition, FDA is committed to providing timely guidance to support response efforts to the Coronavirus Disease 2019 (COVID–19) pandemic. As such, FDA has shifted resources to issue 23 guidances and 11 guidance revisions in FY 2020.

B. Finalization of Draft Guidance Documents

Of the 23 draft guidances issued in FY 2015, CDRH finalized 91 percent within 3 years of the comment period close and 91 percent within 5 years. In addition, in FY 2020, two draft guidances issued prior to October 1, 2014, remain for which no action has been taken yet, and CDRH has been continuing to work towards taking an action on these remaining draft guidances.

Looking forward, in FY 2021, CDRH will strive to finalize, withdraw, or reopen the comment period for 50 percent of existing draft guidances issued prior to October 1, 2015.

C. Applicability of Previously Issued Final Guidance

At the website where CDRH has posted the ''A-list'' and ''B-list'' for FY 2021, CDRH has also posted a list of final guidance documents that issued in 2011, 2001, 1991, and 1981 for our annual review of previously issued final guidances. CDRH is interested in external feedback on whether any of these final guidances should be revised or withdrawn. In addition, for guidances that are recommended for revision, information explaining the need for revision, such as the impact and risk to public health associated with not revising the guidance, would also be helpful as the Center considers potential action with respect to these guidances. CDRH will consider the comments received from this retrospective review when determining priorities for updating guidance documents and will revise these as resources permit.

Consistent with the Good Guidance Practices regulation at 21 CFR 10.115(f)(4), CDRH would appreciate suggestions that CDRH revise or withdraw an already existing guidance document. We request that the suggestion clearly explain why the guidance document should be revised or withdrawn and, if applicable, how it should be revised. While we are requesting feedback on the list of previously issued final guidances located in the annual agenda website, feedback on any guidance is appreciated and will be considered.

In FY 2020, CDRH received comments regarding guidances issued in 2010, 2000, 1990, and 1980 and has withdrawn 52 guidance documents in response to comments received and because these guidance documents were determined to no longer represent the Agency's current thinking. The revision of several guidance documents is also being considered as resources permit.

III. Website Location of Guidance Lists

This notice announces the website location of the document that provides the A- and B-lists of guidance documents, which CDRH is intending to publish during FY 2021. To access these two lists, visit FDA's website at *https://www.fda.gov/medical-devices/guidance-documents-medical-devices-and-radiation-emitting-products/cdrh-proposed-guidance-development.* We note that the topics on this and past guidance priority lists may be removed or modified based on current priorities, as well as comments received regarding these lists. Furthermore, FDA and CDRH priorities are subject to change at any time (*e.g.,* newly identified safety issues). The Agency is not required to publish every guidance on either list if the resources needed would be to the detriment of meeting quantitative review timelines and statutory obligations. In addition, the Agency is not precluded from issuing guidance documents that are not on either list.

Dated: October 14, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–23104 Filed 10–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1359]

Sugars that Are Metabolized Differently Than Traditional Sugars

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA or we) is establishing a docket and invites information about and comments on the nutrition labeling of sugars that are metabolized differently than traditional sugars. We are taking this action to inform our regulatory approach to these distinctly metabolized sugars to promote the public health and help consumers make informed dietary decisions.

DATES: Submit either electronic or written comments on the notice by December 18, 2020.

ADDRESSES: You may submit comments as follows. Please note that late,

untimely filed comments will not be considered. Electronic comments must be submitted on or before December 18, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 18, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1359 for ''Sugars that are Metabolized Differently than Traditional Sugars.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Blakeley Fitzpatrick, Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

In general, under section 403(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)) (FD&C Act), a food is deemed misbranded unless its label or labeling bears nutrition information for certain nutrients. To implement section 403(q) of the FD&C Act, we have issued regulations related to:

- The declaration of nutrients on food labeling, including nutrients that are required or permitted to be declared and the format for such declaration;
- Daily Values (DVs) for nutrients, which are used to declare nutrient contents as percent DVs (%DVs) on the Nutrition Facts label; and
- Exemptions for certain specified products.

These regulations are at § 101.9 (21 CFR 101.9). Additionally, section 403(q)(2)(A) of the FD&C Act provides discretion to the Secretary of Health and Human Services, and, by delegation, to FDA, to determine whether providing nutrition information regarding a nutrient will assist consumers in maintaining healthy dietary practices.

In the **Federal Register** of May 27, 2016 (81 FR 33742), we issued a final rule titled ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels'' (''Nutrition Facts final rule''). The Nutrition Facts final rule revised the Nutrition Facts label to reflect new scientific information by, among other things: (1) Requiring the declaration of the gram amount of ''Added Sugars'' in a serving of a product, establishing a Daily Reference Value (DRV), and requiring the %DV declaration for ''Added Sugars'' and (2) changing ''Sugars'' to ''Total Sugars'' and requiring that ''Includes 'X'g Added Sugars'' be indented and declared directly below ''Total Sugars'' on the label. We discussed our rationale for the required declaration of ''Added Sugars'' in the preamble to both the Nutrition Facts final rule (81 FR 33742 at 33799 through 33801) and the proposed rule in the **Federal Register** of March 3, 2014 (79 FR 11880 at 11902 through 11905), and explained our establishment of a DRV of 10 percent of total energy intake from ''Added Sugars'' and requirement of a %DV for ''Added Sugars'' in the preamble to the supplemental proposed rule in the **Federal Register** of July 27, 2015 (80 FR 44303 at 44307 through 44309).[1]

In the Nutrition Facts final rule, we confirmed that our definition of ''Total Sugars'' remains the same as the previously existing definition of ''Sugars'' at § 101.9(c)(6)(ii)—

[1] We also recognize that with the requirement for the mandatory declaration of added sugars on the label, there is an interest in the use of nutrient content claims that convey to consumers information about the amount of sugars or added sugars in a product. In the Nutrition Facts final rule, we said that we plan to revisit our nutrient content claims regulations as appropriate and as time and resources permit (81 FR 33742 at 33751). We intend to address nutrient content claims related to sugars and added sugars at a later date.

specifically, as the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose). We defined ''Added Sugars,'' in part, as sugars that are either added during the processing of foods or are packaged as such. We codified this definition in our regulations at § 101.9(c)(6)(iii).

In determining which sugars should be included in the definition of ''Added Sugars'' in the Nutrition Facts final rule, we considered the presence of added sugars as a component of dietary intake and whether it was consistent with the concept of ''empty calories'' (81 FR 33742 at 33835). (The Scientific Report of the 2015 Dietary Guidelines Advisory Committee noted that sugars that are added to foods either by the consumer or by food manufacturers are referred to as ''empty calories'' because they provide calories, but few or no nutrients. See United States Department of Agriculture and HHS, Scientific Report of the 2015 Dietary Guidelines Advisory Committee, 2015, Part D. ''Chapter 1: Food and Nutrient Intakes, and Health: Current Status and Trends,'' pg. 69, available at *https://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf*.) We noted, in the preamble to the Nutrition Facts final rule, that it would be extremely difficult for individuals consuming large amounts of empty calories from sugar-sweetened foods and beverages to be able to consume enough other components of a healthy dietary pattern (81 FR 33742 at 33807). In part because of this, current dietary recommendations include limiting the consumption of added sugars in the diet, which we explained in the preamble to the supplemental proposed rule (80 FR 44303 at 44308).

We are aware that some members of the food industry are looking for ways to reformulate products to reduce the sugar content of foods while still providing products that meet consumer preferences. The use of sugars that provide fewer calories, that are not associated with dental caries, and that result in a lower glycemic and insulinemic response than other sugars could be one way for industry to provide products that meet both current dietary recommendations and consumer preferences.

There are several sugars that are not metabolized by the body like other substances that are traditionally known as sugars. The sugars that many consumers are most familiar with (''traditional sugars''), such as sucrose, are associated with an increased risk of dental caries, have 4 calories per gram, and cause an increase in blood glucose and insulin levels after consumption. Some sugars (*e.g.,* allulose, D-tagatose, isomaltulose) do not have all of the same effects in the body as traditional sugars. Because of that, we have received multiple requests from industry to treat these sugars that are metabolized differently than traditional sugars as distinct from traditional sugars for purposes of nutrition labeling. For example, some asked that we exempt certain sugars from inclusion as a carbohydrate, sugar, or added sugar on the Nutrition Facts label for foods and beverages (see, *e.g.,* Citizen Petition Submitted by Tate & Lyle Ingredients Americas LLC requesting that Allulose be Exempt From Being Included As a Carbohydrate, Sugar, or Added Sugar in the Nutrition Facts Label on Foods and Beverages, April 10, 2015, Docket Number FDA–2015–P–1201); some asked that we use a lower general factor for the caloric value of certain sugars (see, *e.g.,* Citizen Petition Submitted by The Food Lawyers Requesting the Use of a General Factor of 0.4 Calories Per Gram of Allulose on the Nutrition Facts Label, July 12, 2016, Docket Number FDA–2016–P–2030); and others asked that we define ''Total Sugars'' as the sum of all free mono- and disaccharides that contain at least one unit of glucose or fructose (see, *e.g.,* Citizen Petition Submitted by Bonumose LLC for Consideration of D-tagatose as Dietary Fiber, November 19, 2018, Docket Number FDA–2018–P–4454).

In the preamble to the Nutrition Facts final rule, we stated that we needed additional time to fully consider certain information provided about one of these sugars that is metabolized differently than traditional sugars—specifically, allulose (81 FR 33742 at 33796). Therefore, we did not reach a decision as to whether allulose should be excluded from the declaration of ''Total Carbohydrate,'' ''Total Sugars,'' or ''Added Sugars.'' We stated that allulose, as a monosaccharide, must be included in the amount of the declaration of ''Total Carbohydrate,'' ''Total Sugars,'' and ''Added Sugars'' pending any future rulemaking that would otherwise consider excluding allulose from the declarations. We also noted that D-tagatose and isomaltulose are chemically sugars. Because these sweeteners are chemically sugars, and other substances are included or excluded from the definition of ''Total Sugars'' and ''Added Sugars'' based on whether they are a free mono- or disaccharide rather than on their physiological effects, including D-tagatose and isomaltulose in the declaration of added sugars is consistent with how we have characterized other sugars. As such, we did not exclude D-tagatose and isomaltulose from the ''Added Sugars'' declaration in the Nutrition Facts final rule (81 FR 33742 at 33837).

In the **Federal Register** of April 18, 2019 (84 FR 16272), we announced the publication of a draft guidance that provided our view on the declaration of allulose on Nutrition and Supplement Facts labels, as well as on the caloric content of allulose. We announce our final guidance elsewhere in this edition of the **Federal Register**. The guidance states our intent to exercise enforcement discretion for the exclusion of allulose from the amount of ''Total Sugars'' and ''Added Sugars'' declared on the label and the use of a general factor of 0.4 calories per gram (kcal/g) for allulose when determining ''Calories'' on the Nutrition and Supplement Facts labels pending review of the issues in a rulemaking.

We are interested in learning more about the kinds of sugars that are metabolized differently than traditional sugars and that are used in foods, any distinct physiological effects in the body caused by those sugars, and how we should treat those sugars for purposes of food labeling.

II. Request for Comments and Information

We invite comment, particularly scientific data and other evidence, about the following topics:

A. General Information About Sugars That Are Metabolized Differently Than Traditional Sugars

1. We are aware of three sugars that are metabolized differently in the body than traditional sugars: allulose, D-tagatose, and isomaltulose. What other sugars are metabolized differently in the body than traditional sugars? Please provide any studies that examine the chemical properties or physiological effects of these other sugars.

2. What research on consumer awareness or understanding of the differences between sugars that are metabolized differently than traditional sugars and traditional sugars is available? Please provide any data or other information that supports your response.

B. Declaration of Total Sugars

1. We could take one of various approaches to account for sugars that are metabolized differently than traditional sugars in the declaration of ''Total Sugars.'' For example, we could require them to be declared within the

''Total Sugars'' declaration, we could exclude them from the ''Total Sugars'' declaration, or we could adjust the gram amount of the ''Total Sugars'' declaration based on their caloric contribution to the diet. What considerations could inform our approach? Please explain your reasoning, and provide data or other information that would support these considerations and any recommended approach.

2. In the guidance regarding allulose, we discuss factors that we considered when determining whether a sugar should be excluded from the declaration of ''Total Sugars,'' including pH of dental plaque after consumption, caloric value, and glycemic and insulinemic response. What, if any, other factors impact whether a sugar should be excluded from the declaration of ''Total Sugars''? Please provide any data or other information that supports your response.

C. Declaration of Added Sugars

1. We could take one of various approaches to account for sugars that are metabolized differently than traditional sugars in the declaration of ''Added Sugars.'' For example, we could require them to be declared within the ''Added Sugars'' declaration, we could exclude them from the ''Added Sugars'' declaration, or we could adjust the gram amount of the ''Added Sugars'' or the %DV declaration based on their caloric contribution to the diet. What considerations could inform our approach? Please explain your reasoning, and provide data or other information that would support these considerations and any recommended approach.

2. In the guidance regarding allulose, we discuss factors that we considered when determining whether a sugar should be excluded from the declaration of ''Added Sugars,'' including caloric value and glycemic and insulinemic response. What other factors, if any, impact whether a sugar should be excluded from the declaration of ''Added Sugars''? Please provide any data or other information that supports your response.

3. We might adjust the %DV for ''Added Sugars'' for the U.S. population 4 years of age and older based on the caloric contribution of the sugar. For example:

Assume a product contains 5 g of sucrose and 10 g of another sugar with a caloric value of 2 kcal/g per serving.

Step 1. Calculate the Total Caloric Contribution of Sugars (amount of sucrose (g/serving) × caloric value (kcal/g)) + (amount of other sugar (g/serving) × caloric value (kcal/g))

a. Sucrose: 5 g/serving × 4 kcal/g (caloric value of sucrose) = 20 kcal/serving

b. Other sugar: 10 g/serving × 2 kcal/g (caloric value of other sugar) = 20 kcal/serving

c. Total Caloric Contribution = 20 kcal/serving (sucrose) + 20 kcal/serving (other sugar) = 40 kcal/serving

Step 2. Calculate Total Amount of Sugars Adjusted for the Total Caloric Contribution (Total Caloric Contribution of Sugars (kcal/serving) ÷ 4 kcal/g))

Amount of Sugars Adjusted for Caloric Contribution = 40 kcal/serving ÷ 4 kcal/g = 10 g-equivalent/serving

Step 3. Calculate %DV for Added Sugars (Amount of Sugars Adjusted for Caloric Contribution (g-equivalent) ÷ 50 g/day (DV for Added Sugars for the general U.S. population 4 years of age and older) × 100))

%DV = (10 g-equivalent ÷ 50 g/day) × 100 = 20%

What considerations are there with respect to adjusting the %DV declaration based on the caloric contribution of the sugar?

D. Label Declarations

1. We currently require the disclosure of sugar alcohols and sugars that are metabolized differently than traditional sugars in the ingredient statement in accordance with § 101.4(a), but also allow for the voluntary declaration of sugar alcohols on the Nutrition Facts label (§ 101.9(c)(6)(iv)). Please provide any data or other information that we could consider when determining whether we should allow for the voluntary declaration on the Nutrition Facts label of sugars that are metabolized differently than traditional sugars.

2. Sugar alcohols fall into a separate category of labeling and are excluded from the ''Total Sugars'' and ''Added Sugars'' declarations. Please provide any data or other information that we could consider when determining whether sugars that are metabolized differently than traditional sugars should be combined with sugar alcohols into one declaration within the Nutrition Facts label.

3. If sugars that are metabolized differently than traditional sugars are excluded from the ''Total Sugars'' and ''Added Sugars'' declarations and are combined with sugar alcohols in a separate labeling category within the Nutrition Facts label, what names would be scientifically appropriate for such a category? Please provide any data or other information that supports your recommendation.

Dated: October 9, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22900 Filed 10–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute

to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on September 1, 2020, through September 30, 2020. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Thomas J. Engels,

Administrator.

List of Petitions Filed

1. Kathleen Beldon, Sheffield, Ohio, Court of Federal Claims No: 20–1111V
2. Shanel Mayo, Chula Vista, California, Court of Federal Claims No: 20–1112V
3. Alison Guthrie, Little Rock, Arkansas, Court of Federal Claims No: 20–1113V
4. Troy Fontechia, Franklin, Tennessee, Court of Federal Claims No: 20–1114V
5. Christa Smith, Denver, Colorado, Court of Federal Claims No: 20–1115V
6. Lisa A. Whitehead, Cleveland, Tennessee, Court of Federal Claims No: 20–1118V
7. Darrell Williams, Louisville, Kentucky, Court of Federal Claims No: 20–1120V
8. Rebecca Jaramillo, Alexandria, Virginia, Court of Federal Claims No: 20–1122V
9. Amanda Baxter, Sacramento, California, Court of Federal Claims No: 20–1123V
10. John Simpson, Phoenix, Arizona, Court of Federal Claims No: 20–1124V
11. Amy Trudeau, Shelby Township, Michigan, Court of Federal Claims No: 20–1125V
12. Craig Divine on behalf of J.D., Phoenix, Arizona, Court of Federal Claims No: 20–1127V
13. Janet Smith, St. Louis, Missouri, Court of Federal Claims No: 20–1128V
14. Lindsey Austin, Asheville, North Carolina, Court of Federal Claims No: 20–1129V
15. Robert Laing, Deerfield, Illinois, Court of Federal Claims No: 20–1130V
16. Tonya Wilson, Fishers, Indiana, Court of Federal Claims No: 20–1131V
17. Quatina Battle, Nashville, North Carolina, Court of Federal Claims No: 20–1133V
18. Felicia A. Vinson, Racine, Wisconsin, Court of Federal Claims No: 20–1134V
19. Kelly Seim, Chicago, Illinois, Court of Federal Claims No: 20–1136V
20. Donna Burke, Salem, Wisconsin, Court of Federal Claims No: 20–1137V
21. Isabel Irizarry, Brooklyn, New York, Court of Federal Claims No: 20–1140V
22. Elizabeth Merwitz, Montgomery, Texas, Court of Federal Claims No: 20–1141V
23. Pamela Vitrano, New Orleans, Louisiana, Court of Federal Claims No: 20–1142V
24. Sara Storm and Joshua Storm on behalf of K.A.S., Madison, Wisconsin, Court of Federal Claims No: 20–1143V
25. Kathryn Frowein, Hartford, Wisconsin, Court of Federal Claims No: 20–1146V
26. Frederick Reno, Santa Rosa, California, Court of Federal Claims No: 20–1147V
27. Brett Van Leer-Greenberg on behalf of H. V.L., New York, New York, Court of Federal Claims No: 20–1150V
28. Sarah Hall, Lakeland, Florida, Court of Federal Claims No: 20–1151V
29. Sidney Lenox, Wichita, Kansas, Court of Federal Claims No: 20–1152V
30. Debbie Fresch, Fort Worth, Texas, Court of Federal Claims No: 20–1153V
31. Bernard Neuwirth on behalf of The Estate of Ellen C. Neuwirth, Pittsburgh, Pennsylvania, Court of Federal Claims No: 20–1155V
32. Ronald Malinski, Sterling Heights, Michigan, Court of Federal Claims No: 20–1156V
33. Constantine Basdakis, Yorba Linda, California, Court of Federal Claims No: 20–1158V
34. Krystal Garcia, New York, New York, Court of Federal Claims No: 20–1159V
35. Deanna Ghormley, Bentonville, Arkansas, Court of Federal Claims No: 20–1161V
36. Ricki Lagozzino, Spokane, Washington, Court of Federal Claims No: 20–1162V
37. Emily Butcher, Boston, Massachusetts, Court of Federal Claims No: 20–1163V
38. Holly Reynolds, Brookings, Oregon, Court of Federal Claims No: 20–1165V
39. Patricia Horton, Cedar Rapids, Iowa, Court of Federal Claims No: 20–1166V
40. Holly Walls-Grom, Berkley Heights, New Jersey, Court of Federal Claims No: 20–1167V
41. Donna E. Maestas, Rio Rancho, New Mexico, Court of Federal Claims No: 20–1168V
42. Dianne Needham, Scottsdale, Arizona, Court of Federal Claims No: 20–1169V
43. Kimberly Monk, Whitewater, Wisconsin, Court of Federal Claims No: 20–1171V
44. Derek Zobrist on behalf of Estate of Derek Edwin Zobrist, Deceased, Los Angeles, California, Court of Federal Claims No: 20–1172V
45. Lori Grady, Spokane, Washington, Court of Federal Claims No: 20–1175V
46. Kathleen Stryski, Gilbert, Arizona, Court of Federal Claims No: 20–1177V
47. Rebecca Cartwright, Wadsworth, Ohio, Court of Federal Claims No: 20–1178V
48. Jody Caldwell, Falconer, New York, Court of Federal Claims No: 20–1179V
49. Robert G. Wilson, Leesburg, Virginia, Court of Federal Claims No: 20–1181V
50. Jo Ann Pusich-Silas, Milton, Washington, Court of Federal Claims No: 20–1184V
51. Douglas Golden and Rishanne Dradt on behalf of Haleigh Golden, Deceased, Phoenix, Arizona, Court of Federal Claims No: 20–1186V
52. Kamille A. King, Murray, Utah, Court of

Federal Claims No: 20–1187V
53. William A. Faith, Louisville, Kentucky, Court of Federal Claims No: 20–1188V
54. Semeca Johnson, Chicago, Illinois, Court of Federal Claims No: 20–1189V
55. Judith Adams, Grove City, Ohio, Court of Federal Claims No: 20–1190V
56. Kenneth Heron, Arlington, Texas, Court of Federal Claims No: 20–1191V
57. Anne Dowdle, Los Alamitos, California, Court of Federal Claims No: 20–1192V
58. Nasser Abdulkadir, Houston, Texas, Court of Federal Claims No: 20–1193V
59. Huong Thi Do, Philadelphia, Pennsylvania, Court of Federal Claims No: 20–1194V
60. Donald Watford, Birmingham, Alabama, Court of Federal Claims No: 20–1195V
61. Sara Campbell, New Orleans, Louisiana, Court of Federal Claims No: 20–1196V
62. Jonathan Ruiz, New Haven, Connecticut, Court of Federal Claims No: 20–1198V
63. Charlene Viets, Henderson, Kentucky, Court of Federal Claims No: 20–1199V
64. Linda B. Haston, Ponte Vedra Beach, Florida, Court of Federal Claims No: 20–1200V
65. James Gill, Fort Myers, Florida, Court of Federal Claims No: 20–1201V
66. Vonnie Hatton, Bullhead City, Arizona, Court of Federal Claims No: 20–1202V
67. Kyrian J. Marshall, Greenwood, Indiana, Court of Federal Claims No: 20–1203V
68. Nora Anne Lawrence, Beaufort, North Carolina, Court of Federal Claims No: 20–1205V
69. Marcia Roby, Hawesville, Kentucky, Court of Federal Claims No: 20–1206V
70. Lindsay M. Camplin, Indianapolis, Indiana, Court of Federal Claims No: 20–1208V
71. Patricia G. Hustead, Athens, Texas, Court of Federal Claims No: 20–1212V
72. Casimir Chmielewski, Washington, District of Columbia, Court of Federal Claims No: 20–1213V
73. Kristen McCormack, Chicago, Illinois, Court of Federal Claims No: 20–1214V
74. Steven Bekker, Concord, North Carolina, Court of Federal Claims No: 20–1215V
75. Angel Silveyra, Carol Stream, Illinois, Court of Federal Claims No: 20–1216V
76. Robert Cameron, Boston, Massachusetts, Court of Federal Claims No: 20–1217V
77. Maureen Reilly, Philadelphia, Pennsylvania, Court of Federal Claims No: 20–1218V
78. Kimberly Asay, Salt Lake City, Utah, Court of Federal Claims No: 20–1219V
79. Leslie Armstrong, Middletown, New York, Court of Federal Claims No: 20–1221V
80. Randy Brouette, Palos Heights, Illinois, Court of Federal Claims No: 20–1222V
81. Michael Calvin Miller, Commerce, Georgia, Court of Federal Claims No: 20–1225V
82. Charlie Dee Mason, Greensboro, North Carolina, Court of Federal Claims No: 20–1226V
83. Maureen Deighan, Hawthorne, New York, Court of Federal Claims No: 20–1227V
84. Donna Verdisco, New Haven, Connecticut, Court of Federal Claims No: 20–1228V
85. Christopher Cary, Scranton, Pennsylvania, Court of Federal Claims No: 20–1229V
86. Sharlene Beal, Rockport, Maine, Court of Federal Claims No: 20–1232V
87. Carl J. Dietz, New York, New York, Court of Federal Claims No: 20–1233V
88. Kristin Cowan, Salt Lake City, Utah, Court of Federal Claims No: 20–1234V
89. Jeanette Koka, Washington, District of Columbia, Court of Federal Claims No: 20–1235V
90. Donna Proctor, Houston, Texas, Court of Federal Claims No: 20–1236V
91. Melanie Fatone, Colchester, Connecticut, Court of Federal Claims No: 20–1238V
92. Wilson V. Rivera, Rochester, New York, Court of Federal Claims No: 20–1239V
93. Lenora Donlin, Forest Lake, Minnesota, Court of Federal Claims No: 20–1240V
94. Jacqueline Brito, Norwalk, Connecticut, Court of Federal Claims No: 20–1241V
95. Barbara Howard and Rodney Barnes on behalf of R.B., Mobile, Alabama, Court of Federal Claims No: 20–1242V
96. Fetlework Norvell, Gaithersburg, Maryland, Court of Federal Claims No: 20–1243V
97. James Marr, Fort Leonard Wood, Missouri, Court of Federal Claims No: 20–1244V
98. Kara Couch, Frankfort, Kentucky, Court of Federal Claims No: 20–1246V
99. Marika Yessa, Winfield, Illinois, Court of Federal Claims No: 20–1247V
100. Anne Pisani on behalf of Estate of Frank Pisani, Deceased, Aston, Pennsylvania, Court of Federal Claims No: 20–1249V
101. Angelea Buttles, Boston, Massachusetts, Court of Federal Claims No: 20–1250V
102. Carol Steinhauer, Pittsburgh, Pennsylvania, Court of Federal Claims No: 20–1251V
103. Yasmin Sheriff, Chicago, Illinois, Court of Federal Claims No: 20–1252V
104. Danielle Horne, Beverly, Massachusetts, Court of Federal Claims No: 20–1253V
105. June T. Taylor and Edward Timothy Canavan on behalf of Estate of Edward T. Canavan, Deceased, Bay Shore, New York, Court of Federal Claims No: 20–1255V
106. Anita Briant, Slidell, Louisiana, Court of Federal Claims No: 20–1257V
107. Nichelle Williams, Boston, Massachusetts, Court of Federal Claims No: 20–1259V
108. John Vandermeyde, Newton, New Jersey, Court of Federal Claims No: 20–1260V
109. Sarah Henderson, Union City, New Jersey, Court of Federal Claims No: 20–1261V
110. Thomas Grant, San Antonio, Texas, Court of Federal Claims No: 20–1262V
111. Elizabeth Holsworth, Jenkintown, Pennsylvania, Court of Federal Claims No: 20–1263V
112. Sonya Elfar, Washington, District of Columbia, Court of Federal Claims No: 20–1264V
113. Christopher DeMore, Durham, North Carolina, Court of Federal Claims No: 20–1265V
114. Kaitlyn J. Reece on behalf of K.R., Manlius, New York, Court of Federal Claims No: 20–1267V
115. Barbara Cerasuolo, Hudson, Massachusetts, Court of Federal Claims No: 20–1268V
116. Robert Stern, New York, New York, Court of Federal Claims No: 20–1270V
117. Robin Rossmann, Charlotte, North Carolina, Court of Federal Claims No: 20–1271V
118. Blas Gutierrez on behalf of Gissell Gutierrez, Brentwood, New York, Court of Federal Claims No: 20–1273V
119. Blas Gutierrez on behalf of Gissell Gutierrez, Brentwood, New York, Court of Federal Claims No: 20–1274V
120. Julio Mendoza, Las Vegas, Nevada, Court of Federal Claims No: 20–1275V
121. Beth A. Ross, Richmond, Virginia, Court of Federal Claims No: 20–1276V
122. Kimberly Ruiz, Houston, Texas, Court of Federal Claims No: 20–1277V
123. Sharon K. Dixon, Bloomington, Indiana, Court of Federal Claims No: 20–1278V
124. Salina M. Flores, Crown Point, Indiana, Court of Federal Claims No: 20–1279V
125. Mackenzie Summers, Phoenix, Arizona, Court of Federal Claims No: 20–1280V
126. Larry J. Demas, Pittsburgh, Pennsylvania, Court of Federal Claims No: 20–1281V
127. Maryann Amicucci, Monongahela, Pennsylvania, Court of Federal Claims No: 20–1282V
128. Bradley M. McLee, Sr. on behalf of Nadine Lynn McLee, Pittsburgh, Pennsylvania, Court of Federal Claims No: 20–1283V
129. Melissa Nicholson, Boston, Massachusetts, Court of Federal Claims No: 20–1284V
130. Casey R. Morgan, Overland Park, Kansas, Court of Federal Claims No: 20–1286V
131. Alex Brown, Boston, Massachusetts, Court of Federal Claims No: 20–1287V
132. Matthew Miller, Boston, Massachusetts, Court of Federal Claims No: 20–1291V
133. Jaclyn Godoy on behalf of L.G., White Plains, New York, Court of Federal Claims No: 20–1292V
134. Alejandra Fajardo, Boston, Massachusetts, Court of Federal Claims No: 20–1294V
135. Jyl Ann Poteet, Granbury, Texas, Court of Federal Claims No: 20–1295V
136. Erica Nesteruk, Fort Mill, South Carolina, Court of Federal Claims No: 20–1297V
137. Terisa A. Folaron, Shorewood, Wisconsin, Court of Federal Claims No: 20–1298V
138. Eula Adeniji, Charlotte, North Carolina, Court of Federal Claims No: 20–1299V

[FR Doc. 2020–22998 Filed 10–16–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Information and Comments on Fostering Research Integrity and the Responsible Conduct of Research

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Request for information (RFI).

SUMMARY: The Department of Health and Human Services (HHS), Office of Research Integrity (ORI) seeks information and comments from entities and individuals regarding activities that foster research integrity and promote the responsible conduct of research under 42 CFR part 93. In particular, ORI is interested in learning about best practices, challenges, and needs related to teaching the responsible conduct of research, promoting research integrity, and preventing research misconduct. ORI will use this information to support the goal of conducting outreach and developing educational resources that best support the Public Health Service (PHS) funded research community.

DATES: Responses to the RFI must be received electronically at the email address provided below no later than 5:00 p.m. ET on the 60th day following the date of publication in the **Federal Register**.

ADDRESSES: Interested parties are to submit comments electronically to *OASH-ORI-Public-Comments@hhs.gov.* Include ''RCR RFI'' in the subject line of the email. Mailed paper submissions and electronic submissions received after the deadline will not be reviewed.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: The Public Health Service Policies on Research Misconduct, 42 CFR parts 50 and 93, establish several requirements regarding the fostering of an environment that promotes research integrity and discourages research misconduct. Institutions must adhere to these requirements to receive PHS funding. Per § 93.300(c), an institution must:

> Foster a research environment that promotes the responsible conduct of research, research training, and activities related to that research or research training, discourages research misconduct . . .

ORI conducts outreach and develops educational resources that aid institutional efforts ''to teach the responsible conduct of research, promote research integrity, prevent research misconduct, and . . . respond effectively to allegations of research misconduct. . . .'' 65 FR 30600, 30601 (May 12, 2000). ORI has created materials and offered workshops and other events to assist research institutions in meeting their requirements. ORI is interested in hearing from the biomedical research community on ways that ORI can improve upon its efforts to support institutions in this endeavor. To this end, ORI seeks information and comment from biomedical research institutions about best practices, challenges, and needs related to teaching the responsible conduct of research (RCR), promoting research integrity (RI), and preventing research misconduct.

This RFI focuses on establishing a greater understanding of the needs, best practices, and challenges related to three categories:

(a) Using Training and Education To Foster Research Integrity;

(b) RI/RCR Program Administration and Facilitation of Training; and

(c) RI/RCR Training Sessions.

Information collected in response to this request will be used to inform the development of future educational resources and outreach activities.

Using Training and Education To Foster Research Integrity

ORI seeks to understand the key challenges to using training and educational efforts to foster a climate that encourages research integrity and the responsible conduct of research.

1. What challenges have been encountered?

2. Where those challenges may have been overcome, what has made the difference?

3. Where those challenges have not been overcome, what would make a difference?

RI/RCR Program Administration and Facilitation of Training

ORI recognizes that the approach to and implementation of research integrity/responsible conduct of research (RI/RCR) training programs varies within the biomedical research community. To better understand the nature of these programs as well as best practices, challenges, and needs related to program administration and the facilitation of training, ORI asks the following:

1. How are institutions' RI/RCR programs structured, with respect to courses, format, frequency, scope, and content? What about this structure may be of interest or benefit to others administering RI/RCR programs?

2. How are institutions' programs administered? Who or what group is responsible for: Instruction, programming, administration, oversight, and financial support? Do institutions' research integrity officers (RIO) play a role in the program? Do research mentors play an active role in the program? What additional resources are needed from the administrative perspective?

3. Which members of institutions' research communities participate, as learners, in the RI/RCR training program? What benefits or drawbacks pertain to this composition of program participants?

4. Does current institutional policy mandate participation in the RI/RCR training program? If so, for which members of the research community? If mandated participation requirements extend beyond funding agency requirements, please share the rationale for requiring this participation.

5. What fields of research are represented by the participants in the RI/RCR training program?

6. What topics, related to the research environment, research integrity, and/or the responsible conduct of research, does the program cover?

7. Are any topics covered due to a locally perceived or expressed need? Please explain.

8. Which topics are most popular with participants?

9. Which topics are the most difficult to cover and why? What resources would make inclusion and discussion of these topics easier and/or more effective?

10. Do resource constraints (*e.g.,* materials for instruction, training for instructors, staffing, financial) limit presentation of certain topics? Which topics, and why? What resources would be most useful in addressing this?

RI/RCR Training Sessions

To inform the development of educational and training resources that support the needs of the biomedical research community, ORI seeks information on institutional experiences, practices, and needs related to RI/RCR training sessions.

1. How long, on average, does it take to prepare a new course or training session?

2. How frequently is the material in a training session or course revised? How often are new training sessions or courses developed? How often are old training sessions or courses discontinued?

3. Do training materials and resources used in the course or training session(s) come from outside the institution? If so, where? If the program or instructor creates custom materials and resources for use in the course or training session, please describe any related benefits or drawbacks.

4. What approaches engage learners and create an interactive session (*e.g.,* lectures, seminars, small group discussions, audience polling, problem solving, role play)? Are different approaches used when training faculty, staff, students, or postdoctoral researchers?

5. What types of resources seem most effective or engaging (*e.g.,* videos, infographics, scenarios, case studies, slide decks); how is this assessed? Does this vary depending on the group of learners (*i.e.,* faculty, staff, students, or postdoctoral researchers)?

6. Is the impact of a training session assessed? If so, how, and what metrics gauge success?

7. What do learners ask for, instructionally or programmatically, that can or cannot be addressed?

8. What resources are needed to more fully engage learners and/or address their training related requests?

Collection of Information Requirements

Please note: This RFI is issued solely for information and planning purposes; it does not constitute a solicitation for: Request for Proposals (RFPs), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or to make a grant award. Further, ORI is not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in responding to this RFI; all costs associated with responding to this RFI will be solely at the expense of the interested parties. ORI notes that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request.

ORI will actively consider all input as our office plans education and outreach activities. ORI may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Responses to this notice are not offers and cannot be accepted by the U.S. Government to form a binding contract or to issue a grant. Information obtained as a result of this RFI may be used by the U.S. Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned.

Elisabeth A. Handley,

Director, Office of Research Integrity.

[FR Doc. 2020–22992 Filed 10–16–20; 8:45 am]

BILLING CODE 4150–31–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: Respiratory Sciences.

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: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Genomics Studies.

Date: November 9, 2020.

Time: 9:00 a.m. to 1:00 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: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV Coinfections and HIV Associated Cancers Study Section.

Date: November 12, 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: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, Bethesda, MD 20892, 301–451–5953, *tuoj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology SBIR/STTR.

Date: November 13, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Shared Instrumentation: Bioengineering Sciences and Technologies (S10).

Date: November 13, 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: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@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 13, 2020.

Time: 10:00 a.m. to 12:00 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: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic

Encephalomyelitis/Chronic Fatigue Syndrome.

Date: November 13, 2020.

Time: 11:00 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: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, (301) 435–1766, *bennettc3@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Surgical Sciences, Biomedical Imaging and Bioengineering.

Date: November 13, 2020.

Time: 11:30 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: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dermatology and Rheumatology.

Date: November 13, 2020.

Time: 1:00 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: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; COVID–19 pandemic: Epidemiology and Analytics.

Date: November 13, 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: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention and Social Development.

Date: November 13, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@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 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23045 Filed 10–16–20; 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; Childhood Asthma in Urban Settings Clinical Research Network—Leadership Center (UM1 Clinical Trial Required).

Date: November 17, 2020.

Time: 8:00 a.m. to 12:00 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 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Konrad Krzewski, 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 3G53, Bethesda, MD 20892–9834, 240–747–7526, *konrad.krzewski@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 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23042 Filed 10–16–20; 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; Innovative Science Accelerator Coordinating Unit Applications.

Date: November 20, 2020.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–4721, *ryan.morris@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 13, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23043 Filed 10–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute On Deafness And Other Communication Disorders, 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, NIDCD.

Date: November 2, 2020.

Time: 4:00 p.m. to 4:45 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas Baer Friedman, Ph.D., Chief, Laboratory of Molecular Medicine, National Institute on Deafness & Comm Disorders, National Institute of Health, 35 Convent Drive, Bethesda, MD 20892, (301) 496–7882, *friedman@nidcd.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nidcd.nih.gov/about/advisory-committees,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: October 14, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23076 Filed 10–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NCCIH Workshop 2020: Exploring the Mechanisms Underlying Analgesic Properties of Minor Cannabinoids and Terpenes

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Center for Complementary and Integrative Health (NCCIH) will hold a workshop on October 23, 2020. The topic of this workshop will be ''Exploring the Mechanisms Underlying Analgesic Properties of Minor Cannabinoids and Terpenes''. The overall goals of this workshop are to convene principal investigators funded by NCCIH on the topic of the analgesic properties of minor cannabinoids and terpenes from natural products and the underlying mechanisms as well as to discuss current research barriers and opportunities on this topic.

DATES: The Meeting will be held on October 23, 2020, from 9:45 a.m. to 3:00 p.m. (ET).

ADDRESSES: This workshop will be livestreamed via videocast. Registration is requested via *https://nccih_cbd_workshop.eventbrite.com.*

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting, contact Dr. Inna Belfer, Program Director, Basic and Mechanistic Research, Division of Extramural Research, National Center for Complementary and Integrative Health, Telephone: 301–435–1573; Email: *inna.belfer@nih.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S.C. 287c–21, of the Public Health Service Act, as amended and in keeping with the mission of the National Center for Complementary and Integrative Health (NCCIH) is to define, through rigorous scientific investigation, the usefulness and safety of complementary and integrative interventions and their roles in improving health and health care. This workshop is aligned with NCCIH's mission to support research on the fundamental science, safety, and usefulness of complementary and integrative health approaches. Specifically, minor cannabinoids and terpenes from natural products are part of complementary interventions supported by NCCIH. The workshop is also aligned with NCCIH's strategic goals of advancing understanding of basic biological mechanisms of action of natural products and improving care for hard-to-manage symptoms, such as pain.

Dated: October 13, 2020.

Helene Langevin,

Director, National Center for Complementary and Integrative Health, National Institutes of Health.

[FR Doc. 2020–22990 Filed 10–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 04, 2020, 09:00 a.m. to November 05, 2020, 02:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 06, 2020, 85 FR Page 63123.

The meeting is scheduled for 11/04/2020 starting at 9:00 a.m. and ending on 11/05/2020 at 2:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 13, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23044 Filed 10–16–20; 8:45 am]

BILLING CODE 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: Orthopedic, Musculoskeletal, Oral, Skin and Rehabilitation Sciences.

Date: November 16–17, 2020.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; Population and Public Health Approaches to HIV/AIDS Study Section.

Date: November 16–17, 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: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1137, *guerriej@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 16–17, 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: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3717, *jessica.smith6@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments (CDT).

Date: November 16–17, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Elena Cardenas-Corona, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 867–5309, *maria.cardenas-corona@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Disease Prevention and Management, Risk Reduction and Health Behavior Change.

Date: November 16–17, 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: Michael J. McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 480–1276, *mike.mcquestion@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Applications: Drug Discovery and Development.

Date: November 16–17, 2020.

Time: 10:00 a.m. to 12:00 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: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Emergency Awards: RADx-rad Data Coordination Center (U24).

Date: November 16, 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: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *liangw3@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 17–18, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *eissenstatma@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 13, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–23046 Filed 10–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–31011;PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before October 3, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by November 3, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 3, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

ALABAMA

Macon County

Macon County High School, 500 East Main St., Notasulga, SG100005781

ARKANSAS

Benton County

Shaw-Blair House, 11976 Tyson Rd., Lowell, SG100005757

Washington County

Elm Springs Cemetery, Historic Section, Northeast of the east end of School St. on Lawn View Ln., Elm Springs, SG100005759

IOWA

Muscatine County

McKee Button Company, 1000 Hershey Ave., Muscatine, SG100005784

MASSACHUSETTS

Berkshire County

Tyringham Center School, 2 Church Rd., Tyringham, SG100005764

Bristol County

Watson, Newell & Company Factory, 67 Mechanic St., Attleboro, SG100005761

Suffolk County

Cartoof & Sherman Apartments, 31–35 Wales St., Boston, SG100005763

Thane Street Historic District, 70–78 Harvard St, 22–24, 26–28, 30–32 Thane St, Boston, SG100005782

Intervale Street-Blue Hill Avenue Historic District, Blue Hill Ave. and Intervale St., Boston, SG100005783

MICHIGAN

Alpena County

Bingham School, 555 South 5th Ave., Alpena, SG100005778

Mason County

Haskell Manufacturing Company Building, 801 North Rowe St., Ludington, SG100005785

MONTANA

Cascade County

Monarch Depot Historic District, 10 Montana Ave., Monarch, SG100005745

Liberty County

Pugsley Bridge, Milepost 5.5 on Pugsley Bridge Rd., Chester vicinity, SG100005746

Yellowstone County

Fratt-Link House, 142 Clark Ave., Billings, SG100005777

NEBRASKA

Douglas County

Benson Commercial Historic District (Streetcar-Era Commercial Development in Omaha, Nebraska MPS), Centered along Maple St. between North 59th and North 63rd Sts., Omaha, MP100005766

Orchard Hill Commercial Historic District (Streetcar-Era Commercial Development in Omaha, Nebraska MPS), 4002–4016 Hamilton St., 1324–1330, 1406–1412 North 40th St., Omaha, MP100005767

Hope Lutheran Church, 2721 North 30th St., Omaha, SG100005768

Howard County

Our Lady of Mount Carmel Church and Cemetery (Rural Church Architecture in Nebraska MPS), 2450 17th Ave., Ashton vicinity, MP100005769

Lancaster County

Strode Building (Detroit-Lincoln-Denver Highway in Nebraska MPS), 1600–1608 O St., Lincoln, MP100005770

NORTH CAROLINA

Forsyth County

St. Paul's Episcopal Church, 520 Summit St., Winston-Salem, SG100005747

Gaston County

Trenton Cotton Mills, 612 West Main Ave., Gastonia, SG100005748

Guilford County

Melrose Hosiery Mill No. 1, 1533–1547 West English Rd., 105–109 SW Point Ave., High Point, SG100005749

Halifax County

Branch, William Jr. and Samuel Warren Branch, House, 16212 NC 125, Enfield, SG100005750

Pitt County

H. B. Sugg School, 3632 South George St., Farmville, SG100005751

VIRGINIA

Campbell County

Flat Creek Rural Historic District, Colonial Hwy. (VA 24), Dearborn Rd., Leesville Rd., Evington vicinity, SG100005773

WISCONSIN

Kenosha County

Barden Store, 622–628 58th St., Kenosha, SG100005752

Milwaukee County

Eagle Knitting Mills, 507 South 2nd St., Milwaukee, SG100005754

Koeffler-Baumgarten Double House, 817–819 North Marshall St., Milwaukee, SG100005755

Washburn County

Bona, Bishop Stanislaus Vincent, Cabin, W9420 Bona Dr., Minong, SG100005753

In the interest of preservation, a SHORTENED comment period has been requested for the following resource:

MASSACHUSETTS

Plymouth County

MAYFLOWER II (square-rigged sailing ship), State Pier, Pilgrim Memorial State Park, 79 Water St., Plymouth, SG100005762, Comment period: 3 days

A request for removal has been made for the following resource:

MICHIGAN

Calhoun County

Roosevelt Community House, 107 Evergreen Rd., Springfield, OT01000653

A request to move has been received for the following resources:

ARKANSAS

Benton County

Bentonville Confederate Monument (Civil War Commemorative Sculpture MPS), Public Sq. Park., near jct. of 2nd and Main Sts., Bentonville, MV96000459

Pope County

Latimore Tourist Home (Arkansas Highway History and Architecture MPS), 318 South Houston Ave., Russellville, MV11001049

Additional documentation has been received for the following resources:

ARKANSAS

Garland County

Brown, W. C., House (Additional Documentation), 2330 Central Ave., Hot Springs, AD86002862

Sebastian County

West Garrison Avenue Historic District (Additional Documentation), 100–525 Garrison Ave., Fort Smith, AD79000464

NEW JERSEY

Essex County

Maplewood Memorial Park (Additional Documentation), Bounded by Oakland & Dunnell Rds., Valley & Baker Sts., Maplewood, AD15000489

VIRGINIA

Albemarle County

Gallison Hall (Additional Documentation), 24 Farmington Dr., Charlottesville vicinity, AD90002013

Henrico County

Malvern Hill (Additional Documentation), SE of jct. of VA 5 and VA 156, Richmond vicinity, AD69000248

Williamsburg Independent City

Chandler Court and Pollard Park Historic District (Additional Documentation), Roughly bounded by Jamestown Rd., Griffin Ave., Pollard Park, and College of William and Mary Maintenance Yard, Williamsburg, AD96001075

Authority: Section 60.13 of 36 CFR part 60.

Dated: October 6, 2020.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2020–23002 Filed 10–16–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2020–0017]

Gulf of Mexico, Outer Continental Shelf (OCS), Oil and Gas Lease Sale 256

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability of a record of decision.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is announcing the availability of a Record of Decision for proposed Gulf of Mexico (GOM)

regionwide oil and gas Lease Sale 256. This Record of Decision identifies BOEM's selected alternative for proposed Lease Sale 256, which is analyzed in the *Gulf of Mexico OCS Lease Sale: Final Supplemental Environmental Impact Statement 2018* (2018 GOM Supplemental EIS).

ADDRESSES: The Record of Decision is available on BOEM's website at *http://www.boem.gov/nepaprocess/.*

FOR FURTHER INFORMATION CONTACT: For more information on the Record of Decision, you may contact Ms. Helen Rucker, Chief, Environmental Assessment Section, Office of Environment, by telephone at 504–736–2421, or by email at *helen.rucker@boem.gov.*

SUPPLEMENTARY INFORMATION: In the 2018 GOM Supplemental EIS, BOEM evaluated five alternatives for proposed Lease Sale 256. We have summarized these alternatives below, noting some additional blocks that may be excluded due to their lease status at the time of this decision:

Alternative A—Regionwide OCS Lease Sale: This is BOEM's preferred alternative. This alternative would allow for a proposed GOM regionwide lease sale encompassing all three planning areas: Western Planning Area (WPA); Central Planning Area (CPA); and a small portion of the Eastern Planning Area (EPA) not under Congressional moratorium. Under this alternative, BOEM would offer for lease all available unleased blocks within the proposed regionwide lease sale area for oil and gas operations with the following exceptions: Whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the United States' Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; whole and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary; depth-restricted, segregated portions of Block 299, Main Pass Area, South and East Addition (Louisiana Leasing Map LA10A); blocks where the lease status is currently under appeal; and whole or partial blocks that have received bids in previous lease sales, where the bidder has sought reconsideration of BOEM's rejection of their bid, unless the reconsideration request is fully resolved at least 30 days prior to the publication of the Final Notice of Sale. We have listed the unavailable blocks in Section I of the Final Notice of Sale for proposed Lease Sale 256 and at *www.boem.gov/Sale-256.* The proposed regionwide lease sale area encompasses about 91.93 million acres (ac), with approximately 78.2 million ac available for lease. As described in the 2018 GOM Supplemental EIS, the estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed regionwide lease sale are between 0.211 and 1.118 billion barrels of oil (BBO) and 0.547 and 4.424 trillion cubic feet (Tcf) of natural gas.

Alternative B—Regionwide OCS Lease Sale Excluding Available Unleased Blocks in the WPA Portion of the Proposed Lease Sale Area: This alternative would offer for lease all available unleased blocks within the CPA and EPA portions of the proposed lease sale area for oil and gas operations, with the following exceptions: Whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the United States' Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; depth-restricted, segregated portions of Block 299, Main Pass Area, South and East Addition (Louisiana Leasing Map LA10A); blocks where the lease status is currently under appeal; and whole or partial blocks that have received bids in previous lease sales, where the bidder has sought reconsideration of BOEM's rejection of their bid, unless the reconsideration request is fully resolved at least 30 days prior to publication of the Final Notice of Sale. The proposed CPA/EPA lease sale area encompasses about 63.35 million ac, with approximately 51.5 million ac are available for lease. The estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed lease sale under Alternative B are 0.185–0.970 BBO and 0.441–3.672 Tcf of gas.

Alternative C—Regionwide OCS Lease Sale Excluding Available Unleased Blocks in the CPA and EPA Portions of the Proposed Lease Sale Area: This alternative would offer for lease all available unleased blocks within the WPA portion of the proposed lease sale area for oil and gas operations, with the following exceptions: Whole and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary; blocks where the lease status is currently under appeal; and whole or partial blocks that have received bids in previous lease sales, where the bidder has sought reconsideration of BOEM's rejection of their bid, unless the reconsideration request is fully resolved at least 30 days prior to publication of the Final Notice of Sale. The proposed WPA lease sale area encompasses about 28.58 million ac, with approximately 26.7 million ac available for lease. The estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed lease sale under Alternative C are 0.026–0.148 BBO and 0.106–0.752 Tcf of gas.

Alternative D—Alternative A, B, or C, with the Option to Exclude Available Unleased Blocks Subject to the Topographic Features, Live Bottom (Pinnacle Trend), and/or Blocks South of Baldwin County, Alabama, Stipulations: This alternative could be combined with any of the Action alternatives above (*i.e.,* Alternative A, B, or C) and would allow the flexibility to offer leases under any alternative with additional exclusions. Under Alternative D, the decisionmaker could exclude from leasing any available unleased blocks in Alternative A subject to any one and/or a combination of the following stipulations: Topographic Features Stipulation; Live Bottom Stipulation; and Blocks South of Baldwin County, Alabama, Stipulation (not applicable to Alternative C). This alternative considered blocks subject to these stipulations because these areas have been emphasized in scoping, can be geographically defined, and adequate information exists regarding their ecological importance and sensitivity to OCS oil- and gas-related activities.

A total of 207 blocks within the CPA and 160 blocks in the WPA are affected by the Topographic Features Stipulation. There are currently no identified topographic features protected under this stipulation in the EPA. The Live Bottom Stipulation covers the pinnacle trend area of the CPA, affecting a total of 74 blocks. Under Alternative D, the number of blocks that would become unavailable for lease represents only a small percentage of the total number of blocks to be offered under Alternative A, B, or C (less than 4%, even if blocks subject to all three stipulations were excluded). Therefore, Alternative D could reduce offshore infrastructure and activities in the pinnacle trend area because Alternative D would simply shift the location of offshore infrastructure and activities farther from these sensitive zones; it would not lead to a reduction in overall impacts. Moreover, the incremental negative impacts of the other alternatives compared with Alternative D would be largely mitigated by the application of the lease stipulations in Alternative A, as discussed below.

Alternative E—No Action: This alternative is not holding proposed

regionwide Lease Sale 256 and is identified as the environmentally preferred alternative. Alternative E was not selected because, if it were, the needed domestic energy sources and the subsequent positive economic impacts from exploration and production, including employment, would not be realized. Not holding a single lease sale would also not significantly change the overall activity levels in the GOM (*i.e.,* on blocks leased in previous lease sales) and the associated environmental impacts in the near term; however, it would avoid the incremental contribution of the proposed regionwide lease sale to the cumulative effects of ongoing activity. Avoidance of this incremental contribution, however, is outweighed by the potential negative economic and socioeconomic impacts of choosing Alternative E.

Lease Stipulations—Eleven lease stipulations have been adopted for Lease Sale 256, including a new stipulation not previously included in recent lease sales, related to processing of certain post-lease permits and described below. The 2018 GOM Supplemental EIS describes 10 of these 11 lease stipulations, which are included in the Final Notice of Sale Package.

In the Record of Decision for the *2017–2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Final Program,* the Secretary of the Interior required the protection of biologically sensitive underwater features in all Gulf of Mexico oil and gas lease sales as programmatic mitigation; therefore, we are adopting the Topographic Features Stipulation and Live Bottom Stipulation and applying them to designated lease blocks in proposed Lease Sale 256.

The additional nine lease stipulations considered for proposed regionwide Lease Sale 256 are the Military Areas Stipulation; the Evacuation Stipulation; the Coordination Stipulation; the Blocks South of Baldwin County, Alabama, Stipulation; the Protected Species Stipulation; the United Nations Convention on the Law of the Sea Royalty Payment Stipulation; the Below Seabed Operations Stipulation; the Stipulation on the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico; and the Timeframe for Decisions on an Application for Permit to Drill (APD) and an Application for Permit to Modify (APM) Stipulation. The Protected Species Stipulation has been updated for this lease sale due to the completion of the Endangered Species Act consultation with the National Marine Fisheries Service and the issuance of a new Biological Opinion addressing OCS oil and gas-related activities in the Gulf of Mexico, including this lease sale. The Timeframe for Decisions on an Application for Permit to Drill (APD) and an Application for Permit to Modify (APM) Stipulation is administrative in nature and addresses the processing and timing of decisions for APDs and APMs by the Bureau of Safety and Environmental Enforcement (BSEE). It does not alter any underlying requirements for those applications and therefore would not be expected to change any environmental effects reasonably foreseeable as a result of this lease sale and any related post-lease activities. As noted, BOEM is adopting these nine stipulations as lease terms where applicable and they are enforceable as part of the lease. Further, Appendix B of the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2017–2022; Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261—Final Multisale Environmental Impact Statement* provides a list and description of standard post-lease conditions of approval that BOEM or BSEE may require as a result of their plan and permit review processes for the Gulf of Mexico OCS region.

After careful consideration, BOEM selected the preferred alternative (Alternative A) in the 2018 GOM Supplemental EIS, with certain additional blocks excluded due to their status, for proposed Lease Sale 256. BOEM is also adopting 11 lease stipulations and all practicable means of mitigation at the lease sale stage. The preferred alternative meets the purpose of and need for the proposed action, as identified in the 2018 GOM Supplemental EIS, and provides for orderly resource development with protection of human, marine, and coastal environments while also ensuring that the public receives a fair market value for these resources and that free-market competition is maintained.

Authority: This Notice of Availability of a Record of Decision is published pursuant to the regulations (40 CFR part 1505) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Michael A. Celata,

Regional Director, New Orleans Office, Department of the Interior Regions 1, 2, 4, and 6, Bureau of Ocean Energy Management.

[FR Doc. 2020–23079 Filed 10–16–20; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2020–0050]

Gulf of Mexico Outer Continental Shelf Region-Wide Oil and Gas Lease Sale 256

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final notice of sale.

SUMMARY: On Wednesday, November 18, 2020, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Region-wide Oil and Gas Lease Sale 256 (GOM Region-wide Sale 256), in accordance with the provisions of the Outer Continental Shelf Lands Act as amended, and the implementing regulations issued pursuant thereto. The GOM Region-wide Sale 256 Final Notice of Sale (NOS) package contains information essential to potential bidders and consists of the NOS, information to lessees, and lease stipulations.

DATES: BOEM will hold GOM Region-wide Sale 256 at 9:00 a.m. on Wednesday, November 18, 2020. All times referred to in this document are Central standard time, unless otherwise specified.

Bid submission deadline: BOEM must receive all sealed bids prior to the Bid Submission Deadline of 10:00 a.m. on Tuesday, November 17, 2020, the day before the lease sale. Bids may be submitted between 8:00 a.m. and 4:00 p.m. on normal working days, until the Bid Submission Deadline. For more information on bid submission, see Section VII, ''Bidding Instructions,'' of this document.

ADDRESSES: Bids will be accepted BY MAIL ONLY, prior to the bid submission deadline, at 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. Public bid reading for GOM Region-wide Sale 256 will be held at 1201 Elmwood Park Boulevard, New Orleans, Louisiana, but the venue will not be open to the general public, media, or industry during bid opening or reading. Bid opening will be available for public viewing on BOEM's website at *www.boem.gov/Sale-256/* via live-streaming video beginning at 9:00 a.m. on the date of the sale. The results will be posted on BOEM's website upon completion of bid opening and reading. Interested parties can download the Final NOS package from BOEM's website at *http://www.boem.gov/Sale-*

256/. Copies of the sale maps can be obtained by contacting the BOEM GOM Region: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF.

FOR FURTHER INFORMATION CONTACT: The New Orleans Office Lease Sale Coordinators at *BOEMGOMRLeaseSales@boem.gov,* 504–736–7502 or 504–736–1729.

Table of Contents

I. Lease Sale Area

Blocks Offered for Leasing: BOEM will offer for bid in this lease sale all of the available unleased acreage in the GOM, except those blocks listed below in ''Blocks Not Offered for Leasing.''

Blocks Not Offered for Leasing: The following whole and partial blocks are not offered for lease in this sale. The BOEM Official Protraction Diagrams (OPDs) and Supplemental Official Block Diagrams are available online at *https://www.boem.gov/Maps-and-GIS-Data/.*

• *Whole and Partial Blocks within the Flower Garden Banks National Marine Sanctuary (East and West Flower Garden Banks and the Stetson Bank):*

Area	OCS block
High Island, East Addition, South Extension (Leasing Map TX7C).	Whole Block: A–398. Partial Blocks: A–366, A–367, A–374, A–375, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401.
High Island, South Addition (Leasing Map TX7B).	Partial Blocks: A–502, A–513.
Garden Banks (OPD NG 15–02)	Partial Blocks: 134, 135.

• *Blocks that are adjacent to or beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap:*

Area	OCS block
Lund South (OPD NG 16–07)	Whole Blocks: 128, 129, 169 through 173, 208 through 217, 248 through 261, 293 through 305, and 349.
Henderson (OPD NG 16–05)	Whole Blocks: 466, 508 through 510, 551 through 554, 594 through 599, 637 through 643, 679 through 687, 722 through 731, 764 through 775, 807 through 819, 849 through 862, 891 through 905, 933 through 949, and 975 through 992. Partial Blocks: 335, 379, 423, 467, 511, 555, 556, 600, 644, 688, 732, 776, 777, 820, 821, 863, 864, 906, 907, 950, 993, and 994.
Florida Plain (OPD NG 16–08)	Whole Blocks: 5 through 24, 46 through 67, 89 through 110, 133 through 154, 177 through 197, 221 through 240, 265 through 283, 309 through 327, and 363 through 370.

• *All whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006, Public Law 109–432:*

Area	OCS block
Pensacola (OPD NH 16–05)	Whole Blocks: 751 through 754, 793 through 798, 837 through 842, 881 through 886, 925 through 930, and 969 through 975.
Destin Dome (OPD NH 16–08)	Whole Blocks: 1 through 7, 45 through 51, 89 through 96, 133 through 140, 177 through 184, 221 through 228, 265 through 273, 309 through 317, 353 through 361, 397 through 405, 441 through 450, 485 through 494, 529 through 538, 573 through 582, 617 through 627, 661 through 671, 705 through 715, 749 through 759, 793 through 804, 837 through 848, 881 through 892, 925 through 936, and 969 through 981.
DeSoto Canyon (OPD NH 16–11)	Whole Blocks: 1 through 15, 45 through 59, and 92 through 102. Partial Blocks: 16, 60, 61, 89 through 91, 103 through 105, and 135 through 147.
Henderson (OPD NG 16–05)	Partial Blocks: 114, 158, 202, 246, 290, 334, 335, 378, 379, 422, and 423.

• *Depth-restricted, segregated block portion(s):*

Block 299, Main Pass Area, South and East Addition (as shown on Louisiana Leasing Map LA10A), containing 1,125 acres, from the surface of the earth down to a subsea depth of 1,900 feet with respect to the following described portions:

$SW_{1/4}NE_{1/4}$; $NW_{1/4}SE_{1/4}NE_{1/4}$; $W_{1/2}NE_{1/4}SE_{1/4}NE_{1/4}$; $S_{1/2}S_{1/2}NW_{1/4}NE_{1/4}$; $S_{1/2}SW_{1/4}NE_{1/4}NE_{1/4}$; $S_{1/2}SW_{1/4}SE_{1/4}NE_{1/4}NE_{1/4}$; $N_{1/2}SW_{1/4}SE_{1/4}NE_{1/4}$; $SW_{1/4}SW_{1/4}SE_{1/4}NE_{1/4}$; $NW_{1/4}SE_{1/4}SE_{1/4}$ $NE_{1/4}$; $N_{1/2}NW_{1/4}SW_{1/4}SE_{1/4}SE_{1/4}NE_{1/4}$; $N_{1/2}SE_{1/4}SW_{1/4}SE_{1/4}NE_{1/4}$; $N_{1/2}S_{1/2}SE_{1/4}SW_{1/4}SE_{1/4}NE_{1/4}$; $S_{1/2}NE_{1/4}NW_{1/4}$; $S_{1/2}S_{1/2}N_{1/2}NE_{1/4}NW_{1/4}$; $N_{1/2}SE_{1/4}NW_{1/4}$;$S_{1/2}SE_{1/4}NW_{1/4}NW_{1/4}$; $NE_{1/4}SE_{1/4}$ $NW_{1/4}NW_{1/4}$; $E_{1/2}NE_{1/4}SW_{1/4}NW_{1/4}$; $N_{1/2}SE_{1/4}SE_{1/4}NW_{1/4}$; $NE_{1/4}SW_{1/4}SE_{1/4}NW_{1/4}$; $N_{1/2}NW_{1/4}SW_{1/4}SE_{1/4}SW_{1/4}NW_{1/4}$; $SE_{1/4}SE_{1/4}SE_{1/4}NW_{1/4}$; $E_{1/2}SW_{1/4}SE_{1/4}SE_{1/4}NW_{1/4}$; $N_{1/2}NW_{1/4}NE_{1/4}SW_{1/4}NW_{1/4}$; $N_{1/2}S_{1/2}NW_{1/4}NE_{1/4}SW_{1/4}NW_{1/4}$; $N_{1/2}N_{1/2}NE_{1/4}NE_{1/4}NE_{1/4}SW_{1/4}$; $N_{1/2}N_{1/2}N_{1/2}NW_{1/4}NW_{1/4}SE_{1/4}$; $N_{1/2}N_{1/2}NW_{1/4}NE_{1/4}NW_{1/4}SE_{1/4}$.

• *The following whole or partial blocks, whose lease status is currently under appeal:*

Area	OCS block
Keathley Canyon (OPD NG15–05)	246, 247, 290, 291, 292, 335, 336.
Vermillion Area (Leasing Map LA3)	Partial Block 179.
Atwater Valley (OPD NG16–01)	63.
Alaminos Canyon (OPN LN15–04)	557, 601.

• *Whole or partial blocks that have received bids in previous sales, where the bidder has sought reconsideration of BOEM's rejection of the bid are not offered in this sale, unless the reconsideration request is fully resolved at least 30 days prior to publication of the Final NOS.*

The list of blocks available can be found under the Sale 256 link at *https://www.boem.gov/Sale-256* under the Final NOS tab.

II. Statutes and Regulations

Each lease is issued pursuant to OCSLA, 43 U.S.C. 1331–1356, as amended, and is subject to OCSLA implementing regulations promulgated pursuant thereto in 30 CFR part 556, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is also subject to amendments to statutes and regulations, including but not limited to OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease.

III. Lease Terms and Economic Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (February 2017) to convey leases resulting from this sale. This lease form can be viewed on BOEM's website at *http://www.boem.gov/BOEM-2005.* The lease form will be amended to include specific terms, conditions, and stipulations applicable to the individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Primary Term

Primary Terms are summarized in the following table:

Water depth (meters)	Primary term
0 to <400	The primary term is 5 years; the lessee may earn an additional 3 years (*i.e.,* for an 8-year extended primary term) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVDSS) during the first 5 years of the lease.
400 to <800	The primary term is 5 years; the lessee will earn an additional 3 years (*i.e.,* for an 8-year extended primary term) if a well is spudded during the first 5 years of the lease.
800+	10 years.

(1) The primary term for a lease in water depths less than 400 meters issued as a result of this sale is 5 years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVDSS within the first 5 years of the lease, then the lessee may earn an additional 3 years, resulting in an 8-year primary term. The lessee will earn the 8-year primary term when the well is drilled to a target below 25,000 feet TVDSS, or the lessee may earn the 8-year primary term in cases where the well targets, but does not reach a depth below 25,000 feet TVDSS due to mechanical or safety reasons, and where the lessee provides sufficient evidence that it did not reach that target for reasons beyond the lessee's control. To earn the 8-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after completion of the drilling operation, providing the well number, spud date, information demonstrating a target below 25,000 feet TVDSS and whether that target was reached, and if applicable, any safety, mechanical, or other problems encountered that prevented the well from reaching a depth below 25,000 feet TVDSS. This letter must request confirmation that the lessee earned the 8-year primary term. The BOEM GOM Regional Supervisor for Leasing and Plans will confirm in writing, within 30 days of receiving the lessee's letter, whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM. A lessee that has earned the 8-year primary term by spudding a well with a hydrocarbon target below 25,000 feet TVDSS during the standard 5-year primary term of the lease will not be granted a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The primary term for a lease in water depths ranging from 400 to less than 800 meters issued as a result of this sale is 5 years. If the lessee spuds a well within the 5-year primary term of the lease, the lessee will earn an additional 3 years, resulting in an 8-year primary term. To earn the 8-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after spudding a well, providing the well number and spud date, and requesting confirmation that the lessee earned the 8-year primary term. Within 30 days of receipt of the request, the BOEM GOM Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

(3) The primary term for a lease in water depths 800 meters or deeper issued as a result of this sale is 10 years.

Economic Conditions

Minimum Bonus Bid Amounts

BOEM will not accept a bonus bid unless it provides for a cash bonus in an amount equal to, or exceeding, the

specified minimum bid, as described below.

- $25 per acre or fraction thereof for blocks in water depths less than 400 meters; and
- $100 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth (meters)	Years 1–5	Years 6, 7, & 8+
0 to <200	$7	$14, $21, & $28.
200 to <400	11	$22, $33, & $44.
400+	11	$16.

Escalating Rental Rates for Leases With an 8-Year Primary Term in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an 8-year primary term will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate, if another well is spudded targeting hydrocarbons below 25,000 feet TVDSS after the fifth year of the lease, and BOEM concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 12.5 percent for leases situated in water depths less than 200 meters; and
- 18.75 percent for leases situated in water depths of 200 meters and deeper.

Minimum Royalty Rate

- $7 per acre or fraction thereof per year for blocks in water depths less than 200 meters; and
- $11 per acre or fraction thereof per year for blocks in water depths 200 meters or deeper.

Royalty Suspension Provisions

The issuance of leases with Royalty Suspension Volumes (RSVs) or other forms of royalty relief is authorized under existing BOEM regulations at 30 CFR part 560. The specific details relating to eligibility and implementation of the various royalty relief programs, including those involving the use of RSVs, are codified in Bureau of Safety and Environmental Enforcement (BSEE) regulations at 30 CFR part 203. In this sale, the only royalty relief program being offered that involves the provision of RSVs relates to the drilling of ultra-deep wells in water depths of less than 400 meters, as described in the following section.

Royalty Suspension Volumes on Gas Production From Ultra-Deep Wells

Pursuant to 30 CFR part 203, certain leases issued as a result of this sale may be eligible for RSV incentives on gas produced from ultra-deep wells. Under this program, wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVDSS or deeper receive an RSV of 35 billion cubic feet on the production of natural gas. This RSV incentive is subject to applicable price thresholds set forth in the regulations at 30 CFR part 203. These regulations implement the requirements of the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 594 (2005)).

IV. Lease Stipulations

Consistent with the Record of Decision for the Final Programmatic Environmental Impact Statement for the 2017–2022 Five Year OCS Oil and Gas Leasing Program, Stipulation No. 5 (Topographic Features) and Stipulation No. 8 (Live Bottom) apply to every lease sale in the GOM Program Area. One or more of the remaining nine stipulations may be applied to leases issued as a result of this sale, on applicable blocks as identified on the map ''Gulf of Mexico Region-wide Oil and Gas Lease Sale 256, November 2020, Stipulations and Deferred Blocks'' included in the Final NOS package. The full text of the following stipulations is contained in the ''Lease Stipulations'' section of the Final NOS package.

(1) Military Areas
(2) Evacuation
(3) Coordination
(4) Protected Species
(5) Topographic Features
(6) United Nations Convention on the Law of the Sea Royalty Payment
(7) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico
(8) Live Bottom
(9) Blocks South of Baldwin County, Alabama
(10) Restrictions due to Rights-of-Use and Easement for Floating Production Facilities
(11) Timeframe for Decisions on an Application for Permit to Drill and an Application for Permit to Modify

V. Information to Lessees

Information to Lessees (ITLs) provide detailed information on certain issues pertaining to specific oil and gas lease sales. The full text of the ITLs for this sale is contained in the ''Information to Lessees'' section of the Final NOS package and covers the following topics:

(1) Navigation Safety
(2) Ordnance Disposal Areas
(3) Existing and Proposed Artificial Reefs/Rigs-to-Reefs
(4) Lightering Zones
(5) Indicated Hydrocarbons List
(6) Military Areas
(7) Bureau of Safety and Environmental Enforcement Inspection and Enforcement of Certain U.S. Coast Guard Regulations
(8) Significant Outer Continental Shelf Sediment Resource Areas
(9) Notice of Arrival on the Outer Continental Shelf
(10) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
(11) Protected Species
(12) Proposed Expansion of the Flower Garden Banks National Marine Sanctuary
(13) Communication Towers
(14) Deepwater Port Applications for Offshore Oil and Liquefied Natural Gas Facilities
(15) Ocean Dredged Material Disposal Sites
(16) Rights-of-Use and Easement
(17) Industrial Waste Disposal Areas
(18) Gulf Islands National Seashore
(19) Air Quality Permit/Plan Approvals
(20) Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

VI. Maps

The maps pertaining to this lease sale can be viewed on BOEM's website at *http://www.boem.gov/Sale-256/.* The following maps also are included in the Final NOS package:

Lease Terms and Economic Conditions Map

The lease terms and economic conditions associated with leases of certain blocks are shown on the map entitled ''Gulf of Mexico Region-wide Oil and Gas Lease Sale 256, November 2020, Lease Terms and Economic Conditions.''

Stipulations and Deferred Blocks Map

The lease stipulations and the blocks to which they apply are shown on the map entitled ''Gulf of Mexico Region-wide Oil and Gas Lease Sale 256, November 2020, Stipulations and Deferred Blocks Map.''

VII. Bidding Instructions

Bids may be submitted BY MAIL ONLY at the address below in the ''Mailed Bids'' section. Bidders should be aware that BOEM has eliminated in-person bidding for Lease Sale 256. Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and the information to be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333 percent);
- Typed name and title, and signature of each bidder's authorized officer;
- Each bidder's qualification number;
- Map name and number or OPD name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including the requirement to post a deposit in the amount of one-fifth of the bonus bid amount for any tract bid upon and make payment of the balance of the bonus bid and first year's rental upon BOEM's acceptance of high bids.

The information required for each bid is specified in the document ''Bid Form'' that is available in the Final NOS package which can be found at *http://www.boem.gov/Sale-256/.* A blank bid form is provided in the Final NOS package for convenience and can be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for GOM Region-wide Sale 256, not to be opened until 9 a.m. Wednesday, November 18, 2020;''
- Map name and number or OPD name and number;
- Block number for block bid upon;
- Acreage, if the bid is for a block that is split between the Central and Eastern Planning Areas; and
- The exact name and qualification number of the submitting bidder only.

The Final NOS package includes a sample bid envelope for reference.

Mailed Bids

Please address the envelope containing the sealed bid envelope(s) as follows:

Attention: Leasing and Financial Responsibility Section, BOEM New Orleans Office, 1201 Elmwood Park Boulevard MS–266A, New Orleans, Louisiana 70123–2394.

Contains Sealed Bids for GOM Region-wide Sale 256. lease Deliver to Mrs. Bridgette Duplantis or Mr. Greg Purvis 2nd Floor, Immediately

Please Note: Bidders mailing bid(s) are advised to inform BOEM by email at *boemgomrleasesales@boem.gov* immediately after placing bid(s) in the mail. This provides advance notice to BOEM regarding pending bids prior to the bid submission deadline. However, if BOEM receives bids later than the bid submission deadline, the BOEM GOM Regional Director (RD) will return those bids unopened to bidders. Please see ''Section XI. Delay of Sale'' regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.,* flooding) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that ever have defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend an area-wide development bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

Please provide, at the time of bid submittal, a confirmation or tracking number for the payment, the name of the company submitting the payment as it appears on the payment, and the date the payment was submitted so BOEM can confirm payment with the Office of Natural Resources Revenue (ONRR). Submitting payment to the bidders' financial institution at least five business days prior to bid submittal helps ensure that the Office of Foreign Assets Control and the U.S. Department of the Treasury (U.S. Treasury) have the needed time to screen and process payments so they are posted to ONRR prior to placing the bid. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. Bids will not be accepted if BOEM cannot confirm payment with ONRR.

If providing a third-party guarantee, amending an area-wide development bond via bond rider, or providing a letter of credit to secure your one-fifth bonus bid deposit, bidders are urged to file the same documents with BOEM, well in advance of submitting the bid, to allow processing time and for bidders to take any necessary curative actions prior to bid submission. For more information on EFT procedures, see Section X of this document entitled, ''The Lease Sale.''

Affirmative Action

Prior to bidding, each bidder should file the Equal Opportunity Affirmative Action Representation Form BOEM–2032 (February 2020, available on BOEM's website at *http://www.boem.gov/BOEM-2032/*) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (February 2020, available on BOEM's website at *http://www.boem.gov/BOEM-2033/*) with the BOEM GOM Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order (E.O.) 11246, issued September 24, 1965, as amended by E.O. 11375, issued October 13, 1967, and by Executive Order 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) A ''Statement'' page that includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid upon that did not use proprietary data;

(2) A ''Table'' listing the required data about each proprietary survey used (see below); and

(3) ''Maps,'' which contain the live trace maps for each proprietary survey that is identified in the GDIS statement and table.

Every bidder submitting a bid on a block in GOM Region-wide Sale 256 or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

The bidder or bidders must submit the GDIS in a separate and sealed envelope, and must identify all proprietary data; reprocessed speculative data, and/or any Controlled

Source Electromagnetic surveys, Amplitude Versus Offset (AVO) data, Gravity data, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (*e.g.,* .pdf and ArcGIS shapefile) for each proprietary survey identified in the GDIS illustrating the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). The shape file must not include cultural resources information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address for a contact person and an alternate, who are both knowledgeable about the geophysical information and data listed and who are available for 30 days after the sale date. The GDIS statement also must include a list of all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. *Bidders must submit the GDIS statement even if no proprietary geophysical data and information were used in bid preparation for the block.*

An example of the preferred format of the table is included in the Final NOS package, and a blank digital version of the preferred table can be accessed on the GOM Region-wide Sale 256 webpage at *http://www.boem.gov/Sale-256.* The GDIS table should have columns that clearly state the following:

- The sale number;
- The bidder company's name;
- The joint bidder's company's name (if applicable);
- The company providing Proprietary Data to BOEM;
- The block area and block number bid upon;
- The owner of the original data set (*i.e.,* who initially acquired the data);
- The industry's original name of the survey (*e.g.,* E Octopus);
- The BOEM permit number for the survey;
- Whether the data set is a fast-track version;
- Whether the data is speculative or proprietary;
- The data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; time or depth);
- The migration algorithm (*e.g.,* Kirchhoff migration, wave equation migration, reverse migration, reverse time migration) of the data and areal extent of bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D);
- The live proprietary survey coverage (2–D miles 3–D blocks);
- The computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block;
- Who reprocessed the data;
- Date the final reprocessing was completed (month and year);
- If data were previously sent to BOEM, list the sale number and date of the sale for which it was used;
- Whether proprietary or speculative AVO/AVA (PROP/SPEC) was used;
- Date AVO or AVA was sent to BOEM if sent prior to the sale;
- Whether AVO/AVA is time or depth (PSTM or PSDM);
- Which angled stacks were used (*e.g.,* NEAR, MID, FAR, ULTRAFAR);
- Whether the company used Gathers to evaluate the block in question; and
- Whether the company used Vector Offset Output (VOO) or Vector Image Partitions (VIP) to evaluate the block in question.

BOEM will use the computer storage size information to estimate the reproduction costs for each data set, if applicable. BOEM will determine the availability of reimbursement of production costs consistent with 30 CFR 551.13.

BOEM reserves the right to inquire about alternate data sets, to perform quality checks, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. See the ''Example of Preferred Format'' that is included in the Final NOS package.

The GDIS maps are live trace maps (*e.g.,* .pdf and ArcGIS shapefiles) that bidders should submit for each proprietary survey identified in the GDIS table. The maps should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). As previously stated, the shapefile must not include cultural resources information, only the live trace map of the survey itself.

Pursuant to 30 CFR 551.12 and 30 CFR 556.501, as a condition of the sale, the BOEM GOM Regional Director requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data should not be submitted to BOEM unless specifically requested by BOEM. No reimbursement will be provided for unsolicited data sent to BOEM. The BOEM GOM RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Where the BOEM GOM RD has notified bidders and joint bidders that the request for such proprietary data has been withdrawn, reimbursement will not be provided. Pursuant to 30 CFR part 551 and 30 CFR 556.501, as a condition of this sale, all bidders that are required to submit data must ensure that the data are received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday.

The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, Louisiana 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation: ''Geophysical Data and Information Statement for Oil and Gas Lease Sale 256'', Company Name, GOM Company Qualification Number, and ''Proprietary Data.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM user account is needed to register or update an entity's records. The website for registering is *gsa.gov/iaesystems.*

(2) Must be enrolled in the U.S. Treasury's Invoice Processing Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When submitting a request for payment, the assigned Purchase Order Number must be included.

(3) Must have a current On-line Representations and Certifications Application at *gsa.gov/iaesystems.*

Please Note: A digital as well as a hardcopy should be sent in for the GDIS Statement, Table and Maps. The GDIS Statement should be sent in as a digital PDF. The GDIS Information Table must be submitted digitally as an Excel spreadsheet.

The Proprietary Maps should be sent in as PDF files and the live trace outline of each proprietary survey should also be submitted as a shapefile. Please flatten all layered PDF files, since layered PDFs can have many objects. Layered PDFs can cause problems opening or printing the file correctly. Bidders may submit the digital files on a CD, DVD, or any USB external drive (formatted for Windows). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Ms. Teree Campbell at (504) 736–3231.

Bidders should refer to Section X of this document, ''The Lease Sale: Acceptance, Rejection, or Return of Bids,'' regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS or Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format is included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 30 CFR 556.401, 30 CFR 556.501, and 30 CFR 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On September 24, 2020, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 85 FR 60266. Potential bidders are advised to refer to the **Federal Register,** prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511–515.

Authorized Signatures

All signatories executing documents on behalf of bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including that requiring payment of one-fifth of the bonus bid on all high bids. A statement to this effect is included on each bid form (see the document ''Bid Form'' that is included in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the bid submission deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed by one or more of the representatives named in the BOEM qualification records. The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM GOM RD, or the RD's designee, will indicate approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks is shown in the document ''List of Blocks Available for Leasing'' included in the Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM will round up to the next whole acre. The appropriate minimum rate per acre will be applied to the whole (rounded up) acreage. The bonus bid amount must be greater than or equal to the minimum bonus bid so calculated and stated in the Final NOS package.

IX. Forms

The Final NOS package includes instructions, samples, and/or the preferred format for the items listed below. BOEM strongly encourages bidders to use the recommended formats. If bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified under the **DATES** and **ADDRESSES** sections of the Final NOS. The venue will not be open to the public. Instead, the bid opening will be available for the public to view on BOEM's website at *www.boem.gov* via live streaming. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to ONRR equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount can be obtained on the BOEM website at *http://www.boem.gov/Sale-256* under the heading ''Notification of EFT 1/5 Bonus Liability'' after 1:00 p.m. on the day of the sale. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury by 1:00 p.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM website identified above.

Submitting payment to your financial institution as soon as possible the day of bid reading, but no later than 7:00 p.m. Eastern Time the day of bid reading, will help ensure that deposits have time to process through the U.S. Treasury and post to ONRR. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for GOM Region-wide Sale 256, following the detailed instructions contained on the ONRR Payment Information web page at *https://www.onrr.gov/ReportPay/payments.htm.* Acceptance of a deposit does not constitute, and will not be construed as, acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all applicable regulations and requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package;

(2) The bid is the highest valid bid; and

(3) The amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS package, OCSLA, or other applicable statute or regulation will be rejected and returned to the bidder. The United States Department of Justice and the Federal Trade Commission will review the results of the lease sale for antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for GOM Region-Wide Sale 256

To ensure that the U.S. Government receives fair market value for the conveyance of leases from this sale, BOEM will evaluate high bids in accordance with its bid adequacy procedures, which are available on BOEM's website at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

Lease Award

BOEM requires each bidder awarded a lease to complete the following:

(1) Execute all copies of the lease (Form BOEM–2005 [February 2017], as amended);

(2) Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.520(a); and

(3) Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended.

ONRR requests that only one transaction be used for payment of the balance of the bonus bid amount and the first year's rental. Once ONRR receives such payment, the bidder awarded the lease may not request a refund of the balance of the bonus bid amount or first year's rental payment.

XI. Delay of Sale

The BOEM GOM RD has the discretion to change any date, time, and/or location specified in the Final NOS package in the case of an event that the BOEM GOM RD deems could interfere with a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM website at *http://www.boem.gov,* for information regarding any changes.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2020–23077 Filed 10–16–20; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1222]

Certain Video Processing Devices, Components Thereof, and Digital Smart Televisions Containing the Same; Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 10, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of DivX, LLC of San Diego, California. The complaint was supplemented on September 15 and 22, 2020. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video processing devices, components thereof, and digital smart televisions containing the same by reason of infringement of one or more claims of U.S. Patent No. 8,832,297 (''the '297 patent''); U.S. Patent No. 10,212,486 (''the '486 Patent); U.S. Patent No. 10,412,141 (''the '141 patent''); and U.S. Patent No. 10,484,749 (''the '749 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 13, 2020, 2020, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–11, 14–29, and 32–39 of the '297 patent; claims 1–5, 7–10, 13–19, and 21–25 of the '486 patent; claims 1–3, 5–11, 20–22, and 26–30 of the '141 patent; claims 1–18 of the '749 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is: ''video processing devices, consisting of printed circuit board assemblies for use in video processing in digital smart televisions and associated software and/or firmware, components thereof, consisting of integrated circuits containing video processors and associated software and/or firmware, and digital smart televisions containing the same, consisting of digital smart televisions containing such video processing devices and/or components'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

DivX, LLC, 4350 La Jolla Village Drive, Suite 950, San Diego, CA 92122.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., 129, Samsung-Ro, Maetan-3dong, Yeongtong-Gu, Suwon-si, Gyeonggi-do, 16677, Rep. of Korea.

Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660.

Samsung Electronics HCMC CE Complex, Co., Ltd., Lot I–11, D2 Road, Saigon Hi-Tech Park, Tang Nhon Phu B Ward, District 9, Ho Chi Minh City, 700000, Vietnam.

LG Electronics Inc., LG Twin Tower, 128, Yeoui-daero, Yeongdeungpo-gu, Seoul, 07336, Rep. of Korea.

LG Electronics USA, Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

TCL Corporation, TCL Technology Building, No. 17 Huifeng 3rd Road, Zhongkai High-Tech Development District, Huizhou, Guangdong, 516001, China.

TCL Technology Group Corporation, TCL Technology Building, 22/F, No. 17 Huifeng 3rd Road, Zhongkai High-Tech Development District, Huizhou, Guangdong, 516001, China.

TCL Electronics Holdings Limited, 9 Floor, TCL Electronics Holdings Limited Building, TCL International E City, #1001 Zhongshan Park Road, Nanshan District, Shenzhen, Guangdong, 518067, China.

TTE Technology, Inc., 1860 Compton Avenue, Corona, CA 92881.

Shenzhen TCL New Technologies Co. Ltd., 9 Floor, TCL Electronics Holdings Limited Building, TCL International E City, #1001 Zhongshan Park Road, Nanshan District, Shenzhen, Guangdong, 518067, China.

TCL King Electrical Appliances (Huizhou) Co. Ltd., No. 78, 4th Huifeng Rd., Zhongkai New & High-Tech Industries Development Zone, Huizhou, Guangdong, 516006, China.

TCL MOKA International Limited, 7/F Hong Kong Science Park, Building 22 E, 22 Science Park East Avenue, Sha Tin, New Territories, Hong Kong (SAR).

TCL Smart Device (Vietnam) Co., Ltd, No. 26 VSIP II–A, Street 32, Vietnam Singapore Industrial Park II–A, Tan Binh Commune, Bac Tan Uyen District, Binh Duong Province, 75000, Vietnam.

MediaTek Inc., No. 1, Dusing 1st Road, Hsinchu Science Park, Hsinchu City, 30078, Taiwan.

MediaTek USA Inc., 2840 Junction Avenue, San Jose, California 95134.

MStar Semiconductor, Inc., 4F–1, No. 26, Tai-Yuan St., ChuPei City, Hsinchu Hsien 302, Taiwan.

Realtek Semiconductor Corp., No. 2, Innovation Road II, Hsinchu Science Park, Hsinchu 300, Taiwan.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: October 14, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–23056 Filed 10–16–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electric Shavers and Components and Accessories Thereof, DN 3501;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Skull Shaver, LLC on October 13, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electric shavers and components and accessories thereof. The complaint names as respondents: Rayenbarny Inc. d.b.a. AsaVea of New York, NY; Bald Shaver Inc. of Canada; Suzhou Kaidiya Garments Trading Co., Ltd. d.b.a. Digimator of China; Shenzhen Aiweilai Trading Co., Ltd. d.b.a. Teamyo of China; Wenzhou Wending Electric Appliance Co., Ltd. d.b.a. Paitree of China; Shenzhen Nukun Technology Co., Ltd. d.b.a. OriHea of China; Yiwu Xingye Network Technology Co. Ltd. d.b.a. Roziapro of China; Magicfly LLC of Hong Kong; Yiwu City Qiaoyu Trading Co., Ltd. d.b.a. Surker; Shenzhen Wantong Information Technology Co., Ltd. d.b.a. WTONG of China; and Shenzhen Junmao International Technology Co., Ltd. d.b.a. Homeasy of China. The complainant requests that the Commission issue a general exclusion order or in the alternative issue a limited exclusion

order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3501'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 14, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–23103 Filed 10–16–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1158]

Certain Digital Video Receivers, Broadband Gateways, and Related Hardware and Software Components; Commission Decision To Review in Part an Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337. The Commission requests written submissions from the parties on the issues under review and from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On May 29, 2019, the Commission instituted this investigation based on a complaint filed by Rovi Corporation and Rovi Guides, Inc. (collectively, ''Rovi''), both of San Jose, California. 84 FR 24814–15 (May 29, 2019). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as

amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital video receivers, broadband gateways, and related hardware and software components by reason of infringement of certain claims of U.S. Patent Nos. 7,779,445 (''the '445 patent''); 7,200,855 (''the '855 patent''); 8,156,528 (''the '528 patent''); 8,001,564 (''the '564 patent''); 7,301,900 (''the '900 patent''); and 7,386,871 (''the '871 patent''). The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named as respondents Comcast Corporation, Comcast Cable Communications, LLC, Comcast Cable Communications Management, LLC, and Comcast Holdings Corporation (collectively, ''Comcast''), all of Philadelphia, Pennsylvania. The Office of Unfair Import Investigations (''OUII'') is partially participating in the investigation. The '528, '855, and '445 patents remain in the investigation and the '564, '900, and '871 patents have been terminated from the investigation. Order No. 18 (Sept. 30, 2019), *unreviewed by* Comm'n Notice (Oct. 15, 2019).

On July 14, 2020, the ALJ issued a written *Markman* Order. *See* Order No. 41 (Jul. 14, 2020).

On July 28, 2020, the ALJ issued the final ID finding a violation of section 337 as to the '528 and '855 patents based on infringement of the asserted claims by Comcast's accused products. Specifically, the ID found that: (1) Comcast's accused products infringe claims 13, 27, and 30 of the '528 patent and claims 60 and 63 of the '855 patent; (2) Comcast's accused products do not infringe asserted claim 5 of the '445 patent; (3) the asserted claims of the '528 and '855 patents are not invalid; (4) claims 5 and 15 of the '445 patent are invalid as anticipated under 35 U.S.C. 102(g)(2) by Comcast's VOD Vision System; and (5) Rovi has satisfied both prongs of the domestic industry requirement. The final ID also included the ALJ's recommended determination, which recommended the issuance of a limited exclusion order directed to Comcast's infringing products and a cease and desist order directed to Comcast.

On August 10, 2020, Rovi petitioned, and Comcast petitioned and contingently petitioned, for review of the final ID. On August 18, 2020, Rovi and Comcast each filed a response in opposition to the other party's petition for review.

Having reviewed the record of the investigation, including the parties' petitions and responses thereto, the Commission has determined to review the subject ID in part. Specifically, the Commission has determined to review: (1) Order No. 41's and the ID's construction of the claim limitations: ''same functions,'' ''personal video recorder device,'' ''personal video recorder-compliant device,'' ''personal video recorder functionality,'' and ''first interactive television program guide . . . are implemented'' (''where the first interactive television program guide and the second interactive program guide . . . are distinctly implemented'') of asserted claims 13, 27, and 30 of the '528 patent; (2) the ID's finding that Comcast's Accused Products infringe the asserted claims of the '528 patent and that the asserted claims are not invalid; (3) the ID's finding that Rovi has satisfied the technical prong of the domestic industry requirement with respect to the '528 patent; (4) the ID's identification of Comcast's products that infringe the asserted claims of the '855 patent; (5) the ID's finding that Comcast's redesigns for the '855 patent are not sufficiently fixed in design to warrant adjudication; (6) the ID's finding that the Accused Products are not ''articles that infringe'' claim 5 of the '445 patent; (7) the ID's finding that claims 5 and 15 of the '445 patent are invalid as anticipated under 35 U.S.C. 102(g)(2) by Comcast's VOD Vision System; (8) the ID's finding that Comcast has engaged in sales within the United States after importation of accused products in accordance with section 337(a)(1)(B); and (9) the ID's finding that Rovi satisfied the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the ID.

The parties are requested to brief their positions with reference to the applicable law and the evidentiary record regarding the questions provided below:

(1) Please explain, with citations to the record, how construing the limitation ''same functions'' of claims 13, 27 and 30 of the '528 patent to mean ''all of the same functions'' would impact the findings on infringement.

(2) Please explain, with citations to the record, how construing the limitations ''personal video recorder device,'' ''personal video recorder-compliant device,'' and ''personal video recorder functionality'' of claims 13, 27 and 30 of the '528 patent not to require (1) recording to local storage and (2) the automatic recording of programs that users are watching in real-time would impact the findings on infringement and validity.

(3) Please explain, with citations to the record, how construing the limitation ''first interactive television program guide . . . are implemented'' of claims 13, 27 and 30 of the '528 patent to ''include the components of a system that can manipulate guide data and user inputs to provide an interactive, visual display of media listings and other guidance functions'' would impact the findings on infringement.

(4) Please explain whether (a) the documents provided by SeaChange (RX–0053), (b) the 10/24/02 *Baltimore Sun* article (RX–60), or (c) Ms. Scilingo's own contemporaneous documents, individually or in combination, are legally sufficient to corroborate Ms. Scilingo's testimony with respect to 35 U.S.C. 102(g). Discuss any relevant case law for each.

(5) Please address whether the practice in the United States of the method of claim 5 of the '445 patent by Comcast's X1 System using an accused set-top box along with other components makes the box an ''article that—infringes'' under section 337(a)(1)(B), taking into account the nature of the accused product, the combination with other components, and the specific limitations of claim 5. Please support your response with reference to the statutory language, legislative history and Commission and court precedent regarding the scope of section 337.

(6) With respect to whether there is a violation concerning the '445 patent, how should the fact that an article would be an ''article that—infringes'' based on an importer's indirect infringement (through supply of an imported article to an infringing third party that directly infringes an asserted claim) inform the Commission's consideration of whether the same article is an ''article that—infringes'' based on the importer's (own) direct infringement?

(7) Please comment on the following possible approaches to evaluating whether an importer's own practice of a patented method using a combination of an imported article with other articles may give rise to a section 337 violation. Also discuss whether, under each of these approaches, there would be a violation of section 337 with respect to claim 5 of the '445 patent given the facts in this investigation.

a. drawing guidance from the provisions of 35 U.S.C. 271(b), concerning inducement of infringement, and therefore examining, *inter alia,* whether the imported article is a device

distributed with the purpose of bringing about infringing acts.

b. drawing guidance from the provisions of 35 U.S.C. 271(c), concerning contributory infringement, (which is one of the few parts of section 271 that specifically references components of an infringing invention), and therefore examining:

(i) whether the imported article is a material part of the invention, known to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

(ii) whether the imported article is a material part of the invention and specifically designed for use in the combination that practices the patented invention.

(8) For each of the two redesigns individually and in combination, please explain whether Rovi has preserved arguments as to infringement in light of its admissions of noninfringement. *See* Tr. at 1402 (Kamprath). If so, please explain whether each of the two redesigns, individually and in combination, infringe or do not infringe the asserted claims of the '855 patent. Please explain whether each redesign alters the accused products physically or alters the code that resides on the accused products to turn off the MoCA functionality. Please also explain whether any redesigned articles have been imported, and whether, for redesigned articles that have yet to be imported, whether the redesigns would be imported with the physical alterations and/or altered code. (add line space)

(9) Please explain, on a patent-by-patent basis, how Complainants' claimed investments are significant under Section 337(a)(3)(A) and (B). *See Lelo Inc.* v. *Int'l Trade Comm'n,* 786 F.3d 879, 883–84 (Fed. Cir. 2015); *Certain Carburetors and Products Containing Such Carburetors,* Inv. No. 337–TA–1123, Comm'n Op. at 17–19 (Oct. 28, 2019).

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review that specifically address the Commission's questions set forth in this notice.[1] The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainants are also requested to identify the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on October 23, 2020. Reply submissions must be filed no later than the close of business on October 30, 2020. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1158'') in a prominent place on the cover page and/or the first page. (*See* Handbook on Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the

[1] In seeking briefing on these issues, the Commission has not determined to excuse any party's noncompliance with Commission rules and the ALJ's procedural requirements, including requirements to present issues in petitions and pre-hearing and post-hearing submissions. *See, e.g.,* Order No. 2 (June 7, 2019) (ground rules); 19 CFR 210.43(a)(2). The Commission may, for example, decline to disturb certain findings in the final ID upon finding that issue was not presented in a timely manner to the ALJ or to the Commission.

programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for this determination took place on October 9, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 13, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–23020 Filed 10–16–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–77]

Fresh, Chilled, or Frozen Blueberries; Institution of Investigation, Scheduling of Public Hearings, and Determination That the Investigation Is Extraordinarily Complicated, Amendment

AGENCY: United States International Trade Commission.

ACTION: Notice; amendment.

SUMMARY: The Commission published a notice in the **Federal Register** of October 9, 2020, concerning the institution and scheduling of investigation No. TA–201–77 pursuant to section 202 of the Trade Act of 1974 (''the Act'') to determine whether fresh, chilled, or frozen blueberries are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported articles. 85 FR 64162. This amended notice corrects a Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting number provided in the original notice, and corrects the citation to the statutory authority for the notice.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Amendment.—In the section of the original notice entitled ''Background,'' in FR Doc. 2020–22423, on page 64163, in the first column, line 20, replace HTSUS statistical reporting number ''0811.90.2010'' with ''0811.90.2040''. Accordingly, the amended description of the imported articles should read as follows. ''The imported articles covered by this investigation are fresh, chilled, or frozen blueberries (''blueberries''). For Customs purposes, the blueberries covered by the investigation are provided for under Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 0810.40.0024; 0810.40.0026; 0810.40.0029; 0811.90.2024; 0811.90.2030; and 0811.90.2040. These HTSUS numbers are provided for convenience, and the written description of the scope is dispositive.''

In addition, in FR Doc. 2020–22423, on page 64164, in the first column, line 58, replace ''section 203(b)(3)'' with ''section 202(b)(3).'' Accordingly, the last paragraph of the notice should read as follows:

Authority: This investigation is being conducted under authority of Section 202 of the Act; this notice is published pursuant to section 202(b)(3) of the Act.''

By order of the Commission.

Issued: October 13, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–23017 Filed 10–16–20; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Criminal Rules; Hearing of the Judicial Conference

AGENCY: Advisory Committee on the Federal Rules of Criminal Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The following remote public hearing on proposed amendments to the Federal Rules of Criminal Procedure has been canceled: Criminal Rules Hearing on November 4, 2020.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

SUPPLEMENTARY INFORMATION: Announcements for this hearing were previously published in 85 FR 48562.

Authority: 28 U.S.C. 2073.

Dated: October 14, 2020.

Rebecca A. Womeldorf,

Chief Counsel, Rules Committee Staff.

[FR Doc. 2020–23051 Filed 10–16–20; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0055]

Steel Erection Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Steel Erection Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by December 18, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0055, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to received submissions to the docket by hand, express mail, messenger, and courier service.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2011–0055) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and dates of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (29 U.S.C. 657).

Section 1926.752(a)(1)

Based on the results of a specified method for testing field-cured samples, the controlling contractor must provide the steel erector with written notification that the concrete in the footings, piers, and walls, or the mortar in the masonry piers and walls, is at 75% of the minimum compressive-design strength or has sufficient strength to support loads imposed during steel erection. *Note:* This is not and will not be enforced for mortar in piers and walls until such time as OSHA is able to define an appropriate substitute or until an appropriate American Society for Testing and Materials (ASTM) test method is developed.

Sections 1926.752(a)(2) and 1926.755(b)(1)

Under § 1926.752(a)(2), the controlling contractor, before it authorizes commencement of steel erection, must notify the steel erector in writing that any repairs, replacements, and modifications to anchor bolts (rods) have been made in accordance with § 1926.755(b)(1) which requires the controlling contractor to obtain approval from the project structural engineer of record for the repairs, replacements, and modifications.

Section 1926.753(c)(5)

Employers must not deactivate safety latches on hooks or make them inoperable except for the situation when: A qualified rigger determines that it is safer to hoist and place purlins and single joists by doing so; or except when equivalent protection is provided in the site-specific erection plan.

Section 1926.753(e)(2)

Employers must have the maximum capacity of the total multiple-lift rigging assembly, as well as each of the individual attachment points, certified by the manufacturer, or a qualified rigger.

Sections 1926.755(b)(1) and 1926.755(b)(2)

Under § 1926.755(b)(2), throughout steel erection the controlling contractor must notify the steel erector in writing of additional repairs, replacements, and modifications of anchor bolts (rods); § 1926.755(b)(1) requires that these repairs, replacements, and modifications not be made without approval from the project structural engineer of record.

Section 1926.757(a)(4)

If steel joists at or near columns span more than 60 feet, employers must set the joists in tandem with all bridging installed. However, the employer may use an alternative method of erection if a qualified person develops the alternative method, it provides equivalent stability, and the employer includes the method in the site-specific erection plan.

Section 1926.757(a)(7)

Employers must not modify steel joists or steel joist girders in a way that affects their strength without the approval of the project structural engineer of record.

Sections 1926.757(a)(9) and 1926.758(g)

An employer can use a steel joist, steel joist girder, purlin, or girt as an anchorage point for a fall-arrest system only with the written approval of a qualified person.

Section 1926.757(e)(4)(i)

An employer must install and anchor all bridging on joists and attach all joist bearing ends before placing a bundle of decking on the joists, unless: a qualified person determines that the structure or portion of the structure is capable of supporting the bundle, the employer documents this determination in the site-specific erection plan, and follows the additional requirements specified in §§ 1926.757(e)(4)(ii)–(vi).

Sections 1926.760(e) and (e)(1)

The steel erector can leave the fall protection at the jobsite after completion of the erection activity only if the controlling contractor or the authorized representative directs the steel erector to do so and inspects and accepts responsibility for the fall protection.

Section 1926.752(e) and Appendix A to Subpart R, ''Guidelines for Establishing the Components of a Site-Specific Erection Plan: Non-Mandatory Guidelines for Complying with 1926.752(e),'' Paragraph (a)

Site-specific erection plan. Where employers elect, due to conditions specific to the site, to develop alternate means and methods that provide employee protection in accordance with §§ 1926.753(c)(5), 1926.757(a)(4), or 1926.757(e)(4), a site-specific erection plan shall be developed by a qualified person and be available at the work site. Guidelines for establishing a site-specific erection plan are contained in Appendix A to this subpart.

Appendix A to Subpart R, paragraph (b). Paragraph (b) of the Appendix provides for the development of a site-specific erection plan. Preconstruction conference(s) and site inspection(s) are held between the erector and the controlling contractor, and others such as the project engineer and fabricator before the start of steel erection. The purpose of such conference(s) is to develop and review the site-specific erection plan that will meet the requirements of this section.

Appendix A to Subpart R, paragraphs (c), (c)(1)–(c)(9), (d), (d)(1) and (d)(2). These paragraphs of Appendix A describe the components of a site-specific erection plan, including: The sequence of erection activity developed in coordination with the controlling contractor; a description of the crane and derrick selection and placement procedures; a description of the fall protection procedures that will be used to comply with § 1926.760; a description of the procedures that will be used to comply with § 1926.759; a description of the special procedures required for hazardous non-routine tasks; a certification for each employee who has received training for performing steel erection operations as required by § 1926.761; a list of the qualified and competent persons; a description of the procedures that will be utilized in the event of rescue or emergency response; the identification of the site and project; and signed and dated by the qualified person(s) responsible for the preparation and modification.

Paragraph (c)(4)(ii) of Appendix G to Subpart R

This mandatory appendix duplicates the regulatory requirements of § 1926.502 (''Fall protection systems criteria and practices''), notably the requirements specified in paragraph (c)(4)(ii). This paragraph addresses the certification of safety nets as an option available to employers who can demonstrate that performing a drop test on safety nets is unreasonable. This provision allows such employers to certify that their safety nets, including the installation of the nets, protect workers at least as well as safety nets that meet the drop-test criteria. The employer must complete the certification process prior to using the net for fall protection, and the certificate must include the following information: identification of the net and the type of installation used for the net; the date the certifying party determined that the net and the installation would meet the drop-test criteria; and the signature of the party making this determination. The most recent certificate must be available at the jobsite for inspection.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment increase of 3,337 burden hours from 30,819 34,156 hours. This increase is the result of an estimated increase in the number of covered employers. The total estimated number of establishments affected by the regulation increased from 16,748 to 18,468, a total adjustment of 1,720 more establishments, based on updated data.

Type of Review: Extension of a currently approved collection.

Title: Steel Erection (29 CFR 1926, Subpart R).

OMB Control Number: 1218–0241.

Affected Public: Business or other for-profits.

Number of Respondents: 18,468.

Frequency: On Occasion; Quarterly; Annually; Immediately; Within 24 hours; Within 30 days.

Average Time per Response: Varies.

Estimated Number of Responses: 101,624.

Estimated Total Burden Hours: 34,156.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA–2011–0055) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350; TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44

U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 13, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–23027 Filed 10–16–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: October 14, 2020 (85 FR 65076).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, October 15, 2020.

CHANGES IN THE MEETING: Matter to be removed from the agenda of an agency meeting: 4. Request for Information, Supervisory Guidance Review and Improvements in Communications.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2020–23176 Filed 10–15–20; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: University of Washington MRSEC Virtual Site Visit (1203).

Date and Time:

April 8, 2021; 10:00 a.m.–6:00 p.m.

April 9, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

April 8, 2021

10:00 a.m.–10:10 a.m. Welcome
10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:35 a.m. IRG–1 Presentation
11:35 a.m.–11:45 a.m. IRG–1 Discussion
11:45 a.m.–11:55 a.m. Break
11:55 a.m.–12:20 p.m. IRG–2 Presentation
12:20 p.m.–12:30 p.m. IRG–2 Discussion
12:30 p.m.–12:40 p.m. iSuperSeeds Accomplishments
12:40 p.m.–12:45 p.m. iSuperSeeds Discussion
12:45 p.m.–01:50 p.m. Executive Session/Lunch (CLOSED)
01:50 p.m.–02:15 p.m. Education and Outreach, Diversity Plan
02:15 p.m.–02:25 p.m. Education and Outreach, Diversity Plan Discussion
02:25 p.m.–02:45 p.m. Industrial Outreach and Other Collaborations; Shared
02:45 p.m.–02:55 p.m. Industrial Outreach and Other Collaborations; Shared Discussion
02:55 p.m.–03:10 p.m. Executive Session Break (CLOSED)
03:10 p.m.–04:20 p.m. Meeting with Trainees, Poster Session
04:20 p.m.–05:30 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
05:30 p.m.–06:00 p.m. Meeting with MRSEC Director and Team Present Questions

April 9, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22988 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: University of Illinois Urbana-Champaign MRSEC Virtual Site Visit (1203).

Date and Time:

May 12, 2021; 10:00 a.m.–6:00 p.m.

May 13, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

May 12, 2021

10:00 a.m.–10:10 a.m. Welcome
10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:35 a.m. IRG–1 Presentation
11:35 a.m.–11:45 a.m. IRG–1 Discussion
11:45 a.m.–11:55 a.m. Break
11:55 a.m.–12:20 p.m. IRG–2 Presentation
12:20 p.m.–12:30 p.m. IRG–2 Discussion
12:30 p.m.–12:40 p.m. iSuperSeeds Accomplishments
12:40 p.m.–12:45 p.m. iSuperSeeds Discussion
12:45 p.m.–01:50 p.m. Executive Session/Lunch (CLOSED)
01:50 p.m.–02:15 p.m. Education and Outreach, Diversity Plan
02:15 p.m.–02:25 p.m. Education and Outreach, Diversity Plan Discussion
02:25 p.m.–02:45 p.m. Industrial Outreach and Other Collaborations; Shared Facilities
02:45 p.m.–02:55 p.m. Industrial Outreach and Other Collaborations; Shared Facilities Discussion

02:55 p.m.–03:10 p.m. Executive Session Break (CLOSED)
03:10 p.m.–04:20 p.m. Meeting with Trainees, Poster Session
04:20 p.m.–05:30 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
05:30 p.m.–06:00 p.m. Meeting with MRSEC Director and Team Present Questions

May 13, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22989 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: University of Pennsylvania MRSEC Virtual Site Visit (1203).

Date and Time:
May 25, 2021; 10:00 a.m.–6:30 p.m.
May 26, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

May 25, 2021

10:00 a.m.–10:10 a.m. Welcome
10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:35 a.m. IRG–1 Presentation
11:35 a.m.–11:45 a.m. IRG–1 Discussion
11:45 a.m.–11:55 a.m. Break
11:55 a.m.–12:20 p.m. IRG–2 Presentation
12:20 p.m.–12:30 p.m. RG–2 Discussion
12:30 p.m.–12:55 p.m. IRG–3 Presentation
12:55 p.m.–01:05 p.m. RG–3 Discussion
01:05 p.m.–02:00 p.m. Executive Session/Lunch (CLOSED)
02:00 p.m.–02:10 p.m. iSuperSeeds Accomplishments
02:10 p.m.–02:15 p.m. iSuperSeeds Discussion
02:15 p.m.–02:50 p.m. Education and Outreach, Diversity Plan
02:50 p.m.–03:00 p.m. Education and Outreach, Diversity Plan Discussion
03:00 p.m.–03:20 p.m. Industrial Outreach and Other Collaborations; Shared Facilities
03:20 p.m.–03:30 p.m. Industrial Outreach and Other Collaborations Shared Facilities Discussion
03:30 p.m.–03:40 p.m. Executive Session Break (CLOSED)
03:40 p.m.–04:50 p.m. Meeting with Trainees, Poster Session
04:50 p.m.–06:00 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
06:00 p.m.–06:30 p.m. Meeting with MRSEC Director and Team Present Questions

May 26, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22985 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: University of Wisconsin-Madison MRSEC Virtual Site Visit V210337 (1203).

Date and Time:
June 3, 2021; 10:00 a.m.–5:30 p.m.
June 4, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

June 3, 2021

10:00 a.m.–10:10 a.m. Welcome
10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:15 a.m. Break
11:15 a.m.–11:40 a.m. IRG–1 Presentation
11:30 a.m.–11:50 a.m. IRG–1 Discussion
11:50 a.m.–12:15 p.m. IRG–2 Presentation
12:15 p.m.–12:25 p.m. IRG–2 Discussion
12:25 p.m.–01:30 p.m. Executive Session/Lunch (CLOSED)
01:30 p.m.–01:55 p.m. Education and Outreach, Diversity Plan

01:55 p.m.–02:05 p.m. Education and Outreach, Diversity Plan Discussion
02:05 p.m.–02:25 p.m. Industrial Outreach and Other Collaborations; Shared Facilities
02:25 p.m.–02:35 p.m. Industrial Outreach and Other Collaborations; Shared Facilities Discussion
02:35 p.m.–02:50 p.m. Executive Session Break (CLOSED)
02:50 p.m.–04:00 p.m. Meeting with Trainees, Poster Session
04:00 p.m.–05:00 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
05:00 p.m.–05:30 p.m. Meeting with MRSEC Director and Team Present Questions

June 4, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22986 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Northwestern University MRSEC Virtual Site Visit (1203).

Date and Time:

April 15, 2021; 10:00 a.m.–6:00 p.m.
April 16, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

April 15, 2021

10:00 a.m.–10:10 a.m. Welcome
10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:35 a.m. IRG–1 Presentation
11:35 a.m.–11:45 a.m. IRG–1 Discussion
11:45 a.m.–11:55 a.m. Break
11:55 a.m.–12:20 p.m. IRG–2 Presentation
12:20 p.m.–12:30 p.m. IRG–2 Discussion
12:30 p.m.–12:40 p.m. iSuperSeeds Accomplishments
12:40 p.m.–12:45 p.m. iSuperSeeds Discussion
12:45 p.m.–01:50 p.m. Executive Session/Lunch (CLOSED)
01:50 p.m.–02:15 p.m. Education and Outreach, Diversity Plan
02:15 p.m.–02:25 p.m. Education and Outreach, Diversity Plan Discussion
02:25 p.m.–02:45 p.m. Industrial Outreach and Other Collaborations; Shared Facilities
02:45 p.m.–02:55 p.m. Industrial Outreach and Other Collaborations; Shared Facilities Discussion
02:55 p.m.–03:10 p.m. Executive Session Break (CLOSED)
03:10 p.m.–04:20 p.m. Meeting with Trainees, Poster Session
04:20 p.m.–05:30 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
05:30 p.m.–06:00 p.m. Meeting with MRSEC Director and Team Present Questions

April 16, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22982 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: University of Texas Austin MRSEC Virtual Site Visit (1203).

Date and Time:

May 20, 2021; 10:00 a.m.–6:00 p.m.
May 21, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

May 20, 2021

10:00 a.m.–10:10 a.m. Welcome
10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:35 a.m. IRG–1 Presentation
11:35 a.m.–11:45 a.m. IRG–1 Discussion
11:45 a.m.–11:55 a.m. Break
11:55 a.m.–12:20 p.m. IRG–2 Presentation
12:20 p.m.–12:30 p.m. IRG–2 Discussion

12:30 p.m.–12:40 p.m. iSuperSeeds Accomplishments
12:40 p.m.–12:45 p.m. iSuperSeeds Discussion
12:45 p.m.–01:50 p.m. Executive Session/Lunch (CLOSED)
01:50 p.m.–02:15 p.m. Education and Outreach, Diversity Plan
02:15 p.m.–02:25 p.m. Education and Outreach, Diversity Plan Discussion
02:25 p.m.–02:45 p.m. Industrial Outreach and Other Collaborations; Shared Facilities
02:45 p.m.–02:55 p.m. Industrial Outreach and Other Collaborations; Shared Facilities Discussion
02:55 p.m.–03:10 p.m. Executive Session Break (CLOSED)
03:10 p.m.–04:20 p.m. Meeting with Trainees, Poster Session
04:20 p.m.–05:30 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
05:30 p.m.–06:00 p.m. Meeting with MRSEC Director and Team Present Questions

May 21, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22984 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: University of California, Santa Barbara Virtual MRSEC Site Visit (1203).

Date and Time:

April 1, 2021; 10:00 a.m.–6:30 p.m.
April 2, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

April 1, 2021

10:00 a.m.–10:10 a.m. Welcome
10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:35 a.m. IRG–1 Presentation
11:35 a.m.–11:45 a.m. IRG–1 Discussion
11:45 a.m.–11:55 a.m. Break
11:55 a.m.–12:20 p.m. IRG–2 Presentation
12:20 p.m.–12:30 p.m. RG–2 Discussion
12:30 p.m.–12:55 p.m. IRG–3 Presentation
12:55 p.m.–01:05 p.m. RG–3 Discussion
01:05 p.m.–02:00 p.m. Executive Session/Lunch (CLOSED)
02:00 p.m.–02:10 p.m. iSuperSeeds Accomplishments
02:10 p.m.–02:15 p.m. iSuperSeeds Discussion
02:15 p.m.–02:50 p.m. Education and Outreach, Diversity Plan
02:50 p.m.–03:00 p.m. Education and Outreach, Diversity Plan Discussion
03:00 p.m.–03:20 p.m. Industrial Outreach and Other Collaborations; Shared Facilities
03:20 p.m.–3:30 p.m. Industrial Outreach and Other Collaborations Shared Facilities Discussion
03:30 p.m.–03:40 p.m. Executive Session Break (CLOSED)
03:40 p.m.–04:50 p.m. Meeting with Trainees, Poster Session
04:50 p.m.–06:00 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
06:00 p.m.–06:30 p.m. Meeting with MRSEC Director and Team Present Questions

April 2, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22987 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Cornell University MRSEC Virtual Site Visit (1203).

Date and Time:

May 4, 2021; 10:00 a.m.–6:30 p.m.
May 5, 2021; 10:00 a.m.–5:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

May 4, 2021

10:00 a.m.–10:10 a.m. Welcome

10:10 a.m.–11:00 a.m. Directors Overview
11:00 a.m.–11:10 a.m. Discussion
11:10 a.m.–11:35 a.m. IRG–1 Presentation
11:35 a.m.–11:45 a.m. IRG–1 Discussion
11:45 a.m.–11:55 a.m. Break
11:55 a.m.–12:20 p.m. IRG–2 Presentation
12:20 p.m.–12:30 p.m. RG–2 Discussion
12:30 p.m.–12:55 p.m. IRG–3 Presentation
12:55 p.m.–01:05 p.m. RG–3 Discussion
01:05 p.m.–02:00 p.m. Executive Session/Lunch (CLOSED) 02:00 p.m.–02:10 p.m. iSuperSeeds Accomplishments
02:10 p.m.–02:15 p.m. iSuperSeeds Discussion
02:15 p.m.–02:50 p.m. Education and Outreach, Diversity Plan
02:50 p.m.–03:00 p.m. Education and Outreach, Diversity Plan Discussion
03:00 p.m.–03:20 p.m. Industrial Outreach and Other Collaborations; Shared Facilities
03:20 p.m.–03:30 p.m. Industrial Outreach and Other Collaborations Shared Facilities Discussion
03:30 p.m.–03:40 p.m. Executive Session Break (CLOSED)
03:40 p.m.–04:50 p.m. Meeting with Trainees, Poster Session
04:50 p.m.–06:00 p.m. Executive Session: Prepare Overnight Questions (CLOSED)
06:00 p.m.–06:30 p.m. Meeting with MRSEC Director and Team Present Questions

May 5, 2021

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)
10:15 a.m.–11:15 a.m. MRSEC Response: Director plus Executive Team
11:15 a.m.–11:30 a.m. Executive Session Break
11:30 a.m.–11:50 a.m. Meeting with University Administrators (CLOSED)
12:00 p.m.–05:00 p.m. NSF + Site Visit Team-Report Writing (CLOSED)
05:00 p.m.–05:30 p.m. BSF Debriefing with MRSEC Director and Executive Team

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–22983 Filed 10–16–20; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–15 and CP2021–16; MC2021–16 and CP2021–17]

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 21, 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

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).:* MC2021–15 and CP2021–16; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 121 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 13, 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 21, 2020.

2. *Docket No(s).:* MC2021–16 and CP2021–17; *Filing Title:* USPS Request to Add Priority Mail Contract 674 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 13, 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 21, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–23086 Filed 10–16–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket No. R2021–1; Order No. 5719]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service notice of inflation-based rate adjustments affecting market dominant domestic and international products and services, along with temporary mailing promotions and numerous proposed classification changes. The adjustments and other changes are scheduled to take effect January 24, 2021. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 29, 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 and Overview

On October 9, 2020, the Postal Service filed a notice of inflation-based price adjustments affecting market dominant domestic and international products and services, along with temporary mailing promotions and numerous proposed classification changes to the Mail Classification Schedule (MCS).[1] The intended effective date is January 24, 2021. Notice at 1. The Notice, which was filed pursuant to 39 U.S.C. 3622 and 39 CFR part 3030, triggers a notice-and-comment proceeding.[2]

Contents of filing. The Postal Service's filing consists of the Notice, which the Postal Service represents addresses the data and information required under 39 CFR 3030.512; four attachments (Attachments A–D) to the Notice; and seven public library references and one nonpublic library reference.

Attachment A presents the proposed price and related product description changes to the MCS. Notice, Attachment A. Attachments B and C address workshare discounts and the price cap calculation, respectively. *Id.* Attachments B and C. Attachment D presents the 2021 promotions schedule. *Id.* Attachment D.

Several library references provide supporting financial documentation for the five classes of mail. Notice at 6 nn.11–12. The Postal Service filed two library references containing workpapers for First-Class Mail International Billing Determinants and Seamless Volumes. It also filed one library reference pertaining to the two international mail products within First-Class Mail (First-Class Mail International and Inbound Letter Post) under seal and applied for non-public treatment of those materials.[3]

Planned price adjustments. The Postal Service's planned percentage changes by class are, on average, as follows:

Market dominant class	Planned price adjustment (%)
First-Class Mail	1.836
USPS Marketing Mail	1.509
Periodicals	1.456
Package Services	1.460
Special Services	1.458

Notice at 5.

Price adjustments for products within classes vary from the average. *See, e.g., id.* at 7, 13 (Table 5 showing range for First-Class Mail products and Table 7 showing range for USPS Marketing Mail products). Most of the planned adjustments entail increases to market dominant rates and fees; however, in a few instances, the Postal Service proposes either no adjustment or a decrease. *See id.* at 7–8.

Proposed classification changes. The Postal Service proposes numerous classification changes in its Notice and identifies the impact on the MCS in Attachment A. *Id.* at 36–37; *id.* Attachment A.

Calendar year 2021 promotions. The Postal Service seeks approval for the following six promotions for the indicated periods:

- Tactile, Sensory and Interactive Mailpiece Engagement Promotion (February 1–July 31, 2021);
- Emerging and Advanced Technology Promotion (March 1–August 31, 2021);
- Earned Value Reply Mail Promotion (April 1–June 30, 2021);
- Personalized Color Transpromo Promotion (July 1–December 31, 2021);
- Mobile Shopping Promotion (August 1–December 31, 2021); and
- Informed Delivery Promotion (September 1–November 30, 2021).

Id. Attachment D. The Postal Service is also introducing a $0.001 per piece rate incentive for Seamless Acceptance. *Id.* at 32–34.

II. Initial Administrative Action

Pursuant to 39 CFR 3030.511(a), the Commission establishes Docket No. R2021–1 to consider the planned price adjustments for market dominant postal products and services, as well as the related classification changes, identified in the Notice. The Commission invites comments from interested persons on whether the Postal Service's filing is consistent with the applicable statutory and regulatory requirements, including 39 U.S.C. 3622 and 39 CFR part 3030. Comments are due no later than October 29, 2020.[4]

The public portions of the Postal Service's filing are available for review on the Commission's website (*http://www.prc.gov*). Comments and other material filed in this proceeding will be available for review on the Commission's website, unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011.

Pursuant to 39 U.S.C. 505, the Commission appoints Richard A. Oliver to represent the interests of the general public (Public Representative) in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2021–1 to consider the planned price adjustments for market dominant postal products and services, as well as the related classification changes, identified in the Postal Service's October 9, 2020 Notice.

2. Comments on the planned price adjustments and related classification

[1] United States Postal Service Notice of Market-Dominant Price Change, October 9, 2020 (Notice).

[2] This is a Type 1–B proceeding. *See* 39 CFR part 3030, subparts A–C for additional information.

[3] *See* USPS Notice of Filing USPS–LR–R2021–1/NP1, October 9, 2020, Attachment 1. Two versions of this document (bearing Filing ID numbers 114788 and 114789) and the non-public materials were filed with the Commission. *See id.*

[4] The Commission continues to use the 20-day comment period as set forth in 39 CFR 3030.511(a)(5); however, the Commission notes that in order to sufficiently address the comments, its determination may exceed the 14-day deadline set forth in 39 CFR 3030.511(d). *See Carlson* v. *Postal Reg. Comm'n,* 938 F.3d 337 (D.C. Cir. Sept. 13, 2019).

changes are due no later than October 29, 2020.

3. Pursuant to 39 U.S.C. 505, Richard A. Oliver is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–23001 Filed 10–16–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2021–15; Order No. 5718]

Competitive Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service document with the Commission concerning changes in rates of general applicability for competitive international products. The changes are scheduled to take effect January 24, 2021. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 27, 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 and Overview

On October 9, 2020, the Postal Service filed notice with the Commission concerning changes in rates of general applicability for competitive international products.[1] The Postal Service represents that, as required by 39 CFR 3035.102(b), the Notice includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. *See* Notice at 1. The changes are scheduled to take effect on January 24, 2021. *Id.*

Attached to the Notice is Governors' Decision No. 20–4, which states the new prices are in accordance with 39 U.S.C. 3632 and 3633 and 39 CFR 3035.102.[2] The Governors' Decision provides an analysis of the competitive products' price changes intended to demonstrate that the changes comply with 39 U.S.C. 3633 and 39 CFR part 3035. Governors' Decision No. 20–4 at 1. The attachment to the Governors' Decision sets forth the price changes and includes draft Mail Classification Schedule (MCS) language for competitive products of general applicability.

The Governors' Decision includes two additional attachments:

- A partially redacted table showing FY 2021 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming implementation of the new prices on January 24, 2021.
- A partially redacted table showing FY 2021 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming a hypothetical implementation of the new prices on October 1, 2020.

The Notice also includes an application for non-public treatment of the attributable costs, contribution, and cost coverage data in the unredacted version of the annex to the Governors' Decision, as well as the supporting materials for the data. Notice at 1–2.

Planned price adjustments. The Governors' Decision includes an overview of the Postal Service's planned price changes, which is summarized in the table below.

TABLE I–1—PROPOSED PRICE CHANGES

Product name	Average price increase (percent)
International Competitive Products	
Global Express Guaranteed	0.9
Priority Mail Express International	3.6
Priority Mail International	5.1
International Priority Airmail	74.1
International Surface Air Lift	32.6
Airmail M-Bags	5.0
First-Class Package International Service	4.8
International Ancillary Services and Special Services	
International Ancillary Services ..	3.4

Source: *See* Governors' Decision No. 20–4 at 2–3 (showing percentage increases for international products).

II. Initial Administrative Actions

The Commission establishes Docket No. CP2021–15 to consider the Postal Service's Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR 3040 subparts B and E. Comments are due no later than October 27, 2020. For specific details of the planned price changes, interested persons are encouraged to review the Notice, which is available on the Commission's website at *www.prc.gov.*

Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as Public Representative to represent the interests of the general public in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2021–15 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR 3040 subparts B and E.

2. Comments are due no later than October 27, 2020.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

[1] United States Postal Service Notice of Changes in Rates of General Applicability for Competitive International Products, October 9, 2020 (Notice).

Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates.

[2] Notice, Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive International Products (Governors' Decision No. 20–4), at 1 (Governors' Decision No. 20–4).

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–23000 Filed 10–16–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90161; File No. SR–NYSE–2020–81]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

October 13, 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 30, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to extend through October 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through September 2020. The Exchange proposes to implement the fee changes effective October 1, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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 its Price List to extend through October 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through September 2020.

The proposed changes respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus (''COVID–19'').

The Exchange proposes to implement the fee changes effective October 1, 2020.

Background

Beginning on March 16, 2020, in order to slow the spread of COVID–19 through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.[4] Following the temporary closure of the Trading Floor, the Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges for the months of April and May.[5]

On May 14, 2020, the Exchange announced that on May 26, 2020 trading operations on the Trading Floor would resume on a limited basis to a subset of Floor brokers, subject to health and safety measures designed to prevent the spread of COVID–19.[6] On June 15, 2020, the Exchange announced that on June 17, 2020, the Trading Floor would reintroduce a subset of DMMs, also subject to health and safety measures designed to prevent the spread of COVID–19.[7] Following this partial reopening of the Trading Floor, the Exchange extended the equipment fee waiver for the months of June, July, August and September.[8] The Trading Floor continues to operate with reduced headcount and additional health and safety precautions.[9]

Proposed Rule Change

The proposed rule change responds to the unprecedented events surrounding the spread of COVID–19 by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for October 2020.

As noted, for the months of April, May, June, July, August and September, the Exchange waived the Annual Telephone Line Charge of $400 per phone number and the $129 fee for a single line phone, jack, and data jack. The Exchange also waived related service charges, as follows: $161.25 to install single jack (voice or data); $107.50 to relocate a jack; $53.75 to remove a jack; $107.50 to install voice or data line; $53.75 to disconnect data line; $53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at $106 per hour in 15 minute increments.[10] These fees were waived for (1) member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, or, beginning in August

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110.*

[5] *See* Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR–NYSE–2020–27); Securities Exchange Act Release No. 88874 (May 14, 2020), 85 FR 30743 (May 20, 2020) (SR–NYSE–2020–29). *See* footnote 11 of the Price List.

[6] *See* Trader Update, dated May 14, 2020, available here: *https://www.nyse.com/traderupdate/history#110000251588.*

[7] *See* Trader Update, dated June 15, 2020, available here: *https://www.nyse.com/trader-update/history#110000272018.*

[8] *See* Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR–NYSE–2020–49); Securities Exchange Act Release No. 89324 (July 15, 2020), 85 FR 44129 (July 21, 2020) (SR–NYSE–2020–59); Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR–NYSE–2020–71); and Securities Exchange Act Release No. 89798 (September 9, 2020), 85 FR 57263 (September 15, 2020) (SR–NYSE–2020–72).

[9] *See* Trader Update, dated June 15, 2020, available here: *https://www.nyse.com/trader-update/history#110000272018.* DMMs continue to support a subset of NYSE-listed securities remotely.

[10] The Service Charges also include an internet Equipment Monthly Hosting Fee that the Exchange did not waive for April, May, June, July, August and September 2020 and that the Exchange does not propose to waive for October 2020.

2020, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020, *i.e.,* the date the Trading Floor re-opened on a limited basis,[11] and (2) member organizations with at least one trading license that are Designated Market Makers with 30 or fewer assigned securities for the billing month of March 2020.

Because the Trading Floor continues to operate with reduced capacity, the Exchange proposes to extend the waiver of these Trading Floor-based fees through October 2020. To effectuate this change, the Exchange proposes to delete '', May, June, July, August, and September'' and add ''through October'' after ''April'' in footnote 11 to the Price List.

In order to further reduce costs for member organizations with a Trading Floor presence, the Exchange also waived the April, May, June, July, August and September 2020 monthly portion of all applicable annual fees for (1) member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, or, beginning in August 2020, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020, and (2) member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.[12]

The Exchange proposes to also waive the October 2020 monthly portion of all applicable annual fees for member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020 or, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020. The indicated annual trading license fees would also be waived for October 2020 for member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020. To effectuate this change, the Exchange proposes to delete '',May, June, July, August, and September'' and add ''through October'' in footnote 15 of the Price List.

The proposed extension of the fee waivers would reduce monthly costs for member organizations with a Trading Floor presence whose operations were disrupted by the Floor closure, which lasted approximately two months, and remains partially closed. The Exchange believes that extension of the fee waiver would ease the financial burden associated with the ongoing partial Trading Floor closure. The Exchange believes that all member organization that conduct a significant portion of trading on the Trading Floor would benefit from this proposed fee change.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [16] Indeed, equity trading is currently dispersed across 15 exchanges,[17] 31 alternative trading systems,[18] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).[19] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tape A, B and C securities combined is less than 14%.

The Proposed Change is Reasonable

The proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations is reasonable in light of the partial continued closure of the NYSE Trading Floor. Beginning March 2020, markets worldwide experienced unprecedented declines and volatility because of the ongoing spread of COVID–19 also resulted in the temporary closure of the NYSE Trading Floor. As noted, the Trading Floor was recently partially reopened on a limited basis to a subset of Floor brokers and DMMs, subject to health and safety measures designed to prevent the spread of COVID–19. The proposed change is designed to reduce costs for Floor participants for the month of October 2020 and therefore ease the financial burden faced by member organizations

[11] Beginning August 2020, member organizations with a physical trading Floor presence that became member organizations on or after April 1, 2020 are eligible for a one-time credit for the member organization's Booth Telephone System charges and all Service Charges except the internet Equipment Monthly Hosting Fee for the months of April through July 2020 if the member organization meets the other requirements for the waiver described in footnote 11 of the Price List.

[12] *See* notes 5–8, *supra. See* footnote 15 of the Price List. Beginning in August 2020, member organizations with a physical trading Floor presence that became member organizations on or after April 1, 2020 are eligible for a one-time credit for the member organization's indicated annual trading license fee for the months of April through July 2020 if the member organization meets the other requirements for the waiver described in footnote 15 of the Price List.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) & (5).

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[16] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[17] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[18] *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.*

[19] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

that conduct business on the Trading Floor while it continues to operate with reduced capacity.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations to October 2020 are an equitable allocation of fees. The proposed waivers apply to all Trading Floor-based firms meeting specific requirements during the period that the Trading Floor remains partially open. The proposed change is equitable as it merely continues the fee waiver granted in April, May, June, July, August and September 2020, and is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to fully conduct Floor operations while the Trading Floor remains partially open during the ongoing COVID–19 pandemic.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposed continuation of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during October 2020 is not unfairly discriminatory because the proposed waivers would benefit all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fees indefinitely, but rather during the period that the Trading Floor is not fully open. The proposed fee change is designed to ease the financial burden on Trading Floor-based member organizations that cannot fully conduct Floor operations.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the continued participation of member organizations on the Exchange by providing certainty and fee relief during the unprecedented volatility and market declines caused by the continued spread of COVID–19. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

Intramarket Competition. The proposed continued waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during October 2020 is designed to reduce monthly costs for those Floor participants whose operations continue to be impacted by the spread of COVID–19 despite the fact that the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would provide a degree of certainty and ease the financial burden on Trading Floor-based member organizations impacted by the temporary closing and partial reopening of the Trading Floor. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange believes that the proposed rule change reflects this competitive environment because it permits impacted member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is not fully open, which could make the Exchange a less competitive venue on which to trade as compared to other equities markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–81. 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

[20] 15 U.S.C. 78f(b)(8).

[21] Regulation NMS, 70 FR at 37498–99.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–81 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23013 Filed 10–16–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90159; File No. SR–MEMX–2020–12]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.16 and Amend Rule 11.16(b)(2) Concerning the Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt

October 13, 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 9, 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 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: (i) Extend the pilot related to the market-wide circuit breaker in Rule 11.16 and (ii) amend Rule 11.16(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt. 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

Extend the Market-Wide Circuit Breaker Pilot

The Exchange proposes to extend the effectiveness of the Exchange's current rule applicable to market-wide circuit breakers (''MWCB'') to the close of business on October 18, 2021. Portions of Rule 11.16, explained in further detail below, are currently operating as a pilot program which is currently set to expire at the close of business on October 18, 2020.[5]

Rule 11.16 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The MWCB mechanism adopted by other national securities exchanges was originally approved by the Commission to operate on a pilot basis,[6] the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, all U.S. equity exchanges and the Financial Industry Regulatory Authority, Inc. (''FINRA'') amended their rules to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The pilot's effectiveness was subsequently extended for an additional year to the close of business on October 18, 2020.[11] On May 4, 2020, the Commission approved MEMX's Form 1 Application to register as a national securities exchange with rules including, on a pilot basis expiring on October 18, 2020, certain portions of MEMX Rule 11.16.[12]

The Exchange now proposes to amend Rule 11.16 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 11.16 other than the proposed change to Rule 11.16(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt as further described below.

The market-wide circuit breaker under Rule 11.16 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012, which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

[5] *See* Exchange Rule 11.16.

[6] *See, e.g.,* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See, e.g.,* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR–NYSE–2013–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of a Rule Change to NYSE Rule 80B).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See, e.g.,* Securities Exchange Act Release No. 85560 (April 9, 2019), 84 FR 15247 (April 15, 2019) (SR–NYSE–2019–19).

[11] *See, e.g.,* Securities Exchange Act Release No. 87016 (September 19, 2019), 84 FR 50502 (September 25, 2019) (SR–NYSE–2019–51).

[12] *See* Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

severe price declines reach levels that may exhaust market liquidity.[13] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 11.16, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. Under current Rule 11.16, a market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.[14]

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable, and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening auction. Other exchanges filed rule changes to that effect in March 2020,[15] and successfully tested the implementation of those changes on September 12, 2020. The Exchange proposes to adopt these changes as part of this proposal, as further described below.

Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt

Today, in the event that a Level 3 market decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day, which time may currently vary depending on the primary listing market. For example, if the primary listing market is the New York Stock Exchange (''NYSE''), NYSE would resume trading in its listed securities at 9:30 a.m. ET on the next trading day, and the Exchange would not be able to resume trading during the Exchange's Pre-Market Session.[16] Alternatively, if the primary listing market is the Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq would resume trading in its listed securities at 4:00 a.m. ET on the next trading day, and therefore, the Exchange would resume trading at the commencement of the Pre-Market Session.

Earlier this year, other exchanges adopted rule changes to standardize their Day 2 opening procedures following a Level 3 MWCB halt.[17] The Exchange proposes to adopt the standardized approach for resuming trading in all NMS Stocks following a Level 3 halt. The proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants.[18] As proposed, a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day. In other words, an exchange could resume trading in any security when it first begins trading under its rules and would not need to wait for the primary listing market to reopen trading in a security before it could start trading such security. Accordingly, under the proposal, the Exchange could begin trading all securities at the beginning of the Exchange's Pre-Market Session.

To effect this change, the Exchange proposes to delete the language in Rule 11.16(b)(2) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 market decline, and specify that

[13] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[14] As described in further detail below, the Exchange proposes to amend this aspect of Rule 11.16 to conform to the rules of other exchanges.

[15] *See, e.g.,* Securities Exchange Act Release Nos. 88342 (March 6, 2020), 85 FR 14513 (March 12, 2020) (SR–NASDAQ–2020–003); 88420 (March 18, 2020), 85 FR 16696 (March 24, 2020) (SR–CboeEDGX–2020–012); 88402 (March 17, 2020), 85 FR 16436 (March 23, 2020) (SR–NYSE–2020–20).

[16] *See* Exchange Rule 1.5(x).

[17] *See supra* note 15.

[18] Of note, the U.S. futures markets, which have similar rules for coordinated MWCB halts, normally begin their ''next day'' trading session at 6:00 p.m. ET (for CFE and CME) or at 8:00 p.m. ET (for ICE).

the Exchange will halt trading for the remainder of the trading day.[19] The proposed rule change would therefore allow each exchange to resume trading in all securities the next trading day following a Level 3 halt at whatever time such exchange normally begins trading under its rules, which for the Exchange would be at the beginning of the Pre-Market Session at 7:00 a.m. ET under its current rules. The Exchange notes that the primary listing exchanges have already made and tested changes to facilitate this change by sending resume messages to the applicable securities information processor (''SIP'') to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

Having a consistent approach for all securities will make the opening process the day after a Level 3 halt more uniform and reduce complexity, which the Exchange believes is important after a significant market event. Based on industry feedback, the Exchange believes that opening in the normal course in all equity securities will be beneficial to the marketplace. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. While the Exchange recognizes that the impact of this proposal is to permit all securities to be traded in the Pre-Market Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, the Exchange nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Pre-Market Session in a manner that is more familiar to the marketplace. Moreover, allowing the resumption of trading to occur on the Exchange at the beginning of the Pre-Market Session in all NMS Stocks will allow for price formation to occur earlier in the trading day, which in turn allows market participants to react to news that has developed. As such, trading at the beginning of regular hours may be more orderly.

2. Statutory Basis

Extend the Market-Wide Circuit Breaker Pilot

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 11.16 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.16 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt

The Exchange believes that the proposed change to Rule 11.16(b)(2) promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility, and how the markets will resume trading following a Level 3 market decline. As described above, the Exchange is seeking to adopt a standardized approach related to resuming trading in NMS Stocks after a Level 3 MWCB halt; this approach has already been adopted and tested by other national securities exchanges and FINRA.[22] In this regard, the Exchange believes that the proposal to resume trading in all securities following a Level 3 halt in the same manner that securities would open trading on a regular trading day (*i.e.,* with continuous trading on the Exchange at the beginning of the Pre-Market Session at 7 a.m. ET) will benefit investors, the national market system, Exchange members, and the Exchange market by promoting a fair and orderly market and reducing confusion during a significant cross-market event. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule changes would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.16 with the proposed standardized process for resuming trading in all securities following a Level 3 halt will promote fair and orderly markets, and protect investors and the public interest.

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 because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

[19] Presently, the Exchange's equities trading day ends at 5:00 p.m. ET. *See* Exchange Rule 1.5(w).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See supra* note 15.

The Exchange also does not believe that the proposed change to Rule 11.16(b)(2) will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed Level 3 rule change described above would standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity. Further, the proposal is based on filings of other markets that have already adopted the proposed Level 3 rule change.[23]

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 designated this rule filing as non-controversial under Section 19(b)(3)(A)[24] of the Act and Rule 19b–4(f)(6)[25] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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 and Rule 19b–4(f)(6) thereunder.[26]

A proposed rule change filed under Rule 19b–4(f)(6)[27] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[28] 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 become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. With respect to the proposed change relating to the resumption of trading after a Level 3 halt, the Commission notes that it approved a substantively similar proposed rule change submitted by Nasdaq, and waiver of the operative delay will ensure consistency across the market centers and the timely implementation of the proposed rule change. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[29]

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 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–2020–12 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–2020–12. 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–2020–12 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23011 Filed 10–16–20; 8:45 am]

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[23] *See id.*

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[27] *Id.*

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] 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).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90154; File No. SR–NYSEAMER–2020–73]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10E

October 13, 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 October

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

2, 2020, NYSE American LLC (''NYSE American'' 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on April 20, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on April 20, 2021. The pilot program is currently due to expire on October 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10E to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange later amended Rule 7.10E to extend the pilot's effectiveness to the close of business on April 20, 2020,[11] and subsequently, to the close of business on October 20, 2020.[12]

The Exchange now proposes to amend Rule 7.10E to extend the pilot's effectiveness for a further six months until the close of business on April 20, 2021. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[13] In such an event, the remaining sections of Rule 7.10E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10E.

The Exchange does not propose any additional changes to Rule 7.10E. Extending the effectiveness of Rule 7.10E for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10E for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEAmer-2010–60).

[5] *See* Securities Exchange Act Release No. 68801 (Feb. 1, 2013), 78 FR 8630 (Feb. 6, 2013) (SR–NYSEMKT–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEMKT–2014–37).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71820 (March 27, 2014), 79 FR 18595 (April 2, 2014) (SR–NYSEMKT–2014–28).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85563 (April 9, 2019), 84 FR 15241 (April 15, 2019) (SR–NYSEAMER–2019–11).

[11] *See* Securities Exchange Act Release No. 87354 (October 18, 2019), 84 FR 57139 (October 24, 2019) (SR–NYSEAMER–2019–44).

[12] *See* Securities Exchange Act Release No. 88589 (April 8, 2020), 85 FR 20769 (April 14, 2020) (SR–NYSEAMER–2020–22).

[13] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

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[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

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–2020–73 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–2020–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–73 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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 satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 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).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90164; File No. SR–NASDAQ–2020–067]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 114 and Equity 7, Section 118 of the Fee Schedule

October 13, 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 October 1, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) amend the Exchange's additional rebate to Qualified Market Maker (''QMM'') at Equity 7, Section 114(e); (ii) remove a rebate provided through the Nasdaq Growth Program at Equity 7, Section 114(j); and (iii) establish and amend certain credits and fees at Equity 7, Section 118, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make modifications to the Exchange's pricing schedule in a further attempt to improve the attractiveness of the market to new and existing market participants. Accordingly, the Exchange proposes to amend its schedule of fees and credits pursuant to Equity 7, Section 114 and Section 118 in several respects. The Exchange also proposes to make certain non-substantive changes to Equity 7, Section 118.

Changes to Section 114

Currently, the Exchange provides an additional rebate of $0.00005 per share executed when a QMM's MPID meets certain requirements in Section 114(e). The Exchange is proposing to amend the rebate to provide $0.000075 per share executed in Tapes A and C, while maintaining the current rebate amount for Tape B in order to incentivize firms to increase their liquidity providing activity on the Exchange, thereby encouraging market quality.

The Nasdaq Growth Program discussed in Section 114(j), which was established in 2016,[3] presently provides a member with credits of $0.0025 per share executed and a $0.0027 per share executed to qualified members. The credit of $0.0027 per share executed was introduced in 2017 to provide members with additional flexibility in qualifying for the Growth Program and incentive to provide greater Consolidated Volume, thereby furthering the Growth Program's goal of incentivizing participation on the Exchange.[4] The Exchange proposes to eliminate the credit of $0.0027 per share executed because the thresholds for the pricing incentive is no longer effective in incentivizing liquidity adding activity.

Changes to Section 118(a)

The Exchange is also proposing to amend the schedule of fees and credits provided to member organizations, pursuant to Equity 7, Section 118(a), in several respects.

First, by way of background, when the Exchange initially established the RTFY order type,[5] the Exchange explained that it would allow Designated Retail Orders to post on the exchange or be routed externally to seek price improvement. The Exchange routes to several destinations that are ineligible for a protected quotation under Regulation NMS when seeking price improvement. Over time the Exchange has seen more orders remove liquidity on Nasdaq and route to other exchanges. When introduced, the fees associated with removing liquidity on Nasdaq and routing away were covered by the Exchange as a promotion to incentivize usage of the order type. Since its inception, RTFY has become more widely used and the Exchange has waived more fees for removing liquidity on Nasdaq and incurred more fees for routing to other exchanges. As a result, the Exchange established a $0.0020 per share executed fee in August 2020.[6]

Currently, the Exchange charges a fee of $0.0020 per share executed to a member entering RTFY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue other than the Nasdaq Market Center and has less than a 75% ratio of its RTFY liquidity adding activity to its RTFY total volume. The fee is applicable to Tape A, Tape B and Tape C and only applies to orders submitted with the RTFY routing option. The Exchange continued to charge a $0.0000 per share executed fee to other members entering a RTFY order that removes liquidity on the Nasdaq Market Center or executes in a venue other than the Nasdaq Market Center.

The Exchange is proposing to increase the fee to $0.0030 per share executed and to amend the requirement by charging a member for shares executed above 4 million shares during the month for RTFY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. Although the Exchange will continue to not charge a fee for RTFY orders in all other instances, the Exchange is also

[3] See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR–NASDAQ–2016–132).

[4] *See* Securities Exchange Act Release No. 80997 (June 22, 2017), 82 FR 29348 (June 28, 2017) (SR–NASDAQ–2017–060).

[5] RTFY is a routing option designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flows. This routing strategy is available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. *See* Rule 4748(a)(1)(A)(v)(b).

[6] *See* Securities Exchange Act Release No. 89781 (September 8, 2020), 85 FR 56663 (September 14, 2020) (SR–NASDAQ–2020–059).

proposing to amend the descriptions of its two RTFY fees of $0.0000 per share executed, to reflect that members will not incur a fee for shares up to 4 million, during the month, that remove from the Exchange or a venue with a protected quotation under Regulation NMS, or if executed in a venue ineligible for a protected quotation under Regulation NMS.

Second, the Exchange currently provides a $0.0029 per share credit to members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.40% of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent more than 0.10% of Consolidated Volume. The Exchange is proposing to amend the threshold for the $0.0029 per share executed credit to apply to a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent more than 0.10% of Consolidated Volume, and (ii) with a ratio of at least 15% volume that sets the NBBO provided through one or more of its Nasdaq Market Center MPIDs to all displayed volume that provides liquidity through one or more of its Nasdaq Market Center MPIDs during the month. This change will apply to Tapes A, B and C. The Exchange hopes that this proposed amendment will incentivize firms to increase their liquidity providing activity on Nasdaq, to set the NBBO, and will promote tighter spreads and improve market quality.

Third, the Exchange proposes to add a new supplemental credit for displayed quotes/orders (other than Supplemental Orders [7] or Designated Retail Orders) that provide liquidity. The proposed credit would provide $0.000025 per share executed to a member with (i) shares of liquidity provided in Tape A securities during the month representing at least 1.40% of Consolidated Volume during the month, and (ii) shares of liquidity provided in Tape C representing at least 1.40% of Consolidated Volume during the month. This supplemental credit only applies to Tapes A and C securities because the Exchange hopes to incentivize firms to increase their display liquidity added in Tapes A and C securities.

Fourth, the Exchange proposes in Section 118(a) to add two new credits across Tapes A, B and C for certain non-displayed orders (other than Supplemental Orders) that provide liquidity. The Exchange proposes to adopt a credit for such non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (including midpoint orders) and through M–ELO orders; and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) and through M–ELO orders by 0.06% or more relative to the member's August 2020 Consolidated Volume provided through non-displayed orders (including midpoint orders) and through M–ELO (''credit 1''). Additionally, the Exchange proposes to adopt a credit for such non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (including midpoint orders) and through M–ELO orders; and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) and through M–ELO orders by 0.10% or more relative to the member's August 2020 Consolidated Volume provided through non-displayed orders (including midpoint orders) and through M–ELO (''credit 2''). The Exchange will provide a credit of $0.00075 per share executed to Tape C and a credit of $0.0010 per share executed to Tapes A and B for credit 1. The Exchange will provide a credit of $0.0010 per share executed to Tape C and a credit of $0.00125 per share executed to Tapes A and B for credit 2. The Exchange hopes that by proposing these new credits it will incentive firms to increase their non-display volume on the Exchange.

Lastly, the Exchange is making certain non-conforming changes to remove the duplicative words ''during the month'' from the $0.0027 per share executed credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tape A. Additionally, the Exchange is adding the word ''and'' to the $0.0025 per share executed credit for non-displayed orders (other than Supplemental Orders) that provide liquidity in Tape B.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of fees and credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .'' [10]

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

[7] A Supplemental Order is an Order Type with a Non-Display Order Attribute that is held on the Nasdaq Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D). *See* Rule 4702(b)(6).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

broader forms that are most important to investors and listed companies.'' [11]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[12]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits and charges to provide increased overall incentives to members to increase their liquidity removal and adding activity on the Exchange. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants. Generally, the proposed new credits and charges will be comparable to, if not favorable to, those that its competitors provide.[13] Moreover, the Exchange believes that it is reasonable to modify certain fees and credits within its fee schedule as a means of incentivizing market participants to increase their contributions to the improvement of the quality of the Exchange.

In particular, the Exchange believes that it is reasonable to increase the additional QMM credit of $0.00005 per share executed to $0.000075 per share executed for Tapes A and C in Section 114(e) because with the launch of new exchanges this month, the Exchange hopes to incentivize participants to maintain or increase their liquidity adding activity and quoting at the NBBO in Tapes A and C. To the extent that this proposal results in an increase in liquidity adding and quoting activity on the Exchange, this will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

Additionally, the Exchange believes it is reasonable to remove the credit of $0.0027 per share executed for the Nasdaq Growth Program in Section 114(j) because the credit did not accomplish the growth in activity as originally intended because the thresholds for the pricing incentive is no longer effective in incentivizing liquidity adding activity.[14] It is reasonable to evaluate and update the Exchange's fee schedule to reflect the fees and rebates that are effective for the Exchange and market participants.

The Exchange also believes it is reasonable to adjust the fee and the qualifications for RTFY orders. Until August 2020,[15] there had been no charge to participants entering RTFY orders because there were no fees charged to participants for removing liquidity from the Exchange and fees charged by other venues with a protected quotation under Regulation NMS for RTFY orders that are routed away to other venues were covered by the Exchange as a promotion to incentivize usage of the order type. Given that RTFY orders have become more widely used and as a result, the Exchange has waived more fees for removing liquidity from the Exchange and incurred more costs for covering the fees for routing to other venues with a protected quotation under Regulation NMS, the Exchange believes that it is reasonable to amend its RTFY fees to cap the number of executed RTFY shares that members receive for free when such orders remove liquidity from the Nasdaq Market Center or execute in a venue with a protected quotation under Regulation NMS. Similarly, the Exchange believes that it is reasonable to amend the RTFY fee qualifications for the $0.0000 per share executed to align with the qualifications for the proposed $0.0030 per share executed fee. The Exchange hopes to continue to encourage market participants to increase their RTFY usage while allowing the Exchange to mitigate the costs it incurs by capping the number of shares that members receive for free when such orders remove liquidity from the Nasdaq Market Center or execute in a venue with a protected quotation under Regulation NMS.

The Exchange also believes that it is reasonable to adjust the qualifications for the $0.0029 per share executed credit in Section 118(a) provided to members for displayed quotes/orders (other than Supplemental Order or Designated Retail Orders [16]) that provide liquidity. The proposed change is intended to incentivize members to increase liquidity and set the NBBO, which will further improve overall market quality.

Additionally, the Exchange believes it is reasonable to add three new credits to Section 118(a). The Exchange believes that the availability of the new $0.000025 per share executed supplemental credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity, as well as the two new credits for certain non-displayed orders (other than Supplemental Orders) that provide liquidity will incentivize members to increase their liquidity adding activity on the Exchange in order to qualify for the new credits. An increase in liquidity adding activity on the Exchange would help to improve the quality of the market for all participants. Moreover, the Exchange believes that it is reasonable to apply the supplemental credit only to Tapes A and C because the Exchange's goal is to promote increased liquidity in Tapes A and C and hopes to incentivize market participants to increase their liquidity adding activity by providing these additional credits. Similarly, the Exchange believes that it is reasonable to provide a higher credit certain for non-displayed orders (other than Supplemental Orders) that provide liquidity in Tapes A and B due to the Exchange's goal to specifically promote increased non-displayed order liquidity in securities in these Tapes because the Exchange is not seeing the level of liquidity that it expected in Tapes A and B.

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[12] As an example, CBOE EDGX provides a standard rebate for liquidity adders of $0.00170 per share executed (or between $0.0020 and $0.0029 per share executed) if a member qualifies for a volume tier.

[13] *See* n. 12, *supra.*

[14] *See* n. 4, *supra.*

[15] *See* n. 6, *supra.*

[16] Pursuant to Rule Section 118, a ''Designated Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a ''natural person'' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as ''Designated Retail Orders'' comply with these requirements. Orders may be designated on an order by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders.

The Proposal Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal will allocate its credits and fees fairly among its market participants.

In particular, it is equitable to increase the additional credit in Section 114(e) for QMMs in securities in Tapes A and C in order to incentivize members to increase their liquidity adding activity in those Tapes because the Exchange is not seeing the volume that it had hoped to see in Tapes A and C. Moreover, the fees will be applied uniformly to all QMMs.

The Exchange also believes that it is equitable to increase certain fees and qualifications for RTFY orders in Section 118(a) because the Exchange must balance providing a variety of order types, including order types that allow market participants to remove liquidity and route orders out of the Exchange, while ensuring that the Exchange is not incurring significant costs as a result of providing a discounted fee. Additionally, the Exchange is assessed various fees for the execution of such orders at away venues and the proposed fee is reflective of the value provided by the Exchange in providing this functionality and the overall fees assessed by such venues. Moreover, the fee and qualifications will apply uniformly to all participants that enter RTFY orders.

Moreover, it is equitable for the Exchange to remove the $0.0027 per share executed credit from the Growth Program in Section 114(j) because, discussed above, the credit did not accomplish the growth in activity as originally intended. When the fees and credits of the Exchange are not meeting their expected goals, it is reasonable for the Exchange to re-evaluate them, and equitable for the Exchange to amend its fees and credits for all members.

Furthermore, it is equitable for the Exchange to adjust the qualifications for the $0.0029 per share executed credit for displayed quotes/orders (other than Supplemental Orders and Designated Retail Orders). The Exchange provides credits with varying qualifications to provide its members with various ways for obtaining the credit. The Exchange believes that it is equitable to adjust the qualifications for a credit in order to incentivize an increase in liquidity adding activity and setting the NBBO on the Exchange. As discussed above, greater liquidity on the Exchange will further improve overall market quality.

The Exchange also believes that it is equitable to establish new credits in Section 118(a). In particular, the Exchange believes it is equitable to establish a new supplemental credit for members that provide liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders). Additionally, the Exchange believes that it is equitable for the Exchange to establish two new credits for members that provide liquidity for certain non-displayed orders (other than Supplemental Orders). The Exchange hopes that these credits will increase the incentive for participants to add liquidity. An increase in overall liquidity adding activity on the Exchange will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants. Moreover, the Exchange believes it is equitable to apply the $0.000025 per share executed credit to Tapes A and C for members that provide liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) because it is the Exchange's goal to specifically promote increased liquidity in securities in Tapes A and C for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders). Additionally, the Exchange believes that it is equitable to provide a higher credit to members with certain non-displayed orders (other than Supplemental Orders) in securities in Tape A and B due to the Exchange's goal to specifically promote increased non-displayed order liquidity in securities in these tapes. An increase in overall liquidity adding activity on the Exchange will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Proposed Amended Fees and Credits Are Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Net adders of liquidity to the Exchange stand to benefit directly from the proposed changes. Moreover, to the extent that the proposed changes increase liquidity adding and removing activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq market, to the benefit of all existing and prospective participants.

More particularly, to the extent that Section 114(e) of the Exchange's proposal to allow a QMM to qualify for a credit of $0.000075 per share executed in Tapes A and C will result in an increase in liquidity on the Exchange, it will improve market-wide quality and price discovery to the benefit of all participants. Moreover, to the extent that the proposal causes members to increase the extent of their liquidity adding and quoting activity on the Exchange, the Exchange market quality will improve, and all market participants will benefit. Moreover, any market participant that does not wish to receive the higher credit is free to shift its order flow to a competing venue. Additionally, the proposal to remove the Growth Program $0.0027 per share executed credit in Section 114(j) is not unfairly discriminatory because the credit will be removed for all market participants given that it did not accomplish the growth in activity as originally intended.

Additionally, the Exchange does not believe that the proposed RTFY fee increase in Section 118(a) is unfairly discriminatory because all members sending Designated Retail Orders to Nasdaq for execution are eligible to use RTFY. Each member may elect to use the RTFY routing strategy and to execute as many shares as the member sees fit. Furthermore, given that the Exchange only incurs a fee for RTFY orders that route and execute at venues with a protected quotation under Regulation NMS, the Exchange does not believe that it is unfairly discriminatory to not charge a fee for RTFY orders that route and execute at venues without a protected quotation under Regulation NMS because the Exchange is not charged a fee for those RTFY orders. Moreover, assessing different rates when a member elects to use a routing strategy but executes on the venue where the order was originally entered is not novel. For example, the Exchange charges fees ranging from $0.0030 per share executed to no charge to a member

entering an MIDP Order.[17] The fees vary based on whether the MIDP Order routes and executes at venues with a protected quotation under Regulation NMS other than BX or Nasdaq, or whether the MIDP Order routes and executes at venues ineligible for a protected quotation under Regulation NMS.[18] The charge for MIDP Orders that route and execute at venues with a protected quotation under Regulation NMS, other than BX or Nasdaq, is the same as the proposed charge for RTFY orders that route and execute at venues with a protected quotation under Regulation NMS. Therefore, the Exchange is not seeking to charge RTFY orders a greater amount than MIDP Orders; rather, the fees are comparable.

Moreover, the Exchange does not believe that it is unfairly discriminatory to add new credits or to amend the qualifications for a member to obtain a current credit in Section 118(a) because to the extent that the proposal increases liquidity adding activity on the Exchange, this will result in improved market quality, which will benefit all existing and prospective participants.

Furthermore, the Exchange does not believe it is unfairly discriminatory for the Exchange to propose a supplemental credit for members that provide liquidity for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in Tapes A and C because the Exchange seeks to promote increased liquidity adding activity specifically in securities in Tapes A and C. Similarly, the Exchange does not believe that it is unfairly discriminatory to provide a higher credit to QMMs who provide liquidity adding activity in Tapes A and C because the Exchange seeks to encourage liquidity adding activity and quoting at the NBBO by QMMs in Tapes A and C. Likewise, the Exchange does not believe that it is unfairly discriminatory to provide a higher credit for certain non-displayed orders (other than Supplemental Orders) that provide liquidity in Tapes A and B than it proposes for participants with orders in Tape C because the Exchange seeks to promote increased liquidity adding activity for certain non-displayed orders (other than Supplemental Orders) specifically in securities in Tapes A and B.

Finally, any participant that is dissatisfied with the proposed amended fees or credits is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage. To the contrary, the proposed changes will provide opportunities for members to receive new and amended credits based on their market-improving behavior. Any member may elect to provide the levels of market activity required in order to receive the new or amended credits. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuates. Additionally, As discussed above, the $0.0027 per share executed Growth Program credit removal is applicable to all members and does not place anyone at a competitive disadvantage because the thresholds for the pricing incentive is no longer effective in incentivizing liquidity adding activity.

Moreover, members are free to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

The Exchange believes that its proposed modification to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 14 live exchanges (soon to be 16) and from off-exchange venues, which include 34 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee and credit changes in this market may impose any burden on competition is extremely limited.

The proposed amended fees and credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 44% of industry volume for the month of August 2020.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[19] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a

[17] The MIDP routing option allows Nasdaq members to seek midpoint liquidity on Nasdaq and other markets on the Nasdaq system routing table.

[18] *See* Rule Equity 7, Section 118(a). *See also* Securities Exchange Act Release No. 87186 (October 1, 2019), 84 FR 53504 (October 7, 2019) (SR–Nasdaq–2019–080).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–067 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–NASDAQ–2020–067. 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–NASDAQ–2020–067 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23015 Filed 10–16–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90156; File No. SR–NYSECHX–2020–29]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

October 13, 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 October 2, 2020, the NYSE Chicago, Inc. (''NYSE Chicago'' 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2021. 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.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2021. The pilot program is currently due to expire on October 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Article 20, Rule 10 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–CHX–2010–13).

[5] *See* Securities Exchange Act Release No. 68802 (Feb. 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04).

primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Article 20, Rule 10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] After the Commission approved the Exchange's proposal to transition to trading on Pillar,[11] the Exchange amended the corresponding Pillar rule—Rule 7.10—to extend the pilot's effectiveness to the close of business on April 20, 2020,[12] and subsequently, to the close of business on October 20, 2020.[13]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further six months until the close of business on April 20, 2021. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Article 20, Rule 10 prior to being amended by SR–CHX–2010–13 shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[14] In such an event, the remaining sections of Article 20, Rule 10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of these rules for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–CHX–2014–06).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71782 (March 24, 2014), 79 FR 17630 (March 28, 2014) (SR–CHX–2014–04).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85533 (April 5, 2019), 84 FR 14701 (April 11, 2019) (SR–NYSECHX–2019–04).

[11] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345 (October 16, 2019) (SR–NYSECHX–2019–08). Article 20, Rule 10 is no longer applicable to any securities that trade on the Exchange.

[12] *See* Securities Exchange Act Release No. 87351 (October 18, 2019), 84 FR 57068 (October 24, 2019) (SR–NYSECHX–2019–13).

[13] *See* Securities Exchange Act Release No. 88591 (April 8, 2020), 85 FR 20771 (April 14, 2020) (SR–NYSECHX–2020–09).

[14] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 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 satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[21]

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–2020–29 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–2020–29. 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–NYSECHX–2020–29 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23008 Filed 10–16–20; 8:45 am]

BILLING CODE 8011–01–P

[21] 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).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90155; File No. SR–NYSEArca–2020–88]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10–E

October 13, 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 October 2, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on April 20, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on April 20, 2021. The pilot program is currently due to expire on October 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10–E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEArca–2010–58).

[5] *See* Securities Exchange Act Release No. 68809 (Feb. 1, 2013), 78 FR 9081 (Feb. 7, 2013) (SR–NYSEArca–2013–12).

transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10–E to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange later amended Rule 7.10–E to extend the pilot's effectiveness to the close of business on April 20, 2020,[11] and subsequently, to the close of business on October 20, 2020.[12]

The Exchange now proposes to amend Rule 7.10–E to extend the pilot's effectiveness for a further six months until the close of business on April 20, 2021. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[13] In such an event, the remaining sections of Rule 7.10–E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10–E.

The Exchange does not propose any additional changes to Rule 7.10–E. Extending the effectiveness of Rule 7.10–E for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10–E for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

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[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEArca–2014–48).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71807 (March 26, 2014), 79 FR 18087 (March 31, 2014) (SR–NYSEArca–2014–32).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85532 (April 5, 2019), 84 FR 14708 (April 11, 2019) (SR–NYSEArca–2019–21).

[11] *See* Securities Exchange Act Release No. 87355 (October 18, 2019), 84 FR 57094 (October 24, 2019) (SR–NYSEArca–2019–75).

[12] *See* Securities Exchange Act Release No. 88590 (April 8, 2020), 85 FR 20791 (April 14, 2020) (SR–NYSEArca–2020–25).

[13] *See supra* notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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 satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

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–NYSEArca–2020–88 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–2020–88. 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–2020–88 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23007 Filed 10–16–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 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).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90158; File No. SR–C2–2020–015]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Related to the Market-Wide Circuit Breaker in Rule 6.32.01

October 13, 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 8, 2020, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to extend the pilot period related to the market-wide circuit breaker in Rule 6.32.01. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 6.32.01 describes the methodology for determining when to halt trading in all stock options due to extraordinary market volatility, *i.e.,* market-wide circuit breakers (''MWCB''). The MWCB mechanism was approved by the Securities and Exchange Commission (the ''Commission'') to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

extensions to the pilot period for the LULD Plan. Though the LULD Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 6.32.01 (as well as other options pilot rules) to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan.[6] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 6.32.01 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8] The Exchange subsequently amended Rule 6.32.01 to extend the pilot to the close of business on October 18, 2020.[9] The Exchange now proposes to amend Rule 5.22 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 6.32.01.

The market-wide circuit breaker under Rule 6.32.01 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. As stated above, because all U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity, the Exchange, too, adopted a MWCB mechanism on a pilot basis pursuant to Rule 6.32.01 Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 6.32.01, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening process. The Exchange notes that its affiliated equities exchanges [10] filed rule changes to that effect in March 2020,[11] and successfully tested the implementation of those changes on September 12, 2020.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[6] *See* Securities Exchange Act Release Nos. 68769 (January 30, 2013), 78 FR 8213 (February 5, 2013) (SR–C2–2013–006) (amending Rule 6.32.03, which was later renumbered to Rule 6.32.01, to delay the operative date of the pilot to coincide with the initial date of operations of the Plan); and 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots, including Rule 6.32.01).

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[8] *See* Securities Exchange Act Release No. 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots, including Rule 6.32.01).

[9] *See* Securities Exchange Act Release No. 87342 (October 18, 2019), 84 FR 57102 (October 24, 2019) (SR–C2–2019–022).

[10] The Exchange's affiliated equities exchanges include Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.

[11] *See* Securities Exchange Act Release Nos. 88417 (March 18, 2020), 85 FR 16702 (March 24, 2020) (SR–CboeBZX–2020–025); 88416 (March 18, 2020), 85 FR 16699 (March 24, 2020) (SR–CboeBYX–2020–009); 88420 (March 18, 2020), 85 FR 16696 (March 24, 2020) (SR–CboeEDGX–2020–012); 88419 (March 18, 2020), 85 FR 16716 (March 24, 2020) (SR–CboeEDGA–2020–008).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The MWCB mechanism under Rule 6.32.01 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 6.32.01 should continue on a pilot basis because the MWCB will promote fair and orderly markets and protect investors and the public interest.

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 because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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 designated this rule filing as non-controversial under Section 19(b)(3)(A)[15] of the Act and Rule 19b–4(f)(6)[16] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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 and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] 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 become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[20]

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 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–C2–2020–015 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–C2–2020–015. 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

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[18] *Id.*

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 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).

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 and on its internet website. 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–C2–2020–015 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23010 Filed 10–16–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90165; File No. SR–CBOE–2020–098]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Related to the Market-Wide Circuit Breaker in Rule 5.22

October 13, 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 8, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to extend the pilot period related to the market-wide circuit breaker in Rule 5.22. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 5.22 describes the methodology for determining when to halt trading in all stock options due to extraordinary market volatility, *i.e.,* market-wide circuit breakers (''MWCB''). The MWCB mechanism was approved by the Securities and Exchange Commission (the ''Commission'') to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan. Though the LULD Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 5.22[6] (as well as other options pilot rules) to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan.[7] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 5.22 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9] The Exchange subsequently amended Rule 5.22 to extend the pilot to the close of business on October 18, 2020.[10] The Exchange now proposes to amend Rule 5.22 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 5.22.

The market-wide circuit breaker under Rule 5.22 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. As stated above, because all U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] In October 2019, the Exchange restructured its Rulebook and relocated previous Rule 6.3B, governing the MWCB mechanism, to current Rule 5.22. No substantive changes were made to the rule. *See* Securities Exchange Act Release No. 87224 (October 4, 2019), 84 FR 54652 (October 10, 2019) (SR–CBOE–2019–081).

[7] *See* Securities Exchange Act Release Nos. 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011) (SR–CBOE–2011–087) (amending Rule 5.22, prior Rule 6.3B, for determining when to halt trading in all stocks and stock options due to extraordinary market volatility); 68770 (January 30, 2013), 78 FR 8211 (February 5, 2013) (SR–CBOE–2013–011) (amending Rule 5.22, prior Rule 6.3B, to delay the operative date of the pilot to coincide with the initial date of operations of the Plan); and 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

[9] *See* Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

[10] *See* Securities Exchange Act Release No. 87341 (October 18, 2019), 84 FR 57081 (October 24, 2019) (SR–CBOE–2020–100).

trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity, the Exchange, too, adopted a MWCB mechanism on a pilot basis pursuant to Rule 5.22. Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 5.22, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening process. The Exchange notes that its affiliated equities exchanges [11] filed rule changes to that effect in March 2020,[12] and successfully tested the implementation of those changes on September 12, 2020.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The MWCB mechanism under Rule 5.22 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 5.22 should continue on a pilot basis because the MWCB will promote fair and orderly markets and protect investors and the public interest.

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

[11] The Exchange's affiliated equities exchanges include Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.

[12] *See* Securities Exchange Act Release Nos. 88417 (March 18, 2020), 85 FR 16702 (March 24, 2020) (SR–CboeBZX–2020–025); 88416 (March 18, 2020), 85 FR 16699 (March 24, 2020) (SR–CboeBYX–2020–009); 88420 (March 18, 2020), 85 FR 16696 (March 24, 2020) (SR–CboeEDGX–2020–012); 88419 (March 18, 2020), 85 FR 16716 (March 24, 2020) (SR–CboeEDGA–2020–008).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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 designated this rule filing as non-controversial under Section 19(b)(3)(A) [16] of the Act and Rule 19b–4(f)(6) [17] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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 and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] 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 become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[21]

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 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–CBOE–2020–098 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–098. 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 and on its internet website. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2020–098 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23016 Filed 10–16–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[19] *Id.*

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 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).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90157; File No. SR–NYSENAT–2020–32]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

October 13, 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 October 2, 2020, NYSE National, Inc. (''NYSE National'' 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2021. The pilot program is currently due to expire on October 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.19 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 11.19 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 11.19.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rule 7.10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11] The Exchange later amended Rule 7.10 to extend the pilot's effectiveness to the close of business on April 20, 2020,[12] and subsequently, to the close of business on October 20, 2020.[13]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further six months to the close of business on April 20, 2021. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) as described in former Rule 11.19 will be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[14] In such an event, the remaining sections of Rule 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10 for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NSX–2010–07).

[5] *See* Securities Exchange Act Release No. 68803 (Feb. 1, 2013), 78 FR 9078 (Feb. 7, 2013) (SR–NSX–2013–06).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NSX–2014–08).

[7] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENAT–2018–02).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71797 (March 25, 2014), 79 FR 18108 (March 31, 2014) (SR–NSX–2014–07).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85522 (April 5, 2019), 84 FR 14704 (April 11, 2019) (SR–NYSENAT–2019–07).

[12] *See* Securities Exchange Act Release No. 87352 (October 18, 2019), 84 FR 57063 (October 24, 2019) (SR–NYSENAT–2019–24).

[13] *See* Securities Exchange Act Release No. 88593 (April 8, 2020), 85 FR 20728 (April 14, 2020) (SR–NYSENAT–2020–13).

[14] *See supra* notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[21]

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–NYSENAT–2020–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–32 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23009 Filed 10–16–20; 8:45 am]

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[17] 15 U.S.C. 78s(b)(3)(A).

[18] 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 satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90163; File No. SR–NASDAQ–2020–066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118(a)

October 13, 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 October 1, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's schedule of credits, as set forth in Equity 7, Section 118(a) of the Exchange's Rulebook.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its schedule of credits at Equity 7, Section 118, to add several new credits.

New Supplemental Credit for Displayed Orders in Securities in Tape B

Presently, the Exchange offers a supplemental credit of $0.0001 per share executed—in addition to the range of credits it normally offers—to members with displayed orders/quotes (other than Supplemental Orders[3] or Designated Retail Orders[4]) in securities in Tape B (securities listed on exchanges other than Nasdaq or NYSE) that provide liquidity to the Exchange, to the extent that such members add liquidity in securities in Tape B representing at least 0.10% of Consolidated Volume[5] during the month through one or more of their Nasdaq Market Center MPIDs.

In addition to this credit the Exchange now proposes to add a new supplemental $0.00005 per share executed credit for members that add displayed liquidity in securities in Tape B constituting Designated Retail Orders where members add liquidity in securities in Tape B representing at least 0.10% of Consolidated Volume during the month through one or more of their Nasdaq Market Center MPIDs.

Thus, under the proposal, to the extent that a member provides liquidity in securities in Tape B that represents more than 0.10% of Consolidated Volume during a month, then the member will qualify for the following: (i) Any of the regular per share executed credits set forth in Equity 7, Section 118(a)(3) for which the member otherwise qualifies; (ii) a supplemental $0.0001 per share executed credit applicable to the member's displayed add orders (other than its Supplemental Orders or Designated Retail Orders); and (iii) a supplemental $0.00005 per share executed credit applicable to the member's displayed add orders that constitute Designated Retail Orders (other than Supplemental Orders).

The Exchange intends for the new supplemental credit to provide a further incentivize to its members to add displayed liquidity to the Exhange in securities in Tape B. Moreover, the Exchange intends for the proposal to broaden the availability of its supplemental credits to members that add displayed retail liquidity to the Exchange, as the existing supplemental credit excludes Designated Retail Orders. In incentivizing members to increase the extent of their displayed liquidity adding activity on the Exchange, and the extent of their retail liquidity adding activity on the Exchange, the Exchange intends to improve the overall quality and attractiveness of the market.

New Credits for Non-Displayed Orders

Presently, the Exchange offers a range of credits for non-displayed orders (other than Supplemental Orders) that provide liquidity to the Exchange. For example, for orders in securities in Tapes A and B, the Exchange presently offers a member a $0.0015 per share executed credit for other non-displayed orders if the member (i) provides 0.10% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.15% or more of Consolidated Volume through midpoint orders during the month. For orders in securities in Tape C, these same qualification requirements presently entitle a member to receive a credit of $0.0010 per share executed.

The Exchange proposes to add two additional credit tiers for orders in securities in each Tape. For orders in securities in Tapes A and B, the Exchange proposes to offer the following credits:

- $0.00175 per share executed for other nondisplayed orders if the member (i) provides 0.225% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.165% or more of Consolidated Volume through midpoint orders during the month; and
- $0.0020 per share executed for other nondisplayed orders if the member (i) provides 0.275% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.175% or more of Consolidated Volume through midpoint orders during the month.

For orders in securities in Tape C, these same qualification requirements described above would entitle a member to receive credits of $0.00125 per share

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As set forth in Rule 4703(b)(6)(A), a ''Supplemental Order'' is an Order Type with a Non-Display Order Attribute that is held on the Nasdaq Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D).

[4] As set forth in Equity 7, Section 118, a ''Designated Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this section, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a ''natural person'' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as ''Designated Retail Orders'' comply with these requirements. Orders may be designated on an order by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders.

[5] Pursuant to Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity.

executed and $0.0015 per share executed, respectively.

The Exchange intends for these new credits to provide increased incentives to its members to add significant amounts of non-displayed liquidity to the Exhange, including in both midpoint and non-midpoint orders. Although the Exchange intends to provide such incentives to members who add non-displayed liquidity in securities in all Tapes, it intends to provide a higher incentive to members who add non-displayed liquidity in orders in securities in Tapes A and B, where the Exchange has determined that the market would benefit most from additional such liquidity. In incentivizing members to increase the extent of their non-displayed liquidity adding activity on the Exchange, the Exchange intends to improve the overall quality and attractiveness of the market.

Impact of the Changes

Those participants that act as significant providers of displayed retail liquidity to the Exchange in securities in Tape B will benefit directly from the proposed addition of the new supplemental credit, while participants that act as significant providers of non-displayed liquidity will benefit directly from the new non-displayed credits. Other participants will also benefit from the new credits insofar as any increase in liquidity adding activity on the Exchange will improve the overall quality of the market, to the benefit of all member organizations.

The Exchange notes that its proposals are not otherwise targeted at or expected to be limited in their applicability to a specific segment of market participants nor will they apply differently to different types of market participants.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,[6] in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals Are Reasonable

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .'' [8]

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.'' [9]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposals represent a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed new supplemental displayed credit to provide increased overall incentives to members to increase their retail displayed liquidity adding activity on the Exchange in securities in Tape B, and it has designed its proposed new non-displayed credits to increase incentives to members to increase their non-displayed liquidity adding activity on the Exchange. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Exchange notes that those market participants that are dissatisfied with the new credits are free to shift their order flow to competing venues that offer them lower charges or higher credits.

The Proposals Are an Equitable Allocation of Credits

The Exchange believes its proposals will allocate its credits fairly among its market participants. It is equitable for the Exchange to establish the proposed new supplemental credit as a means of incentivizing members to provide meaningful amounts of liquidity to the Exchange in securities, including both displayed and non-displayed liquidity. To the extent that the Exchange succeeds in increasing liquidity activity on the Exchange and in attracting additional retail order flow, then the Exchange would experience improvements in its market quality, which would benefit all market participants.

The Exchange also believes it is equitable for the Exchange to target its proposed supplemental credit to members with displayed orders in securities in Tape B, and to Designated Retail Orders, in particular, due to the Exchange's assessment that the market would benefit from an increase in displayed liquidity in securities in Tape B as well as additional retail liquidity in securities in Tape B. Likewise, the Exchange believes that it is equitable for it to provide higher new non-displayed credits to members with non-displayed orders in securities in Tapes A and B, because the Exchange has determined that the market would specifically benefit from additional non-displayed liquidity in securities in those Tapes.

Any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

venues that provide more generous pricing or less stringent qualifying criteria.

The Proposed Credits Are Not Unfairly Discriminatory

The Exchange believes that the proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Moreover, the Exchange believes that its new proposed supplemental displayed credit and its new proposed non-displayed credits are not unfairly discriminatory because they stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to provide meaningful amounts of liquidity. Additionally, it is not unfairly discriminatory to target the new supplemental credit to orders in securities in Tape B and to provide higher non-displayed credits to orders in securities in Tapes A and B because the Exchange believes that the market would benefit from additional liquidity in those areas. The Exchange notes that it has limited funds to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective at improving market quality in areas that the Exchange determines are in need of improvement.

Finally, any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage. To the contrary, the proposed changes will provide opportunities for members to receive new credits based upon their market-improving behavior. Any member may elect to provide the levels of market activity required in order to receive the new credits. Furthermore, all members of the Exchange will benefit from any increase in market activity that the proposals effectuates.

Moreover, members are free to trade on other venues to the extent they believe that the proposed credits are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

The Exchange believes that its proposals will not burden competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the multitude of other live exchanges and from off-exchange venues. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee and credit changes in this market may impose any burden on competition is extremely limited.

The proposed new credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 40% of industry volume.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to increase liquidity on the Exchange and thereby render the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–066 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–NASDAQ–2020–066. 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–NASDAQ–2020–066 and should be submitted on or before November 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23014 Filed 10–16–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0479]

Conflicts of Interest Exemption: Avante Mezzanine Partners SBIC II, L.P.

Notice is hereby given that Avante Mezzanine Partners SBIC II, L.P., 11150 Santa Monica Blvd., Suite 1470, Los Angeles, CA 90025, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Avante Mezzanine Partners SBIC II, L.P., is seeking a written exemption from SBA for a proposed financing to Telestream Holding Corporation, 848 Gold Flat Road, Nevada City, CA 95959.

The financing is brought within the purview of § 107.730(a) of the Regulations because Avante Mezzanine Partners SBIC II, L.P will participate in a transaction that will discharge the obligations of its Associate, Avante Mezzanine Partners SBIC, L.P., therefore this transaction is considered *Financing which constitute conflicts of interest* requiring SBA's prior written exemption. Both Avante Mezzanine Partners SBIC II, L.P. and Avante Mezzanine Partners SBIC, L.P. previously held financings in Telestream Holding Corporation, however only Avante Mezzanine Partners SBIC II, L.P. will participate in this financing round as Avante Mezzanine Partners SBIC, L.P. has already concluded its investment period.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Donald DeFosset III,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–23075 Filed 10–16–20; 8:45 am]

BILLING CODE 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 3.

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 10/07/2020.

Physical Loan Application Deadline Date: 11/02/2020.

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 extend the deadline for filing applications for physical damages as a result of this disaster to 11/02/2020.

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. 2020–23034 Filed 10–16–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16700 and #16701; ALABAMA Disaster Number AL–00112]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–4563–DR), dated 10/09/2020.

Incident: Hurricane Sally.

Incident Period: 09/14/2020 and continuing.

DATES: Issued on 10/09/2020.

Physical Loan Application Deadline Date: 12/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/09/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baldwin, Conecuh, Escambia, Mobile.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 167008 and for economic injury is 167010.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–23029 Filed 10–16–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16603 and #16604; CALIFORNIA Disaster Number CA–00325]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA—4558—DR), dated 08/22/2020.

Incident: Wildfires.

Incident Period: 08/14/2020 through 09/26/2020.

DATES: Issued on 10/07/2020.

Physical Loan Application Deadline Date: 11/23/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/24/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 08/22/2020, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/23/2020.

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. 2020–23035 Filed 10–16–20; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Southern California Association of Governments (WB20–48—10/5/20) for permission to use select data from the Board's 2019 Masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB20–48.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–23021 Filed 10–16–20; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0039]

Applications for Inclusion on the Binational Panels Roster Under the United States-Mexico-Canada Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: The United States-Mexico-Canada Agreement (USMCA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CVD) proceedings and amendments to AD/CVD statutes of a USMCA Party. The United States annually renews its selections for the roster. The Office of the United States Trade Representative (USTR) invites applications from eligible individuals wishing to be included on the roster for the period April 1, 2021, through March 31, 2022.

DATES: USTR must receive your application by November 16, 2020.

ADDRESSES: You should submit your application through the Federal eRulemaking Portal: *http://www.regulations.gov (Regulations.gov),* using docket number USTR–2020–0039. Follow the instructions for submitting comments below. For alternatives to online submissions, please contact Sandy McKinzy at (202) 395–9483 before transmitting your application and in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Philip Butler, Associate General Counsel, *Philip.A.Butler@ustr.eop.gov,* (202) 395–5804.

SUPPLEMENTARY INFORMATION:

Binational Panel AD/CVD Reviews Under the USMCA

Article 10.12 of the USMCA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one USMCA Party with respect to the products of another USMCA Party. Binational panels decide whether AD/CVD determinations are in accordance with the domestic laws of

the importing USMCA Party using the standard of review a domestic court of the importing USMCA Party would have applied. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a 3-member extraordinary challenge committee, selected from a separate roster composed of 15 current or former judges.

Article 10.11 of the USMCA provides that a USMCA Party may refer an amendment to the AD/CVD statutes of another USMCA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the WTO Antidumping or Subsidies Agreements, successor agreements, or the object and purpose of the USMCA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two USMCA Parties must consult and seek to achieve a mutually satisfactory solution.

Roster and Composition of Binational Panels

Annex 10–B.1 of the USMCA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 10 binational panels, with each USMCA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two USMCA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

When there is a request to establish a panel, roster members from the two involved USMCA Parties will complete a disclosure form that is used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Roster

Selections by the United States of individuals for inclusion on the Chapter 10 roster are based on the eligibility criteria set out in Annex 10–B.1 of the USMCA. Annex 10–B.1 provides that Chapter 10 roster members must be citizens of a USMCA Party, must be of good character and of high standing and repute, and are to be chosen strictly based on their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with the governments of any of the three USMCA Parties. Annex 10–B.1 also provides that, to the fullest extent practicable, the roster should include judges and former judges.

Adherence to the USMCA Code of Conduct for Binational Panelists

The Code of Conduct under Chapter 10 and Chapter 31 (Dispute Settlement) (*see https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/code-code-codigo.aspx?lang=eng*), which was established pursuant to Article 10.17 of the USMCA, provides that current and former Chapter 10 roster members ''shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.'' The Code of Conduct also provides that candidates to serve on Chapter 10 panels, as well as those who ultimately are selected to serve as panelists, have an obligation to ''disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.'' Annex 10–B.1 of the USMCA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 10–B.1 states that ''[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.''

Procedures for Selection of Roster Members

Section 412 of the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113 (19 U.S.C. 4582)), establishes procedures for the selection by USTR of the individuals chosen by the United States for inclusion on the Chapter 10 roster. The roster is renewed annually, and applies during the one-year period beginning April 1st of each calendar year.

For the United States, the current Chapter 10 roster is comprised of individuals selected for the Chapter 19 roster beginning April 1, 2020, under Annex 1901.2 (Establishment of Binational Panels) of the NAFTA.

Under Section 412, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 10 roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, the U. S. Trade Representative selects the final list of individuals chosen by the United States for inclusion on the Chapter 10 roster.

Applications

USTR invites eligible individuals who wish to be included on the Chapter 10 roster for the period April 1, 2021, through March 31, 2022, to submit applications. In order to be assured of consideration, USTR must receive your application by November 16, 2020. Applications may be submitted electronically to *Regulations.gov*, using docket number USTR–2020–0039. For alternatives to online submissions, please contact Sandy McKinzy at (202) 395–9483 before transmitting your application and in advance of the deadline.

In order to ensure the timely receipt and consideration of applications, USTR strongly encourages applicants to make on-line submissions, using *Regulations.gov*. To submit an application via *Regulations.gov*, enter docket number USTR–2020–0039 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the 'comment now' link. For further information on using the *Regulations.gov*, please consult the resources provided on the website by clicking on the 'How to Use Regulations.gov' on the bottom of the page.

Regulations.gov allows users to provide comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that you submit applications in an attached document. If you attach a document, please type 'Application for Inclusion on USMCA Chapter 10 Roster' in the 'upload file' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the 'type comment' field.

Applications must be typewritten, and should be headed 'Application for Inclusion on USMCA Chapter 10 Roster.' Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Submit only one copy of publications, testimony, speeches, and decisions.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.,* and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 10 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 10 roster (individuals selected for the Chapter 19 roster beginning April 1, 2020) who remain interested in inclusion on the Chapter 10 roster only need to indicate that they are reapplying and submit updates (if any) to their applications on file. Current members do not need to resubmit their applications. Individuals who previously have applied but were not selected must submit new applications to reapply. An applicant, including a current or former roster member, who previously has submitted materials referred to in item 9, should not resubmit the materials.

Public Disclosure

Applications are covered by a Privacy Act System of Records Notice and are not subject to public disclosure and will not be posted publicly on *Regulations.gov*. USTR may refer applications to other federal agencies and Congressional committees in the course of determining eligibility for the roster, and may share them with foreign governments and the USMCA Secretariat in the course of panel selection.

False Statements

False statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 10 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Juan Millán,

Assistant United States Trade Representative for Monitoring and Enforcement,Office of the United States Trade Representative.

[FR Doc. 2020–22999 Filed 10–16–20; 8:45 am]

BILLING CODE 3290–F1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Delaying Submission of the Small Business Report Under the Trade Facilitation and Trade Enforcement Act of 2015

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to delegated authority, the U.S. Trade Representative is requiring the Chief Counsel for Advocacy of the Small Business Administration (SBA Advocacy) to delay submission of the report to Congress on the economic impacts on small businesses of the United States-Kenya trade agreement until negotiations conclude.

DATES: This notice is applicable on October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Rosalyn Steward, Assistant Chief Counsel, SBA Office of Advocacy, at (202) 205–7013, or Christina Sevilla, Deputy Assistant U.S. Trade Representative for Small Businesses, at (202) 395- 9506.

SUPPLEMENTARY INFORMATION: The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125) requires SBA Advocacy to submit to Congress a report on the economic impacts of a covered trade agreement on small businesses not more than 180 days after convening an Interagency Working Group for the relevant trade agreement. *See* 15 U.S.C. 634c(b)(3)(A). The TFTEA authorizes the President to require SBA Advocacy to delay the submission of this report until after the relevant negotiation concludes so that the negotiations are not disrupted. *See* 15 U.S.C. 634c(b)(3)(B). The President has delegated this authority to the U.S. Trade Representative. Pursuant to this authority, the U.S. Trade Representative is requiring SBA Advocacy to delay the submission of the report for the United States-Kenya trade agreement negotiations until the negotiation has concluded, but not later than 30 days after the trade agreement is signed, provided that the delay allows SBA Advocacy to submit the report to the Congress not later than 45 days before the Senate or the House of Representatives acts to approve or disapprove the trade agreement.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–23084 Filed 10–16–20; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

NextGen Advisory Committee; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the NextGen Advisory Committee (NAC).

DATES: The meeting will be held virtually only on November 17, 2020, from 1:00 p.m.–4:00 p.m. EST. Requests to attend the meeting virtually and request for accommodations for a disability must be received by November 2, 2020. If you wish to make a public statement during the meeting, you must submit a written copy of your remarks by November 2, 2020. Requests to submit written materials to be reviewed by NAC Members before the meeting must be received no later than November 2, 2020.

ADDRESSES: The meeting will be a virtual meeting only. Virtual meeting information will be provided upon registration. Information on the NAC, including copies of previous meeting minutes is available on the NAC internet website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/*. Members of the public interested in attending must send the required information listed in the **SUPPLEMENTARY INFORMATION** to *9-AWA-ANG-NACRegistration@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Schwab, NAC Coordinator, U.S. Department of Transportation, at *gregory.schwab@faa.gov* or 202–267–1201. Any requests or questions not regarding attendance registration should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

NAC was created under the Federal Advisory Committee Act (FACA), under the authority of the U.S. Department of Transportation, to provide independent advice and recommendations to FAA, and to respond to specific taskings received directly from FAA. The NAC recommends consensus-driven advice for FAA consideration relating to Air Traffic Management System modernization.

II. Agenda

At the meeting, the agenda will cover the following topics:

- NAC Chairman's Report
- FAA Report
- NAC Subcommittee Chairman's Report
  - Risk and Mitigations update for the following focus areas: Multiple Runway Operations, Data Communications, Performance Based Navigation, Surface and Data Sharing, and Northeast Corridor
- NAC Chairman Closing Comments

The detailed agenda will be posted on the NAC internet website at least one week in advance of the meeting.

III. Public Participation

This virtual meeting will be open to the public on a first-come, first served basis. Members of the public who wish to attend are asked to register via email by submitting full legal name, country of citizenship, contact information (telephone number and email address), and name of your industry association, or applicable affiliation, to the email listed in the **ADDRESSES** section. When registration is confirmed, registrants will be provided the virtual meeting information. Callers are responsible for paying associated long-distance charges.

Note: Only NAC Members, members of the public who have registered to make a public statement, and briefers will have the ability to speak. All other attendees will be listen only.

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, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Five minutes will be allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, FAA may conduct a lottery to determine the speakers. Speakers are required to submit a copy of their prepared remarks for inclusion in the meeting records and for circulation to NAC members to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** All prepared remarks submitted on time will be accepted and considered as part of the meeting's record.

Members of the public may submit written statements for inclusion in the meeting records and circulation to the NAC members. Written statements need to be submitted to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Comments received after the due date listed in the **DATES** section, will be distributed to the members but may not be reviewed prior to the meeting. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, this 14th day of October 2020.

Tiffany McCoy,

General Engineer, NextGen Office of Collaboration and Messaging, ANG–M, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2020–23088 Filed 10–16–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of an Emergency Approval of Information Collection: Runway to Recovery Recommendations To Help Airports and Airlines Mitigate the Risks of COVID–19 Transmission

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for emergency OMB approval and public comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) emergency approval for a new information collection. The collection involves determining the extent to which U.S. airlines and certificated U.S. airports have been able to implement practices recommended to reduce and mitigate the risks of COVID–19 transmission during air travel. FAA is collecting this information on behalf of multiple agencies that will use the information collected to gauge implementation, identify the impact of recommended practices on aviation safety and operations, understand potential barriers to implementation, and identify additional mitigation practices. If granted, the emergency approval is only valid for 180 days. FAA plans to follow this emergency request with a submission for a 3-year approval through OMB's normal PRA clearance process.

DATES: Written comments should be submitted by November 18, 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: Tip Stinnette by email at *tip.stinnette@faa.gov* or phone at 202–768–5642.

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–XXXX.

Title: Runway to Recovery Recommendations to Help Airports and Airlines Mitigate the Risks of COVID–19 Transmission.

Form Numbers: None.

Type of Review: Emergency approval of an information collection.

Background: The FAA is developing this collection to gather information on the United States' implementation of measures by airports and airlines to mitigate COVID–19-related risks and to restore aviation, in accordance with recommendations in the joint federal agency guidance *Runway to Recovery: The United States Framework for Airlines and Airports to Mitigate the Public Health Risks of Coronavirus*.[1] As described in *Runway to Recovery,* the adoption of the mitigation measures by airports and airlines is vital to reducing the spread of the virus in the air transportation system and restoring the confidence of passengers and the aviation workforce in air travel, both of which are critical to the recovery of the aviation industry. The information collection will help to identify the specific mitigation measures used by airports and airlines to stop the spread of COVID–19 and to assess the impact these measures are having on aviation safety and operations, reduction of public health risk, and security and resiliency of the air transport system.

FAA is conducting this information collection on behalf of agencies that issued *Runway to Recovery:* Department of Transportation, Department of Homeland Security, and Department of Health and Human Services.

As provided under 5 CFR 1320.13, DOT is requesting emergency processing for this new collection of information as specified in the PRA and its implementing regulations. DOT cannot reasonably comply with normal clearance procedures because an appropriate response to the COVID–19 public health emergency requires immediate action to ensure the safety and welfare of the traveling public. Upon OMB approval of its emergency clearance request, FAA will follow the normal clearance procedures for this information collection.

Use: FAA will use this information to update the International Civil Aviation Organization (ICAO) on the progress of U.S. airports and airlines implementing safety, security, and public health measures to mitigate risks associated with COVID–19. FAA will share the collected information with the federal agencies that issued *Runway to Recovery* (Departments of Transportation, Homeland Security and Health and Human Services). FAA will also share the collected information with airports and airlines.

The collected data will be used to:

- Assess the extent to which airports and airlines have implemented the recommended mitigation practices in the *Runway to Recovery* document;
- Help identify the impact of these practices on aviation safety and operations, reduction of public health risk, and the security and resiliency of the air transportation system;
- Better understand potential barriers airports and airlines are facing when they implement these recommendations; and
- Identify success stories and additional practices that airports and airlines are using to help prevent the spread of the virus, inspire confidence among the traveling public, and further ensure the safety of passengers and the aviation workforce.

Based on collected data, FAA, DOT, DHS, or HHS may recommend changes and/or additions to the mitigation measures identified in the *Runway to Recovery* document.

Respondents: Approximately 520 airport owners/managers and 60 airline representatives.

Frequency: Information will be collected approximately every 2 months over a 6-month period.

Estimated Average Burden per Response: 20–25 minutes.

Estimated Total Annual Burden: 60–75 minutes per respondent.

Issued in Washington, DC.

Roberto Gonzalez,

Deputy Director, Foundational Business, Flight Standards, Office of Aviation Safety.

[FR Doc. 2020–23069 Filed 10–16–20; 8:45 am]

BILLING CODE 4910–13–P

[1] U.S. DOT, HHS, DHS, *Runway to Recovery: The United States Framework for Airlines and Airports to Mitigate the Public Health Risks of Coronavirus* (July 2020), available at *https://www.transportation.gov/briefing-room/runway-recovery.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation: Notice of Availability and Request for Comment on the Draft Environmental Assessment for Issuing a Launch Operator License to Virgin Orbit, LLC for LauncherOne Operations From Andersen Air Force Base, Guam

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comment.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), Council on Environmental Quality NEPA implementing regulations, and FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures,* the FAA is announcing the availability of and requesting comment on the Draft Environmental Assessment for Issuing a Launch Operator License to Virgin Orbit, LLC for LauncherOne Operations from Andersen Air Force Base, Guam (Draft EA).

DATES: Comments must be received on or before November 16, 2020.

ADDRESSES: Comments should be mailed to Leslie Grey, Environmental Protection Specialist, Federal Aviation Administration, 800 Independence Avenue SW, Suite 325, Washington, DC 20591. Comments may also be submitted by email to *VOLauncherOne@icf.com.*

FOR FURTHER INFORMATION CONTACT: Leslie Grey, Environmental Protection Specialist, Federal Aviation Administration, 800 Independence Avenue SW, Suite 325, Washington, DC 20591; phone (907) 227–2113; email *leslie.grey@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA is evaluating Virgin Orbit, LLC's (VO's) proposal to conduct 747 carrier vehicle operations from Andersen Air Force Base (AFB), Guam and conduct LauncherOne rocket operations over the Pacific Ocean east of Guam for the purposes of transporting small satellites into a variety of low earth orbits, which would require the FAA to issue a launch license. Issuing a launch license is considered a federal action subject to environmental review under NEPA. Under the Proposed Action, the FAA would issue a launch license to VO, which will authorize VO to operate LauncherOne from Andersen AFB to conduct 25 launches over the next 5 years (2021–2025), with a maximum of

10 launches per year in any one year over the 5-year period.

Alternatives under consideration include the Proposed Action and No Action Alternative. Under the No Action Alternative, the FAA would not issue a launch license to VO for LauncherOne operations from Andersen AFB.

The Draft EA evaluates the potential environmental impacts from the Proposed Action and No Action Alternative on air quality; biological resources; climate; coastal resources; Department of Transportation Act Section 4(f); farmlands; hazardous materials, solid waste, and pollution prevention; historical, architectural, archeological, and cultural resources; land use; nature resources and energy supply; noise and noise-compatible land use; socioeconomics, environmental justice, and children's health and safety risks; visual effects (including light emissions); and water resources.

The FAA has posted the Draft EA on the FAA Office of Commercial Space Transportation website: *https://www.faa.gov/space/environmental/nepa_docs/.*

The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EA. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the FAA in your comment to withhold from public review your personal identifying information, the FAA cannot guarantee that we will be able to do so.

Issued in Washington, DC, on: October 13th, 2020.

Daniel Murray,

Manager, Safety Authorization Division.

[FR Doc. 2020–23099 Filed 10–16–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to the proposed Better Market Street Project (Federal-aid project number BUILDL–5934(180)) in the City of San Francisco, County of San Francisco, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 18, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Tom Holstein, Senior Environmental Planner, Caltrans District 4 Office of Local Assistance, 12th Floor, 111 Grand Avenue, Oakland, CA 94623 Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone (510) 286–6371 or email *tom.holstein@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California.

San Francisco Public Works, in coordination with the Citywide Planning Division of the San Francisco Planning Department, the San Francisco Municipal Transportation Agency, the San Francisco Public Utilities Commission, and the San Francisco County Transportation Authority, proposes to make Market Street safer and more efficient for all modes of transportation by reducing conflicts between transit, paratransit, taxis, commercial vehicles, cyclists, and pedestrians. The project includes changes to and replacement/modification of: Roadway configuration; traffic signals; surface transit; bicycle and pedestrian facilities; commercial and passenger loading; vehicular parking; and utilities. The project corridor consists primarily of the 2.2 miles of Market Street between Octavia Boulevard and the Embarcadero in the City and County of San Francisco. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment with Finding of No Significant Impact and Final Section 4(f) Evaluation for the project, issued September 11, 2020, and in other documents in Caltrans' project records. The FEA, FONSI, Final Section 4(f) Evaluation, and other project records are available by contacting Caltrans at the addresses provided above. The FEA, FONSI, Final Section 4(f) Evaluation, and other project records can be viewed and downloaded from the project website at *http://www.bettermarketstreetsf.org/your-part-environmental-review.html.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
3. Federal-Aid Highway Act of 1970, 23 U.S.C. 109
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act, (Pub. L. 112–141)
5. Clean Air Act Amendments of 1990 (CAAA)
6. Clean Water Act of 1977 and 1987
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 and 1987)
8. Federal Land Policy and Management Act of 1976 (Paleontological Resources)
9. Noise Control Act of 1972
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Water Bank Act Wetlands Mitigation Banks, ISTEA 1991, Sections 1006–1007
18. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130
19. Coastal Zone Management Act of 1972
20. Coastal Zone Management Act Reauthorization Amendments of 1990
21. Executive Order 11988, Floodplain Management
22. Department of Transportation (DOT) Executive Order 5650.2—

Floodplain Management and Protection (April 23, 1979)
23. Rivers and Harbors Appropriation Act of 1899, Section 9 and 10
24. Title VI of the Civil Rights Act of 1964, as amended
25. Executive Order 12898, Federal Actions To Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 13, 2020.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–23052 Filed 10–16–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–27]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On July 22, 2020, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before November 18, 2020.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, telephone (202) 493–0440, email: *Hodan.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On July 22, 2020, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 85 FR 44357. FRA received no comments in response to this notice.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Reflectorization of Freight Rolling Stock.

OMB Control Number: 2130–0566.

Abstract: FRA issued this regulation to mandate the reflectorization of freight rolling stock (using retroreflective material on freight cars and locomotives) to enhance the visibility of trains to reduce the number and severity of accidents at highway-rail grade crossings in which visibility is a contributing factor.[1] FRA uses the information collected to verify that the person responsible for the car reporting mark is notified after the required visual inspection when the freight equipment has less than 80 percent of the required retroreflective sheeting present, undamaged, or unobscured. Further, FRA uses the information collected to verify that the required locomotive records of retroreflective sheeting defects found after inspection are kept in the locomotive cab or in a railroad accessible electronic database FRA can access upon request. Finally, FRA uses the information collected to confirm that railroads/car owners meet the prescribed standards for the inspection and maintenance of the required retroreflective material.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 746 railroads/car owners.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 36,001.

Total Estimated Annual Burden: 3,159 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $180,102.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–23073 Filed 10–16–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0082]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on October 5, 2020, CSX Transportation (CSXT) petitioned

[1] See 70 FR 144, Jan. 3, 2005.

the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2020–0082.

Applicant: CSX Transportation, Mr. Carl A. Walker, Chief Engineer Communications & Signals, 500 Water Street, Speed Code J–350, Jacksonville, Florida 32202.

Specifically, CSXT requests permission to remove No. 1 and No. 3 power-operated split point derails at St. Joseph Drawbridge, milepost CG–87.52, Chicago Zone, Grand Rapids Subdivision, St. Joseph, Michigan.

CSXT states that the derails are no longer needed for present day operation and their removal will enhance safety by eliminating points of failure in the track and signal infrastructure. Maintenance requirements will also be reduced, eliminating periodic inspections and on-track testing.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 3, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *http://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–23087 Filed 10–16–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0134]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CATATONIC 500 (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 18, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0134 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0134 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0134, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CATATONIC 500 is:

—*Intended Commercial Use of Vessel:* ''Overnight and day charters''

—*Geographic Region Including Base of Operations:* Currently, the CATATONIC 500 has a small vessel waiver for New York (excluding New York Harbor), New Jersey, Connecticut, Rhode Island, Massachusetts, Delaware, Maryland, Maine, and New Hampshire (see *www.regulations.gov* search docket ''MARAD–2018–0076''), but now seeks an additional waiver for ''Florida'', (Base of Operations: Dover, DE).

—*Vessel Length and Type:* 51' Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0134 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of

MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0134 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121).

* * *

Dated: October 14, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–23074 Filed 10–16–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Corporate Senior Executive Management Office; Notice of Performance Review Board Members

AGENCY: Corporate Senior Executive Management Office, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice announces the appointment of individuals to serve on the PRB of the Department of Veterans Affairs.

DATES: This is effective October 19, 2020.

ADDRESSES: Corporate Senior Executive Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Contact Carrie Johnson-Clark, Executive Director, Corporate Senior Executive Management Office (006D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–5181.

SUPPLEMENTARY INFORMATION: The membership of the Department of Veterans Affairs Performance Review Board is as follows:

Reeves, Randy (Chair)
Brahm, Victoria
Bologna, Mark
Carroll, J. David
Czarnecki, Tammy
Galvin, Jack
Isaacks, Scott
Jones, Luwanda
MacDonald, Edna
Matthews, Kameron
Mattison-Brown, Valerie
Mayo, Jeffrey
McDivitt, Robert
McDougal, Skye
Mitrano, Catherine
Murray, Edward J.
Ogilvie, Brianne Oshinski, Renee
Oswalt, John
Pope, Brent
Rivera, Fernando
Simms, Christopher B.
Streitberger, William
Tallman, Gary
Thomas, Lisa
Tibbits, Paul
Verschoor, Thayer

Authority: 5 U.S.C. 4314(c)(4)

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on October 14, 2020, for publication.

Luvenia Potts,

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

[FR Doc. 2020–23080 Filed 10–16–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Monday,
No. 202 October 19, 2020

Part II

Federal Reserve System

12 Part 228

Community Reinvestment Act; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1723]

RIN 7100–AF94

Community Reinvestment Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is publishing for public comment an advance notice of proposed rulemaking (ANPR) to solicit public input regarding modernizing the Board's Community Reinvestment Act regulatory and supervisory framework. The Board is seeking comment on all aspects of the ANPR from all interested parties and also requests commenters to identify other issues that the Board should consider.

DATES: Comments on this ANPR must be received on or before February 16, 2021.

ADDRESSES: You may submit comments, identified by Docket No. R–1723 and RIN 7100–AF94, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Instructions: All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: S. Caroline (Carrie) Johnson, Manager, Division of Consumer and Community Affairs, (202) 452–2762; Catherine M.J. Gates, Senior Project Manager, Division of Consumer and Community Affairs, (202) 452–2099; Amal S. Patel, Counsel, Division of Consumer and Community Affairs, (202) 912–7879, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of Telecommunication Device for Deaf (TDD) only, (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Introduction: Request for Feedback, Objectives, and Overview

In this ANPR, the Board requests feedback on different approaches to modernizing the regulatory and supervisory framework for the Community Reinvestment Act (CRA) [1] in order to more effectively meet the needs of low- and moderate-income (LMI) communities and address inequities in credit access. This includes seeking feedback from stakeholders regarding, among other things, accounting for changes in the banking system, applying metrics to certain CRA evaluation standards, and providing greater clarity regarding CRA-eligible activities. The Board is also mindful of the economic impact of the COVID–19 pandemic, particularly on LMI communities and households, and seeks feedback on how it should consider these impacts in CRA modernization.

In addition to requesting comment on all topics raised below, this ANPR also includes specific questions that are numbered consecutively. Commenters are requested to refer to these question numbers in their submitted comments, which will assist the Board in its efforts as well as members of the public that review comments online.

The contemplated changes to Regulation BB are guided by the following objectives:

- More effectively meet the needs of LMI communities and address inequities in credit access, in furtherance of the CRA statute and its core purpose.
- Increase the clarity, consistency, and transparency of supervisory expectations and of standards regarding where activities are assessed, which activities are eligible for CRA purposes, and how eligible activities are evaluated and assessed, while seeking to minimize the associated data burden and to tailor collection and reporting requirements.
- Tailor CRA supervision of financial institutions (banks) [2] to reflect:
  - Differences in bank sizes and business models;
  - Differences in local markets, needs, and opportunities, including with respect to small banks serving rural markets; and
  - Expectations across business cycles.
- Update standards in light of changes to banking over time, particularly the increased use of mobile and internet delivery channels.
- Promote community engagement.
- Strengthen the special treatment of minority depository institutions (MDIs).
- Recognize that CRA and fair lending responsibilities are mutually reinforcing.

The Board seeks public input on different policy options to carry out the above objectives in several key areas and looks forward to assessing this input to advance the goal of strengthening the CRA regulation. The ANPR includes the below sections.

Background. Section II discusses the CRA's statutory history and purpose, including a discussion of the historical practice of redlining on the basis of race and the enactment of the CRA and other complementary federal civil rights laws to address systemic inequities in access to credit and other financial services. The background section also provides an overview of the Board's existing Regulation BB and stakeholder feedback on CRA modernization.

Assessment Areas and Defining Local Communities for CRA Evaluations. Section III addresses the issue of how to define a bank's local communities, which impacts where banks' CRA performance is evaluated and is critical for ensuring that the CRA fulfills its purpose of encouraging banks to meet the credit needs of their local communities. The Board seeks to more predictably delineate assessment areas around physical locations, such as bank branches, and to ensure that assessment areas are contiguous, do not reflect illegal discrimination, do not arbitrarily exclude LMI census tracts, and are tailored to bank size and performance context. For large banks that conduct a

[1] 12 U.S.C. 2901 *et seq.* The Board implements the CRA through Regulation BB. 12 CFR part 228.

[2] ''Regulated financial institution'' means an ''insured depository institution'' as defined in 12 U.S.C. 1813. *See* 12 U.S.C. 2902(2). ''Insured depository institution'' means any bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation. *See* 12 U.S.C. 1813(c)(2).

significant amount of lending and deposit-based collection far from their branches, the Board seeks comment on deposit-based and lending-based alternative approaches to delineating assessment areas. For internet banks, the Board is also considering whether nationwide assessment areas could more holistically capture their banking activities.

Overview of Evaluation Framework. Section IV provides an overview of the Board's proposed framework for evaluating banks' CRA performance with a Retail Test and a Community Development Test. The Retail Test would include two subtests: A Retail Lending Subtest and a Retail Services Subtest. The Community Development Test would also include two subtests: A Community Development Financing Subtest and a Community Development Services Subtest. This section proposes tailoring these tests based on differences in bank asset size and business models. The Board proposes an asset-size threshold of $750 million or $1 billion to distinguish between small and large retail banks. Small retail banks could continue to be evaluated under the current CRA framework, but would have the option to be evaluated under the Retail Lending Subtest alone and could also elect to have their retail services and community development activities evaluated. Large retail banks would be evaluated under all four subtests. Wholesale and limited purpose banks would be evaluated under the two community development subtests. Alternatively, any bank would have the option to be evaluated pursuant to an approved strategic plan.

Retail Test. Section V describes the two subtests of the proposed Retail Test. For the Retail Lending Subtest, the Board proposes a metrics-based approach that is tailored based on a bank's major product lines and on the credit needs and opportunities within its assessment area(s). For the Retail Services Subtest, the Board proposes a qualitative approach that is intended to provide greater predictability and transparency for evaluating important aspects of retail banking services, including branches, other delivery systems, and deposit products. Section VI discusses updating and clarifying certain aspects of Retail Test qualifying activities, including the designation of major product lines, the evaluation of consumer loan products, the definitions of small business and small farm loans, and the consideration of retail activities conducted in Indian Country.

Community Development Test. Section VII describes the two subtests of the proposed Community Development Test: A Community Development Financing Subtest and a Community Development Services Subtest. The Board proposes a metrics-based approach to evaluating community development financing activities that is transparent, predictable, and tailored to the community development needs and opportunities within an assessment area. For the Community Development Services Subtest, the Board proposes evaluating community development services in a way that better recognizes the value of qualifying volunteer activities, especially in rural communities.

Section VIII discusses proposals for clarifying and updating Community Development Test qualifying activities pertaining to affordable housing, community services, economic development, and revitalization and stabilization, and discusses updating how activities outside of a bank's assessment areas would be considered. The Board seeks to emphasize qualifying activities that support MDIs and Community Development Financial Institutions (CDFIs). In addition, the Board is considering how to treat community development activities outside of assessment areas to help address discrepancies between so-called CRA ''hot spots'' [3] and ''deserts.'' [4] The Board seeks feedback on defining designated areas of need—for example, in Indian Country or in areas that meet an ''economically distressed'' definition—where banks could conduct community development activity outside of an assessment area. The Board also seeks feedback on approaches to increase the upfront certainty about what activities qualify for CRA credit, including a process for banks and other stakeholders to obtain pre-approval that a particular activity qualifies for consideration and publication of illustrative lists of qualifying activities.

Strategic Plans. In Section IX, the Board seeks feedback on proposed revisions to the strategic plan option for CRA performance evaluations to provide more clarity and flexibility about establishing strategic plans and the standards used to assess activities.

Ratings. In Section X, the Board discusses updating the way in which state, multistate metropolitan statistical area (MSA), and institution ratings are reached, basing these ratings in local assessment area conclusions for the different subtests, as applicable. For example, the Board proposes assigning a bank's overall rating on the Retail Test by using a weighted average of each of the bank's assessment area-level conclusions. The Board believes it is appropriate to anchor a bank's overall rating in its performance in all of its local communities, and therefore proposes to eliminate the designation of full- and limited-scope assessment areas in the evaluation process. Certain activities outside of a bank's assessment area(s) would also be considered in determining overall ratings, such as a partnership with an MDI, which could be considered as part of a pathway to an ''outstanding'' rating. The Board also seeks to update the consideration of discrimination and other illegal credit practices in determining CRA ratings by adding violations of new laws and regulations that are related to meeting community credit needs.

Data Collection and Reporting. In Section XI, the Board solicits feedback on potential revisions to data collection and reporting requirements. The Board is mindful of the potential tradeoff between the expanded use of metrics to provide greater certainty and consistency and the expanded need for data collection and reporting, and has prioritized using existing data wherever possible. The Board has also prioritized approaches that would exempt small banks from new data collection requirements. In addition, the Board seeks feedback on deposits data options for large banks, and in particular for large banks with extensive deposit activity outside of the areas served by their physical branches. The Board seeks feedback on how to balance the certainty provided through the use of metrics in CRA performance evaluations with the potential data burden implications.

Request for Feedback:

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

II. CRA Background

The Board implements the CRA through Regulation BB. The CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities, including LMI neighborhoods, in which they are chartered. Under Regulation BB, the Board applies different evaluation standards to banks of different asset sizes and types.

Together with the Federal Deposit Insurance Corporation (FDIC) and the

[3] CRA hot spots are areas where large numbers of banks concentrate CRA and other banking activities in the same, relatively small number of localities.

[4] CRA deserts are areas with little bank presence and corresponding lesser availability of banking products and services and community development activities.

Office of the Comptroller of the Currency (OCC), the Board has also published Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers) [5] to provide guidance on the interpretation and application of the agencies' CRA regulations.

A. CRA Statutory Purpose and History

The CRA invests the Board, the FDIC, and the OCC with broad authority and responsibility for implementing the statute, which provides the agencies with a crucial mechanism for addressing persistent systemic inequity in the financial system for LMI and minority individuals and communities. In particular, the statute and its implementing regulations provide the agencies, regulated banks, and community organizations with the necessary framework to facilitate and support a vital financial ecosystem that supports LMI and minority access to credit and community development.[6]

Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities.[7] Many believed that systemic inequities in credit access—due in large part to a practice known as ''redlining''—along with a lack of public and private investment, was at the root of these communities' economic distress.[8] Redlining occurred when banks refused outright to make loans or extend other financial services in neighborhoods comprised largely of African-American and other minority individuals, leading to discrimination in access to credit and less favorable financial outcomes even when they presented the same credit risk as others residing outside of those neighborhoods. The term is widely associated with the former federal Home Owners' Loan Corporation (HOLC), which employed color-coded maps [9] to designate its perception of the relative risk of lending in a range of neighborhoods, with ''hazardous'' (the highest risk) areas coded in red. Redlined neighborhoods typically had a high percentage of minority residents, were overwhelmingly poor, and had less desirable housing.[10] As Senator William Proxmire, who authored the CRA legislation, testified when discussing its purpose:

> By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.[11]

Against this backdrop, Congress passed the CRA, along with other complementary federal civil rights laws during the late 1960s and 1970s, to address systemic inequities in access to credit and other financial services that contributed to often dramatic differences in economic access and overall financial well-being.[12] In particular, the Equal Credit Opportunity Act (ECOA) [13] and the Fair Housing Act (FHA) [14] fair lending laws each include an explicit focus on discrimination on prohibited bases such as race, and the Home Mortgage Disclosure Act (HMDA) [15] is intended to bring greater transparency to mortgage lending practices. Even with the implementation of the CRA and the other complementary laws, the harmful legacy of redlining and other discriminatory practices too often continues to be felt. In 2016, the ''wealth gap [was] roughly the same as it was in 1962, two years before the passage of the Civil Rights Act of 1964[.]'' [16]

In enacting the CRA, the Congress found that: (1) Banks and savings associations (collectively, banks) are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit services; and (3) banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.[17] The statute directed the relevant federal financial supervisory agencies to: Encourage the financial institutions they supervise to safely and soundly meet the credit needs of the communities they serve, including LMI

[5] *See* 81 FR 48506 (July 25, 2016). ''Interagency Questions and Answers'' refers to the ''Interagency Questions and Answers Regarding Community Reinvestment'' in its entirety. ''Q&A'' refers to an individual question and answer within the Interagency Questions and Answers.

[6] *See, e.g.,* Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System, ''The Community Reinvestment Act: Its Evolution and New Challenges'' (March 30, 2007), *https://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm* (''After years of experimentation, the managers of financial institutions found that these loan portfolios, if properly underwritten and managed, could be profitable. . . . Moreover, community groups and nonprofit organizations began to take a more businesslike, market-oriented approach to local economic development, leading them to establish more-formalized and more-productive partnerships with banks. Community groups provided information to financial institutions on the needs of lower-income communities for credit and services, offered financial education and counseling services to community members, and referred 'bankable' customers to partner banks. Specialized community development banks and financial institutions with the mission of providing financial services and credit to lower-income communities and families emerged and grew.'').

[7] *See* Bernanke, ''The Community Reinvestment Act: Its Evolution and New Challenges'' (''Public and congressional concerns about the deteriorating condition of America's cities, particularly lower-income and minority neighborhoods, led to the enactment of the Community Reinvestment Act. . . . Several social and economic factors help explain why credit to lower-income neighborhoods was limited at that time. First, racial discrimination in lending undoubtedly adversely affected local communities. Discriminatory lending practices had deep historical roots.'').

[8] *See, e.g.,* Michael Berry, Federal Reserve Bank of Chicago, and Jessie Romero, Federal Reserve Bank of Richmond, ''Federal Reserve History: Community Reinvestment Act of 1977,'' *https://www.federalreservehistory.org/essays/community_reinvestment_act* (also explaining that other federal and state policies likewise contributed to redlining and additional discriminatory practices).

[9] *See* ''Mapping Inequality: Redlining in New Deal America,'' *https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58* (archive of HOLC maps).

[10] *See, e.g.,* Daniel Aaronson, Daniel Hartley, and Bhashkar Mazumder, Federal Reserve Bank of Chicago, ''The Effects of the 1930s HOLC 'Redlining' Map'' (Feb. 2019), *https://www.chicagofed.org/publications/working-papers/2017/wp2017-12,* p.1 (''Neighborhoods were classified based on detailed risk-based characteristics, including housing age, quality, occupancy, and prices. However, non-housing attributes such as race, ethnicity, and immigration status were influential factors as well. Since the lowest rated neighborhoods were drawn in red and often had the vast majority of African American residents, these maps have been associated with the so-called practice of 'redlining' in which borrowers are denied access to credit due to the demographic composition of their neighborhood.'').

[11] 123 Cong. Rec. 17630 (June 6, 1977).

[12] *See, e.g.,* Governor Lael Brainard, ''Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose'' (Jan. 8, 2020), *https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm* (''The CRA was one of several landmark pieces of legislation enacted in the wake of the civil rights movement intended to address inequities in the credit markets.'').

[13] 15 U.S.C. 1691 *et seq.*

[14] 42 U.S.C. 3601 *et seq.*

[15] 12 U.S.C. 2801 *et seq.*

[16] Dionissi Aliprantis and Daniel Carroll, Federal Reserve Bank of Cleveland, ''What is Behind the Persistence of the Racial Wealth Gap'' (Feb. 28, 2019), *https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2019-economic-commentaries/ec-201903-what-is-behind-the-persistence-of-the-racial-wealth-gap.aspx. See also, e.g.,* The New York Times, ''How Redlining's Racist Effects Lasted for Decades'' (Aug. 24, 2017), *https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasted-for-decades.html* (citing William J. Collins and Robert A. Margo, ''Race and Home Ownership from the End of the Civil War to the Present'' (Nov. 2010) in stating, ''The black-white gap in homeownership in America has in fact changed little over the last century . . . . That pattern helps explain why, as the income gap between the two groups has persisted, the wealth gap has widened by much more.'').

[17] 12 U.S.C. 2901(a).

neighborhoods;[18] assess their record of doing so and take this record into account when evaluating banking applications for a deposit facility;[19] and report to Congress the actions they have taken to carry out their CRA responsibilities.[20] The CRA also directed each agency to publish regulations to carry out the statute's purposes.[21]

Since its enactment, Congress has amended the CRA several times, including through the Financial Institutions Reform, Recovery, and Enforcement Act of 1989[22] (which required public disclosure of a bank's CRA written evaluation and rating); the Federal Deposit Insurance Corporation Improvement Act of 1991[23] (which required the inclusion of a bank's CRA examination data in the determination of its CRA rating); the Housing and Community Development Act of 1992[24] (which included assessment of the record of nonminority-owned and nonwomen-owned banks in cooperating with minority-owned and women-owned banks and low-income credit unions); the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994[25] (which (1) required an agency to consider an out-of-state national bank's or state bank's CRA rating when determining whether to allow interstate branches, and (2) prescribed certain requirements for the contents of the written CRA evaluation for banks with interstate branches); and the Gramm-Leach-Bliley Act of 1999[26] (which, among other things, provided regulatory relief for smaller banks by reducing the frequency of their CRA examinations).

In 1978, consistent with Congress's statutory directive, the agencies promulgated the first CRA regulations, which included evidence of prohibited discriminatory or other illegal credit practices as a performance factor.[27] The agencies have since significantly amended these regulations twice, in 1995 and 2005.[28] In addition, the agencies have periodically published interpretations of the CRA regulations in the form of the Interagency Questions and Answers.

The Federal Reserve has also developed significant supervisory and other infrastructure to support the CRA and its objectives. Starting in 1984, the Federal Reserve System, through the community development function at each Federal Reserve Bank, has engaged in outreach, educational, and technical assistance to help banks, community organizations, government entities, and the public understand and address financial services issues affecting LMI individuals and communities and to assist banks in meeting their affirmative obligations under the CRA.[29]

The CRA requires each agency to prepare a written evaluation of a bank's record of meeting the credit needs of its entire community, including LMI neighborhoods, at the conclusion of its CRA examination.[30] This report, known as a performance evaluation, is required to be a public document that presents an agency's conclusions regarding a bank's overall performance for each ''assessment factor'' identified in the CRA regulations.[31] A performance evaluation must also present facts and data supporting the agency's conclusions and contain both the bank's CRA rating and a description of the basis for the rating.[32] A bank's CRA rating is considered, for example, in applications to merge with or acquire another bank, open a branch, or relocate a main office or branch.[33] A bank with a CRA rating below ''satisfactory'' may be restricted from certain activities until its next CRA examination.

Request for Feedback:

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

B. Regulation BB and Guidance for Performance Evaluations

1. CRA Performance Evaluations

Regulation BB provides different methods to evaluate a bank's CRA performance depending on its asset size and business strategy.[34] Under the current framework:

- Small banks—currently, those with assets of less than $326 million as of December 31 of either of the prior two calendar years—are evaluated under a retail lending test that may also consider community development lending. Community development investments and services may be considered for an ''outstanding'' rating at a bank's option, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
- Intermediate small banks—currently, those with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years—are evaluated under the retail lending test for small banks and a community development test. The intermediate small bank community development test evaluates all community development activities together.
- Large banks—currently, those with assets of more than $1.305 billion as of December 31 of both of the prior two calendar years—are evaluated under separate lending, investment, and service tests. The lending and service tests consider both retail and community development activities, and the investment test focuses on qualified community development investments. To facilitate the agencies' CRA analysis, large banks are required to report annually certain data on community development, small business, and small farm loans (small banks and intermediate small banks are not required to report these data).
- Designated wholesale banks (those engaged in only incidental retail lending) and limited purpose banks (those offering a narrow product line to

[18] 12 U.S.C. 2901(b).

[19] 12 U.S.C. 2903(a).

[20] 12 U.S.C. 2904.

[21] 12 U.S.C. 2905.

[22] Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989).

[23] Public Law 102–242, 105 Stat. 2236 (Dec. 19, 1991).

[24] Public Law 102–550, 106 Stat. 3874 (Oct. 28, 1992).

[25] Public Law 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[26] Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[27] 43 FR 47144 (Oct. 12, 1978). *See also* Governor Lael Brainard, ''Strengthening the Community Reinvestment Act: What are We Learning?'' (Feb. 1, 2019), *https://www.federalreserve.gov/newsevents/speech/brainard20190201a.htm* (''The central thrust of the CRA is to encourage banks to ensure that all creditworthy borrowers have fair access to credit, and, to do so successfully, it has long been recognized that they must guard against discriminatory or unfair and deceptive lending practices.'').

[28] 60 FR 22156 (May 4, 1995); 70 FR 44256 (Aug. 2, 2005). The CRA regulations have typically been adopted individually by each agency, but drafted on an interagency basis and released jointly.

[29] *See, e.g.,* Chairman Jerome H. Powell, Board of Governors of the Federal Reserve System, ''Celebrating Excellence in Community Development'' (Dec. 3, 2018), *https://www.federalreserve.gov/newsevents/speech/powell20181203a.htm* (''The Fed's community development function . . . advances our Community Reinvestment Act responsibilities by analyzing and disseminating information related to local financial needs and successful approaches for attracting and deploying capital. These efforts strengthen the capacity of both financial institutions and community organizations to meet the needs of the communities they serve.'').

[30] 12 U.S.C. 2906.

[31] 12 U.S.C. 2906(b)(1)(A)(i).

[32] 12 U.S.C. 2906(b)(1)(A)(ii) and (iii). There are four statutory rating categories: ''outstanding,'' ''satisfactory,'' ''needs to improve,'' and ''substantial noncompliance.'' 12 U.S.C. 2906(b)(2).

[33] 12 CFR 228.29.

[34] *See generally* 12 CFR 228.21–.27. The Board, the FDIC, and the OCC annually adjust the CRA asset-size thresholds based on inflation.

a regional or broader market) are evaluated under a standalone community development test.

• Banks may elect to be evaluated under a strategic plan that sets out measurable, annual goals for lending, investment, and service activities in order to achieve a ''satisfactory'' or an ''outstanding'' rating. A strategic plan must be developed with community input and approved by the bank's primary regulator.

The Board also considers applicable performance context information to inform its analysis and conclusions when conducting CRA examinations. Performance context comprises a broad range of economic, demographic, and institution- and community-specific information that examiners review to calibrate a bank's CRA evaluation to its local communities, including:

• Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant assessment area-related data.

• Any information about lending, investment, and service opportunities in the bank's assessment area(s).

• The bank's product offerings and business strategy.

• Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate, safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s).

• The bank's past performance and the performance of similarly situated lenders.

• The bank's public file and any written comments about the bank's CRA performance submitted to the bank or to the Board, and any other information deemed relevant by the Board.[35]

2. Assessment Areas

Regulation BB requires a bank to delineate one or more assessment area(s) in which its record of meeting its CRA obligations will be evaluated.[36] The regulation requires a bank to delineate assessment areas consisting of metropolitan areas (MSAs or metropolitan divisions) or political subdivisions[37] in which its main office, branches, and deposit-taking automated teller machines (ATMs) are located, as well as the surrounding geographies (*i.e.,* census tracts)[38] where a substantial portion of its loans are originated or purchased.

The assessment area definition's emphasis on branches reflects the prevailing business model for financial service delivery when the CRA was enacted. The statute instructs the agencies to assess a bank's record of meeting the credit needs of its ''entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and to take such record into account in its evaluation of an application for a deposit facility by such institution.''[39] The statute does not prescribe the delineation of assessment areas, but they are an important aspect of the regulation because they define ''community'' for purposes of the evaluation of a bank's CRA performance.

3. Eligible Activities

Regulation BB and the Interagency Questions and Answers provides detailed information, including applicable definitions, regarding activities that are eligible for CRA consideration in an assessment of a bank's CRA performance. Banks that are subject to a performance test that includes a review of their retail activities are assessed in connection with retail lending activity (as applicable, home mortgage loans, small business loans, small farm loans, and consumer loans[40]) and, where applicable, retail banking service activities (*e.g.,* the current distribution of a bank's branches in geographies of different income levels, and the availability and effectiveness of the bank's alternative systems for delivering banking services to LMI geographies and individuals).[41]

Banks subject to a performance test that includes a review of their community development activities are assessed with respect to community development lending, qualified investments, and community development services, which by definition must have a primary purpose of community development.[42]

4. Guidance for Performance Evaluations

In addition to information included in their CRA regulations, the Board and the other agencies also provide information to the public regarding how CRA performance tests are applied, where CRA activities are considered, and what activities are eligible through publicly available CRA performance evaluations,[43] the Interagency Questions and Answers, interagency CRA examination procedures,[44] and interagency instructions for writing performance evaluations.[45]

C. Stakeholder Feedback and Recent Rulemaking

The financial services industry has undergone transformative changes since the CRA statute was introduced, including the removal of national bank interstate branching restrictions and the expanded role of mobile and online banking. To better understand how these developments impact both consumer access to banking products and services and a bank's CRA performance, the agencies have reviewed feedback from the banking industry, community groups, academics, and others stakeholders on several occasions.

From 2013 to 2016, the agencies solicited feedback on the CRA as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) review.[46] Commenters raised issues related to assessment area definitions; incentives for banks to serve LMI, unbanked, underbanked, and rural communities; recordkeeping and reporting requirements; need for clarity regarding performance measures and better examiner training to ensure consistency in examinations; and refinement of CRA ratings.

1. OCC CRA Advance Notice of Proposed Rulemaking and Federal Reserve Outreach Sessions

On September 5, 2018, the OCC published an advance notice of proposed rulemaking to solicit ideas for a new CRA regulatory framework (OCC CRA advance notice of proposed rulemaking).[47] More than 1,500 comment letters were submitted in response. To augment that input, the Federal Reserve System held about 30 outreach meetings with representatives of banks, community organizations, and the other agencies.[48]

[35] 12 CFR 228.21(b).

[36] 12 CFR 228.41.

[37] Political subdivisions include cities, counties, towns, townships, and Indian reservations. Q&A § ___.41(c)(1)—1.

[38] 12 CFR 228.12(k).

[39] 12 U.S.C. 2903(a).

[40] 12 CFR 228.12(j), (l), (u), and (w).

[41] *See generally,* 12 CFR 228.21–.27; 12 CFR 228.24(d).

[42] *See generally,* 12 CFR 228.21–.27; 12 CFR 228.12(g), (h), (i), and (t).

[43] *See, e.g.,* Board of Governors of the Federal Reserve System, ''Community Reinvestment Act (CRA), Search: Evaluations and Ratings (Federal Reserve Supervised Banks),'' *https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRating.*

[44] *See, e.g.,* FFIEC, ''Community Reinvestment Act: CRA Examinations,'' *https://www.ffiec.gov/cra/examinations.htm.*

[45] *Id.*

[46] *See, e.g.,* 80 FR 7980 (Feb. 13, 2015).

[47] 83 FR 45053 (Sept. 5, 2018).

[48] For a summary of the Federal Reserve outreach session feedback see: *https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf.*

Although commenters agreed that the regulations needed to be modernized to reflect the evolution of the banking industry, they expressed strong support for some elements of the current approach to CRA and noted the significant volume of loans and investments directed toward LMI consumers and communities that it has generated. There was substantial support for retaining CRA's focus on LMI consumers and communities, and many commenters urged the agencies to proceed with caution so as not to disturb the important collaborative environment that CRA has fostered among banks and community stakeholders in support of community development.

Although there was general openness to considering a more quantitative CRA framework, commenters raised concerns about a ''single metric'' approach, noting that setting a threshold for the ratio of CRA activity relative to deposits associated with each performance rating could incentivize banks to focus on high-value markets or activities without assessing their impact.

Many stakeholders suggested that deposit-taking physical facility-based (''branch-based'') assessment areas serve many banks well, but additional or different assessment areas may be appropriate for other banks, such as internet banks.

2. OCC–FDIC CRA Notice of Proposed Rulemaking and OCC CRA Final Rule

On December 12, 2019, the FDIC and the OCC issued a joint notice of proposed rulemaking (FDIC–OCC CRA notice of proposed rulemaking).[49] In response, the agencies received over 7,500 comment letters.[50]

On May 20, 2020, the OCC issued a CRA final rule (OCC CRA final rule), retaining the most fundamental elements of the proposal but also making adjustments to reflect stakeholder input.[51] The agency deferred establishing metrics-based thresholds for evaluating banks' CRA performance until it is able to assess additional data,[52] with the final rule having an October 1, 2020 effective date and January 1, 2023 and January 1, 2024 compliance dates.[53] Additionally, the final rule retains the proposal's approach of allowing smaller banks (including renaming and adjusting the current intermediate small bank category as ''intermediate banks'') [54] to continue to have their CRA performance evaluated in a manner comparable to the current CRA framework.[55] The OCC CRA final rule also provides that wholesale and limited purpose banks will be reviewed in a manner similar to the current approach.[56] The final rule's revised qualifying activities criteria are applicable to all bank types.[57]

III. Assessment Areas

In the current regulation, the definition of assessment areas reflects a time when banks delivered products and services almost exclusively through physical facilities, primarily branches. Banks now increasingly deliver financial products and services to consumers through online or mobile banking, which results in a broader geographic reach for some banks, especially large banks. Although the CRA statute does not expressly define ''communities'' or ''local communities,'' the statute provides the Board with broad authority to define these terms by regulation. This authority includes amending Regulation BB to incorporate, in the consideration of a bank's ''community,'' assessment areas that are not geographically local to its main office, branches, or deposit-taking ATMs, as currently defined.

The Board is considering how best to define the local communities where banks' CRA activities are assessed to both reflect changes in the banking industry and to retain CRA's nexus with fair lending requirements. This includes evaluating changes to a bank's facility-based assessment areas, as well as different approaches for defining assessment areas for certain large banks based on concentrations of deposits or lending that are geographically distant from the banks' facilities or that are primarily provided through non-branch means.

A. Current Approach for Designating Assessment Areas

Pursuant to the CRA statute, banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.[58] In their CRA regulations, the agencies have interpreted local communities to include the areas surrounding a bank's main office, branches, and deposit-taking ATMs. Accordingly, one of Regulation BB's core requirements is that each bank delineate areas representing the main geographic basis upon which their CRA performance is assessed—referred to as assessment areas—in keeping with this interpretation of local communities.

As noted previously, the CRA was one of several groundbreaking pieces of legislation enacted to address economic and financial inequity with respect to LMI individuals and communities and systemic disinvestment in LMI areas. Among other things, Regulation BB requires that assessment areas not reflect illegal discrimination and not arbitrarily exclude LMI geographies; these elements represent links to ECOA and the FHA, which work congruently with the CRA to combat redlining.[59] Consequently, it is crucial that banks appropriately delineate their assessment areas.

Regulation BB currently defines assessment areas for banks (other than wholesale and limited purpose banks) in connection with a bank's deposit-taking physical locations and the surrounding areas in which it has originated or purchased a substantial portion of its loans.[60] Assessment areas for wholesale and limited purpose banks consist generally of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities, or towns in which the bank has its main office, branches, and deposit-taking ATMs.[61] Banks whose business models predominantly focus upon serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate their entire deposit customer base as their assessment area.[62]

B. Stakeholder Feedback on Assessment Areas

Stakeholder input has generally indicated that branch-based assessment areas should be retained. Community

[49] 85 FR 1204 (Jan. 9, 2020).

[50] 85 FR 34734, 34734 and 34737 (June 5, 2020).

[51] 85 FR 34734 (June 5, 2020).

[52] *See* OCC, News Release 2020–63, ''OCC Finalizes Rule to Strengthen and Modernize Community Reinvestment Act Regulations'' (May 20, 2020), *https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-63.html; see also* 85 FR at 34736.

[53] 85 FR at 34784.

[54] The OCC CRA final rule defines small banks as those with total assets of $600 million or less and intermediate banks as those with total assets of over $600 million but less than $2.5 billion.

[55] *See, e.g.,* 85 FR at 34780.

[56] *See, e.g., id.*

[57] *See, e.g., id.* at 34764, 34780.

[58] 12 U.S.C. 2901.

[59] Importantly, a redlining violation under ECOA or the FHA may be based on a number of factors, including inappropriate delineation of an assessment area, lending disparities, and branching patterns or marketing practices that have the effect of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the property will be located. *See* FFIEC Interagency Fair Lending Examination Procedures (Aug. 2009), *https://www.ffiec.gov/PDF/fairlend.pdf.*

[60] 12 CFR 228.41(c).

[61] 12 CFR 228.41(b).

[62] 12 U.S.C. 2902(4); 12 CFR 228.41(f).

groups and research organizations have also indicated that, for banks without branch-centric business models, deposit or lending data, or both, should be used to delineate additional assessment areas for banks with considerable deposits or lending volumes outside of their assessment areas. Industry stakeholders have expressed some reservations about deposit-based assessment areas, citing concerns that the associated data collection and reporting for many large banks would be costly and burdensome. Relatedly, community groups and research organizations have advised against comprehensive changes to assessment area delineation without data-driven analysis regarding their potential impact. And both industry and community group stakeholders have expressed concern that deposit-based assessment areas could result in additional assessment areas in wealthier and metropolitan areas, exacerbating the CRA hot spot dynamic.

Industry stakeholders have also expressed concern about being required to delineate large assessment areas (*e.g.,* whole counties) when a bank serves only a portion of an area and/or when other banks already serve that area. These stakeholders have also noted uncertainty whether their lending in a geography would constitute a substantial portion and, as a result, would trigger an expectation to include that geography as part of their assessment area.

Some industry stakeholders have also noted that internet banks lacking a physical presence in any market should have nationwide assessment areas. For example, some stakeholders have suggested that internet banks could be defined as those deriving no more than 20 percent of their deposits from branch-based assessment areas.

C. Facility-Based Assessment Area Delineation Options

To continue encouraging banks to meet the credit and community development needs of their local communities, the Board proposes continuing to delineate assessment areas where banks have a physical presence and seeks feedback on options to better tailor assessment areas around branches, loan production offices, and deposit-taking ATMs based on bank size, business model, and capacity.

1. Branch-Based Assessment Areas

Branches have traditionally been the primary means through which banks connect with and serve their communities. In addition to providing a channel for delivering banking products and services, branches are frequently the places where individuals develop personal banking relationships and obtain financial education. Branches are particularly important in this regard to LMI consumers and small business owners.[63] Because of these ancillary activities, branches are also essential to low-income communities, including many rural communities [64] and low-income metropolitan neighborhoods where there is often a shortage of bank branches.[65]

Branch-based assessment areas can raise fair lending risk and uncertainty when they are not composed of whole political subdivisions, *e.g.,* whole counties. For assessment areas composed of portions of political subdivisions, examiners conduct a more rigorous review that includes a bank's geographic lending patterns to ensure that LMI census tracts are not arbitrarily excluded. Consistent with the longstanding public policy to prevent redlining, examiners also validate that an assessment area does not reflect illegal discrimination. An assessment area that appears to have been drawn to exclude areas with a majority number of minority residents represents a higher risk of discriminatory redlining, as set forth in the FFIEC Interagency Fair Lending Examination Procedures.[66] If LMI census tracts are found to be arbitrarily excluded or an assessment area reflects illegal discrimination, examiners work with a bank to delineate an assessment area that complies with the regulatory criteria, which in some cases could include the entire political subdivision. The revised assessment area is then used for the CRA evaluation. However, redrawing a bank's assessment area during a CRA evaluation can result in uncertainty and possibly a lower rating, since the bank may not have engaged in CRA activities inside the portions of the political subdivision that were previously excluded.

The Board is proposing to tailor the facility-based assessment area definition based on bank size. To address the uncertainty commenters noted when banks take assessment areas composed of partial political subdivisions, this approach would require facility-based assessment areas for large banks to consist of whole counties. Excluding partial county assessment areas for large banks would streamline the assessment area review process, add additional predictability and consistency to CRA examinations, and may provide incentives for large banks to lend in a broader area.

In contrast, for small banks, the Board believes that defining assessment areas based on whole counties may not be appropriate. Smaller banks may not have the capacity and resources to serve the needs of a geographically large county, especially when a bank is situated near a county border, is otherwise geographically remote from an area where it may have some lending activity but no branches, or faces substantial competition from other financial institutions within the same geographies. Some small municipalities and community groups have also indicated that overly large assessment areas can mask poor performance in remote and underserved LMI areas. Therefore, small banks would continue to be allowed to define facility-based assessment areas that include partial counties or portions of smaller political subdivisions, including portions of cities or townships, as long as they are composed of at least whole census tracts.

The Board proposes to provide greater clarity that a small bank would not be required to expand the delineation of an assessment area to include parts of counties where it does not have a physical presence and where it either engages in a *de minimis* amount of lending or there is substantial competition from other institutions, except in limited circumstances. Pursuant to this, it would clarify the limited circumstances under which a small bank would be asked to broaden the delineation of its assessment area beyond where it has branches, such as where an assessment area is drawn in a discriminatory manner or arbitrarily excludes LMI areas.

Under this tailored approach, both large and small banks would still be required to delineate assessment areas to include the geographies in which a bank has its main office and its branches, as well as the surrounding geographies in which the bank has

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[63] *See,* Lei Ding, Federal Reserve Bank of Philadelphia, and Carolina K. Reid, University of California, Berkeley, ''The Community Reinvestment Act (CRA) and Bank Branching Patterns'' (Sept. 2019), *https://www.philadelphiafed.org/-/media/community-development/publications/discussion-papers/discussion-paper_cra-and-bank-branching-patterns.pdf?la=en.*

[64] Board of Governors of the Federal Reserve System, ''Perspectives from Main Street: Bank Branch Access in Rural Communities'' (Nov. 2019), *https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf.*

[65] *See* Ding and Reid, ''The Community Reinvestment Act (CRA) and Bank Branching Patterns.''

[66] *See* OCC, FDIC, Board, Office of Thrift Supervision, National Credit Union Association, ''Interagency Fair Lending Examination Procedures'' (Aug. 2009), *www.ffiec.gov/PDF/fairlend.pdf.*

originated or purchased a substantial portion of its loans, and may not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. The Board proposes a technical update to Regulation BB to also include a combined statistical area, in addition to MSAs, as a limitation to branch-based assessment areas. Similarly, the regulatory requirements that assessment area delineations may not reflect illegal discrimination and may not arbitrarily exclude LMI geographies would continue to apply.

2. Loan Production Office-Based and Deposit-Taking ATM-Based Assessment Areas

The Board is considering whether assessment areas should be expanded to include loan production offices (LPOs). Certain banks source loans and other services through LPOs, which are non-depository lending facilities that extend retail lending products to the public and are frequently located outside of branch-based assessment areas. CRA performance associated with these facilities could be evaluated based on bank business models, capacities, and constraints, as well as community needs. For example, if a bank extends only small business or consumer loans from its LPOs and those products constitute a major product line as discussed in Section VI, only those types of loans would be subject to evaluation. Similarly, community development expectations could also be based on the bank's capacity to engage in community development financing and community development services. This approach could provide banks with CRA consideration for, and thereby incentivize, retail lending and community development activity potentially without some of the complexity associated with deposit- or lending-based assessment areas discussed below.

Additionally, the Board is proposing to give banks the option of delineating facility-based assessment areas around deposit-taking ATMs, but they would not be required to do so. Some stakeholders have expressed the view that the current requirement for banks to delineate an assessment area around a deposit-taking ATM is outdated now that customers can use smartphones and other technologies to make deposits. However, if deposits from deposit-taking ATMs generate considerable bank deposits or comprise a comparatively large market share within a community, it may still be appropriate to delineate assessment areas around them.

Request for Feedback:

Question 3. Given the CRA's purpose and its nexus with fair lending laws, what changes to Regulation BB would reaffirm the practice of ensuring that assessment areas do not reflect illegal discrimination and do not arbitrarily exclude LMI census tracts?

Question 4. How should the Board provide more clarity that a small bank would not be required to expand the delineation of assessment area(s) in parts of counties where it does not have a physical presence and where it either engages in a *de minimis* amount of lending or there is substantial competition from other institutions, except in limited circumstances?

Question 5. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

Question 6. Would delineating facility-based assessment areas that surround LPOs support the policy objective of assessing CRA performance where banks conduct their banking business?

Question 7. Should banks have the option of delineating assessment areas around deposit-taking ATMs or should this remain a requirement?

D. Deposit-Based or Lending-Based Assessment Areas for Certain Large Banks

For certain large banks that engage in considerable business beyond their branch-based assessment areas, the Board is exploring alternative deposit-based and lending-based ways to delineate additional assessment areas. In considering options for creating new assessment areas that are not facility-based, the Board is also considering the types of banks to which these additional assessment area requirements should apply. The Board would be inclined to require such an approach only for internet banks that do not have physical locations and banks that partner with online lenders that do not have physical loan-making locations. The Board is also considering which approaches should apply to hybrid banks that have traditional branch-based assessment areas but also conduct a substantial majority of lending and deposit-taking beyond their assessment areas. For these banks, the Board is considering whether there is a certain threshold of outside activity that would prompt new assessment areas.

1. Deposit-Based Assessment Areas

The Board is considering the option of establishing deposit-based assessment areas for large banks that provide all or a substantial majority of their products and services entirely via mobile and internet channels. There are currently deposits data gaps that make it difficult to understand how this option would affect banks with different business models and asset sizes and which communities it would impact. Additionally, deposit-based assessment areas also raise considerations of how much burden would be associated with deposits data collection, as discussed in Section XI. Subject to the deposits data limitations discussed above, one option for deposit-based assessment areas would be to trigger the delineation of additional assessment areas when a large bank exceeds a certain threshold of deposits outside of its facility-based assessment areas.[67] However, based on stakeholder feedback that deposit-based assessment areas could exacerbate CRA hot spots and deserts, it would be important to evaluate the impact of this approach on LMI and other underserved communities.

2. Lending-Based Assessment Areas

Given some of the data challenges with adding deposit-based assessment areas, an alternative approach could be to base additional assessment areas for large banks on concentrations of lending activity. One advantage of lending-based assessment areas is that it is possible to analyze their impact given the availability of HMDA and CRA reporter data, reflecting home mortgage, small business, and small farm lending activity. The Board conducted two separate analyses of possible approaches to delineating additional assessment areas based on concentrations of lending activity outside of branches.[68] The first used a business model approach based on banks having a substantial majority of lending outside of their branch-based assessment areas plus a concentration of lending at the county level. The second utilized the concentration of lending outside of banks' branch-based assessment areas.

[67] A deposit-based approach was proposed in the FDIC–OCC CRA notice of proposed rulemaking and adopted in the OCC CRA final rule. The OCC CRA final rule provides, in relevant part, that if a majority of a bank's deposits come from depositors located outside of its branch-based assessment area(s) additional assessment areas would be delineated in areas where a certain percentage of deposits are located.

[68] The data used in the various analyses to support the Board's ANPR reflect information that was available at the time that the analyses were conducted.

a. Lending-Based Approach for Large Banks With a Substantial Majority of Lending Outside of Branches

The Board analyzed how lending-based assessment areas might work for large banks that conduct a substantial majority (75 percent or greater) of their lending outside of their facility-based assessment areas. Such an approach would be intended to capture a subset of bank business models, including banks that do not rely principally on branches for extending loans.

The Board's analysis reviewed 2017 HMDA, small business, and small farm data from CRA-reporting banks. The analysis indicated that this approach for delineating lending-based assessment areas may not meet the Board's policy objectives for defining additional assessment areas. The analysis revealed that additional assessment areas would be required for only 33 banks across all three lending categories.[69] The small number of affected banks reflects two key findings of the analysis: (i) The vast majority of banks make less than a substantial majority of retail loans outside of their assessment areas, and (ii) for the banks that make more than a substantial majority of retail loans outside of their assessment areas, their lending is relatively dispersed rather than concentrated in particular geographic areas. Additionally, as with deposit-based assessment areas, this approach may exacerbate the discrepancies in CRA activity between CRA hot spots and deserts, because the new assessment areas identified under this approach tended to be located in high-density metropolitan areas with multiple active banks. Finally, the analysis indicates that this approach may not substantially increase banks' lending to LMI borrowers in the new assessment areas because the percentage of LMI borrowers is similar between banks that would add new lending-based assessment areas and banks that already have existing facility-based assessment areas.

b. Lending-Based Approach for Large Banks With a Concentration of Lending Outside of Their Assessment Areas

The second lending-based approach analyzed by the Board would require a bank to delineate additional assessment areas in counties with sufficient concentrations of lending, regardless of how many loans it makes outside of its branch-based assessment areas. Using 2017 data, the Board examined all banks that are both HMDA reporters and included in FDIC Summary of Deposits (SOD) data.[70] The analysis examined HMDA mortgage lending only and used two illustrative thresholds of 100 and 250 home mortgage loans, respectively, within a county as a trigger to delineate additional assessment areas. This analysis revealed that of 3,160 banks analyzed, only 167 banks would be required to delineate at least one additional assessment area using a threshold of 100 mortgages loans and only 65 banks would be required to delineate at least one additional assessment area using a threshold of 250 mortgage loans. It is important to recognize that these numbers could increase over time as banks expand their reliance on mobile and online platforms.

Request for Feedback:

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

E. Nationwide Assessment Areas for internet Banks

The Board is considering whether to allow internet banks to delineate nationwide assessment areas. Currently, these banks' assessment areas are based on the location of the bank's solitary main office. This results in assessment areas that are much smaller than the bank's actual business footprint. Additionally, the number of new assessment areas triggered for internet banks using the deposit-based or lending-based assessment area approach would vary and, for some of these banks, could be limited. The Board's above-referenced lending-based assessment area analysis indicated that many banks' dispersion of lending activity would make it challenging to delineate additional assessment areas in specific counties. In contrast, nationwide assessment areas would be based holistically on an internet bank's overall business activity.

The designation of a nationwide assessment area would require determining how to conduct performance evaluations for this approach, including for retail and community development activities. Such an approach would also require defining an internet bank for CRA purposes. In the extreme, the definition of internet bank could be limited to banks that exclusively use an online business model to deliver products and services. A hybrid definition might instead allow limited branch-related activity in combination with a substantial majority of activity conducted through online channels.

Request for Feedback:

Question 9. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?

Question 10. How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?

IV. Tailoring Evaluations Based on Bank Size and Business Model

The Board is proposing a revised CRA evaluation framework that would consist of two separate tests: A Retail Test and a Community Development Test. Within these tests would be the following four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest. Retail and community development activities are both fundamental to CRA and essential for meeting the core purpose of the statute. Separately evaluating these activities in a Retail Test and a Community Development Test helps ensure that these activities are appropriately taken into consideration. Having a separate Retail Test and Community Development Test also provides the ability to tailor which tests and subtests

[69] The Board defined a minimum concentration of lending at the county level needed to delineate a new assessment area in the following way. First, the Board identified banks making 75 percent or more of their retail loans outside of their assessment areas in 2017, by product line. Next, the Board sought to delineate new assessment areas for these banks such that a substantial share of the lending currently outside of branch-based assessment areas would be newly included in lending-based assessment areas. To do so, by product line, the Board calculated a minimum concentration of loans at the county level that would capture approximately 50 percent of the loans outside of branch-based assessment areas that are not currently assessed for CRA within this group of banks. For home mortgage lending, this minimum concentration is 88 loans. Note that this calculation is based on lending of the group of banks making 75 percent or more of their loans outside of branch-based assessment areas and not all lending outside of branch-based assessment areas.

[70] In this analysis, a proxy measure was used to determine banks' assessment areas using bank branch location data from the FDIC SOD. If a bank had a branch in a county in 2017, then that county was counted as part of the bank's assessment area(s).

apply to banks based on asset size and other factors. Finally, separate tests facilitate using metrics and benchmarks that are customized to different activities, which allows the use of available data to the greatest extent possible and thereby minimizes burden.

Treatment of Small and Large Retail Banks. The Board proposes giving small retail banks the option to be evaluated solely under the Retail Lending Subtest, while applying all four subtests to larger retail banks. A bank would receive a conclusion for each applicable subtest in each of its assessment areas. Accordingly, a small bank that chooses to opt in would receive a Retail Lending Subtest conclusion in each assessment area, and a large bank would receive four subtest conclusions in each assessment area. These subtest conclusions in assessment areas would form the foundation for state, multistate MSA, and institution CRA ratings.

Defining Small and Large Banks for CRA Purposes. The approach described above would establish small bank and large bank categories of retail banks based on institution asset size, and would eliminate the current intermediate small bank category to reduce complexity and create more consistent evaluation standards. Currently, the asset threshold between small and intermediate small banks is $326 million, and the threshold between intermediate small and large banks is $1.305 billion. The Board is seeking feedback on whether to set the asset threshold differentiating between small and large banks at either $750 million or $1 billion, designating banks below this level as small banks and banks above this level as large banks.

Under the proposed test structure, increasing a small bank threshold above the existing $326 million limit would reduce the scope of activities evaluated under CRA for some banks compared to the approach used today. Currently, small banks with assets below $326 million are evaluated on retail lending performance alone, while intermediate small banks with assets between $326 million and $1.305 billion are also evaluated on their community development activities. Although increasing the small bank threshold above the existing limit might result in fewer banks' community development activities evaluated for purposes of CRA, it would also better tailor the compliance and data implications of the proposed Community Development Test only to banks with substantial community development activity.

Small Bank Considerations. The Board proposes that small retail banks under the Board's proposed threshold would, by default, have their retail lending activities evaluated under the qualitative approach used in the current examination procedures for small banks, rather than the metrics-based approach proposed in Section V. Small banks would also have the ability to opt in to the metrics-based approach at their choosing. The default approach of evaluation under the current qualitative framework would allow for continuity of examination procedures and would more fully account for qualitative performance context factors that may be especially relevant for smaller banks, such as capacity constraints. However, the default option would not deliver the consistency and predictability of the evaluation process desired by many banks and other stakeholders and would increase overall complexity because it requires multiple performance evaluation frameworks.

Another consideration is allowing small banks to have the option of requesting that retail services, community development activities, or both, be considered in addition to the Retail Lending Subtest conclusions when developing CRA ratings. Small banks could opt to have these activities evaluated on a qualitative basis to improve their overall ratings and would not be required to collect the data necessary to be evaluated under the Retail Services Subtest and the Community Development Test. The Board believes that a small retail bank should also continue to be able to achieve any rating, including an ''outstanding,'' based on its retail lending performance alone, and should not be required to be evaluated on other activities. Section X discusses ratings for small banks in greater detail.

Wholesale and Limited Purpose Banks. The Board has also considered how to tailor evaluation standards to wholesale and limited purpose banks. Because these banks, by definition, do not conduct retail lending as a significant part of their business, the Board proposes evaluating these banks using only the Community Development Test. The Board anticipates that the evaluation approach used for the Community Development Test, however, would be applied differently to wholesale and limited purpose banks than retail banks. Specifically, although the Board is proposing a community development financing metric that incorporates deposits as a measure of a large retail bank's capacity within an assessment area, the Board is considering alternate measures of capacity for wholesale and limited purpose banks, such as total assets. In addition, as with any bank, wholesale and limited purpose banks would continue to have the option to be evaluated under an approved strategic plan, which allows for tailoring to their unique business models and strategies.

Request for Feedback:

Question 11. Is it preferable to make the default approach for small banks the current framework, with the ability to opt in to the metrics-based approach, as proposed, or instead the metrics-based approach, with the ability to opt out and remain in the current framework?

Question 12. Should small retail banks that opt in to the proposed framework be evaluated under only the Retail Lending Subtest? Should large retail banks be evaluated under all four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest?

Question 13. Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

V. Retail Test: Evaluation of Retail Lending and Retail Services Performance

The Board proposes using a Retail Lending Subtest—utilizing a metrics-based approach—to evaluate retail lending performance for all large retail banks and small retail banks that opt into the new framework. This approach would result in a small retail bank receiving a Retail Lending Subtest conclusion in each of its assessment areas. The Board also seeks feedback on a Retail Services Subtest, which would apply only to large banks above a specified asset threshold. A large bank would receive separate Retail Lending Subtest and Retail Services Subtest conclusions in each of its assessment areas.

A. Retail Lending Subtest Evaluation Approach

This section proposes a metrics-based approach to a Retail Lending Subtest that leverages practices currently used in CRA examinations combined with more transparent performance expectations. At the heart of this analysis would be evaluating how well a bank serves LMI census tracts, LMI borrowers, small businesses, and small farms. This approach is intended to strengthen CRA's focus on how banks serve the retail credit needs of LMI

communities, and to improve the clarity and consistency of CRA examinations.

First, the Board proposes using a retail lending screen that would determine whether a bank should be eligible for a metrics-based evaluation of retail lending that could result in a presumption of ''satisfactory,'' or that should instead be evaluated subject to examiner discretion as a result of having relatively low levels of retail lending in an assessment area.

Second, for banks that pass the simple screen, the Board proposes using retail lending distribution metrics to determine whether a bank is eligible for a presumption of ''satisfactory'' on the Retail Lending Subtest in a specific assessment area. The retail lending distribution metrics comprises two metrics: (a) A *geographic distribution* metric that would evaluate how well a bank is serving LMI census tracts; and (b) a *borrower distribution* metric that would evaluate how well a bank is serving LMI borrowers, small businesses, and small farms in their assessment area overall, regardless of geography. To determine which banks are eligible for a presumption of ''satisfactory,'' this approach would use tailored, dynamic thresholds that adjust across different communities and that reflect changes in the local business cycle. The Board believes that providing a dashboard—using data through the previous quarter or year, depending on the data source—to show the thresholds for specific assessment areas would facilitate ease of use and enable banks to track their performance over the course of an evaluation period.

To complement the presumption of ''satisfactory'' approach, the Board is also considering a third step using the same distribution metrics relative to performance ranges set for each Retail Lending Subtest conclusion: ''outstanding,'' ''satisfactory,'' ''needs to improve,'' and ''substantial noncompliance.'' This would produce a *recommended* Retail Lending Subtest conclusion that an examiner would consider in addition to certain, targeted performance context and qualitative information to reach a *final* Retail Lending Subtest conclusion.

1. Current Structure for Evaluating Retail Lending Activity

In current CRA examinations, retail lending performance is examined under a lending test that differs based on a bank's asset size category (small, intermediate small, and large). The lending test includes quantitative and qualitative criteria, and does not specify what level of lending is needed to achieve ''satisfactory'' or ''outstanding'' performance.

Currently, the purpose of evaluating lending activity for both small and large banks is the same—to determine whether a bank has a sufficient aggregate value of lending in its assessment area(s) in light of a bank's performance context, including its capacity and the lending opportunities available in its assessment area(s). For small banks, examiners make a loan-to-deposit calculation based on the balance sheet dollar values at the institution level, and review the number of loans made inside and outside of assessment area(s). For large banks, examiners consider the number and dollar amount of loans in assessment area(s) and the number of loans inside and outside of assessment area(s). These approaches rely on examiner judgment to draw a conclusion about a bank's level of lending.

Pursuant to Regulation BB, CRA examinations today also include an evaluation of the geographic distribution and borrower distribution of a bank's retail lending.[71] This evaluation leverages a set of local data points referred to as comparators—both demographic comparators and aggregate comparators—that are tailored to each assessment area in which the bank operates.

For the geographic distribution analysis, examiners evaluate the distribution of a bank's retail loans in low-income, moderate-income, middle-income, and upper-income census tracts. Examiners review the geographic distribution of home mortgage loans by income category and compare the percentage distribution of lending to the percentage of owner-occupied housing units in the census tracts. Similarly, in each income category of census tract, examiners compare small business lending to the percentage distribution of small businesses; small farm lending to the percentage distribution of small farms; and consumer lending to the percentage distribution of households in each category of census tract, as applicable.

For the borrower distribution analysis, examiners evaluate the distribution of a bank's retail loans based on specified borrower characteristics, such as the income level of borrowers for home mortgage lending. The comparators used to inform the borrower distribution analysis are families by income level for home mortgage lending; businesses with gross annual revenues of $1 million or less for small business lending; farms with gross annual revenues of $1 million or less for small farm lending; and households by income level for consumer lending.

Examiners complement these distribution analyses by also reviewing the dispersion of a bank's loans throughout census tracts of different income levels in its assessment area(s) to determine if there are conspicuous lending gaps.

2. Stakeholder Feedback on Evaluating Retail Lending

Although many stakeholders expressed support for the consideration of performance context and the qualitative aspects of CRA performance, they raised concerns about a lack of transparency and predictability regarding the amount and nature of retail lending activity required to achieve a particular rating. As explained above, Regulation BB and the related examination procedures require evaluations based on the number and dollar amount of loans, but without a formalized way of translating that analysis into performance expectations.

Stakeholders have also expressed the need for greater consistency across CRA performance standards. CRA evaluations are tailored based on bank size and business strategy; however, these differences can be confusing as banks cross asset thresholds and are subject to different examination procedures. For example, as noted, overall lending activity is evaluated using a loan-to-deposit ratio criterion for small banks and by reviewing the number and amount of loans in a bank's assessment area(s) for large banks.

3. Potential Retail Lending Screen

As a first step to evaluating a bank's retail lending, the Board proposes using a retail lending screen. The screen would measure a bank's retail lending relative to its capacity to lend in an assessment area to determine whether the bank is eligible for a presumption of ''satisfactory'' using the retail lending distribution metrics, or whether it should instead be more closely evaluated by an examiner.

Using the retail lending screen would ensure that a bank does not receive a presumption of ''satisfactory'' in assessment areas where it has overall low levels of retail lending relative to deposits, compared to other banks in the assessment area. Without such a screen, a bank with high levels of deposits that originated a very low number of retail loans during an evaluation period might otherwise appear to merit a ''satisfactory'' conclusion simply because, for example, those loans

[71] *See* 12 CFR 228.22(b).

happened to be concentrated among LMI borrowers and LMI census tracts.

In each assessment area, the retail lending screen would measure the average annual dollar amount of a bank's originations and purchases of retail loans in the numerator—including home mortgage, small business, and small farm loans—relative to its deposits in the denominator. Both the numerator and denominator of the retail lending screen would be measured in dollars.

The retail lending screen would be measured against a market benchmark that reflects the level of retail lending by other banks in the same assessment area, indicating the aggregate dollar amount of lending a typical bank might be expected to engage in given its level of retail deposits. Specifically, the proposed market benchmark for the retail lending screen would be the percentage of retail lending (in dollars) by all HMDA and CRA reporter banks in an assessment area compared to the aggregate amount of deposits for those banks in that same assessment area. The use of HMDA and CRA reporter data would minimize the data reporting requirements for small banks. To ensure that banks' ability to pass this retail lending screen would not depend on their business strategy (*e.g.,* banks that hold their loans in portfolio rather than sell them into the secondary market), the threshold for this screen would be set at a low level, such as 30 percent of the market benchmark.[72] The intent would be to focus examiner attention on banks that are significantly underperforming relative to the market benchmark.

Under this approach, banks not meeting the retail lending screen threshold would not be eligible for a metrics-based presumption of ''satisfactory'' on the Retail Lending Subtest in an assessment area. Instead, examiners would review the bank's aggregate lending, geographic distribution, and borrower distribution in combination with performance context and qualitative aspects of performance.

Request for Feedback:

Question 14. Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?

4. Retail Lending Distribution Metrics for a Presumption of ''Satisfactory''

For banks that pass the retail lending screen, the Board proposes comparing a pair of retail lending distribution metrics against local quantitative thresholds to determine whether a bank is eligible for a presumption of ''satisfactory'' on the Retail Lending Subtest in an assessment area. For each product line evaluated under the Retail Lending Subtest, the Board proposes evaluating bank activity using *both* a geographic distribution metric and a borrower distribution metric, with each designed to evaluate different but complementary aspects of a bank's retail lending performance, similar to the focus of current examinations.

If a bank's geographic distribution metric and borrower distribution metric both met or exceeded the relevant thresholds, then a bank would receive a presumption of ''satisfactory'' performance and would be eligible for a ''satisfactory'' or an ''outstanding'' conclusion in a specific assessment area.

a. Calculation of Retail Lending Distribution Metrics

The geographic distribution metric would measure the number of a bank's loans in LMI census tracts within an assessment area. For each of the bank's major product lines, the geographic distribution metric would calculate the total number of the bank's originated or purchased loans in LMI census tracts (numerator) relative to the total number of the bank's originated or purchased loans in the assessment area overall (denominator). For mortgage and consumer loans, this would include loans to borrowers of any income level but located within an LMI census tract. For instance, assuming that a bank originated or purchased 25 home mortgage loans in one of its assessment areas during the evaluation period and that five of these were located in LMI census tracts, the geographic distribution metric for home mortgage loans would be:

$$\frac{Bank\ Loans\ in\ LMI\ Tracts\ (5)}{Bank\ Loans\ (25)} = Geographic\ Distribution\ Metric\ (0.2\ or\ 20\%)$$

The borrower distribution metric would measure a bank's loans to LMI individuals (for home mortgages or consumer loans, respectively) or to small businesses (for small business loans) or small farms (for small farm loans) within an assessment area relative to the total number of the bank's corresponding loans in that category in the assessment area overall. For each of the bank's major product lines, the borrower distribution metric would be calculated separately. Options for revising the thresholds for small business lending and small farm lending are discussed in Section VI.

Assuming that a bank originated or purchased 100 home mortgage loans in one of its assessment areas during the evaluation period, and that 20 of these went to LMI borrowers, the borrower distribution metric would be:

$$\frac{Bank\ Loans\ to\ LMI\ Borrowers\ (20)}{Bank\ Loans\ (100)} = Borrower\ Distribution\ Metric\ (0.2, or\ 20\%)$$

To calculate the retail lending distribution metrics, the Board's proposed approach would use the number of a bank's loans, not the dollar amount of those loans, in order to treat different-sized loans equally within product categories. For example, using an approach based on the number of loans, a $250,000 mortgage to a

[72] The analysis of performance evaluation data, using the Board's publicly available CRA Analytics Data Tables, showed that the frequency of ratings below ''satisfactory'' increased substantially relative to ''high satisfactory'' or ''outstanding'' ratings when a bank's average annual loan-to-deposit ratio fell below 30 percent of the market benchmark. In 2017, the median market benchmark loan-to-deposit ratio for entire MSAs and for non-MSA counties were both approximately 9 percent. The proposed loan-to-deposit ratio is based on the dollar amount of a bank's originations and purchases during the evaluation period. In contrast, the loan-to-deposit ratio used under current small bank examination procedures is based on the dollar amount of loans and purchases on a bank's balance sheet.

moderate-income household would count the same as an $80,000 mortgage to a low-income household. This approach emphasizes the number of households, small businesses, and small farms served, and avoids weighting larger loans more heavily than smaller loans, as would occur when using dollar amounts. This better captures the importance and responsiveness of smaller dollar loans to the needs of lower-income borrowers and smaller businesses and farms, and does not provide an incentive to make larger loans to reach performance levels.

For each product line evaluated using the retail lending distribution metrics, the Board proposes aggregating the calculation of the retail lending distribution metrics in certain aspects for simplicity and clarity. This would be a change from current practice, whereby examiners separately evaluate a bank's performance in each income category (low-, moderate-, middle-, and upper-); each loan category within a product line (*e.g.,* home purchase loans, home refinance loans); and each year. The proposed approach would combine low- and moderate-income categories under a single metric calculation. The proposed approach would also aggregate all categories of home mortgage loans together when evaluating home mortgage lending, all categories of small business loans together when evaluating small business lending, and all types of small farm loans together when evaluating small farm lending. By comparison, the Board believes that there could be different considerations for evaluating consumer loan categories separately (*e.g.,* motor vehicle lending separately from credit card lending) rather than as one consumer product line. Lastly, the Board proposes to combine all years of the evaluation period together under a single metric calculation.

Calculating the retail lending distribution metrics on a more aggregated basis for each product line would simplify the number of calculations needed to determine whether a bank qualified for the presumption of ''satisfactory.'' This approach would result in only one calculation needed for each distribution metric for each product line during an evaluation period. Another benefit of aggregating the metrics in this manner is that, for small banks and rural banks with relatively fewer retail loan originations, this approach would more likely capture a sufficient number of loans for use in the metrics.

The greater simplicity would also have some drawbacks. Combining low- and moderate-income categories together could potentially reduce the focus on lending in low-income census tracts and to low-income borrowers relative to lending to moderate-income tracts and moderate-income borrowers. A potential drawback to combining all home mortgage lending products into one category is that the evaluation of home purchase lending could be obscured when combined with home refinance loans, particularly when levels of home mortgage refinancing increase.[73]

b. Benchmarks for the Retail Lending Distribution Metrics

The Board proposes using two different kinds of benchmarks for each distribution metric as the building blocks for setting quantitative thresholds for the retail lending distribution metrics. First, a community benchmark would reflect the demographics of an assessment area, such as the number of owner-occupied units, the percentage of low-income families, or the percentage of small businesses or small farms. Second, a market benchmark would reflect the aggregate lending to targeted areas or targeted borrowers by all lenders operating in the same assessment area. Using these two kinds of benchmarks will help tailor the Retail Lending Subtest to the lending opportunities, needs, and overall lending taking place in an assessment area. Importantly, the Board believes that these benchmarks will focus CRA evaluations on the local communities being served by banks and will incorporate aspects of performance context directly into the metrics.

Benchmarks grounded in local data are used today in CRA examinations, and the Board's approach seeks to translate these comparators into performance expectations in a consistent and transparent way. As discussed above, in current CRA performance evaluations, the benchmarks are referred to as ''comparators.'' The community benchmark is currently referred to as the demographic comparator. The market benchmark is currently referred to as the aggregate comparator.

Within each retail lending product line evaluated under the Retail Lending Subtest, the geographic distribution metric would be compared to a community benchmark and a market benchmark, and the borrower distribution metric would be compared to a community benchmark and a market benchmark. Table 1 provides an overview of the benchmarks under consideration by the Board and their respective data sources.

TABLE 1—LIST OF BENCHMARKS FOR RETAIL LENDING DISTRIBUTION METRICS AND DATA SOURCES

Distribution metric	Community benchmark	Market benchmark
Mortgage		
Geographic:		
Data Point	Percentage of owner-occupied residential units in LMI census tracts in assessment area.	Percentage of home mortgages in LMI census tracts by all lender-reporters in assessment area.
Data Source	American Community Survey (Census)	HMDA Data.
Borrower:		
Data Point	Percentage of LMI families in assessment area	Percentage of home mortgages to LMI borrowers by all lender-reporters in assessment area.
Data Source	American Community Survey (Census)	HMDA Data.
Small Business		
Geographic:		

[73] Complicating this decision further is that, for loans originated in 2018, HMDA reporting requirements for home mortgage loans changed and now include, for certain reporters, home equity lines of credit (HELOCs) that are secured by a dwelling, regardless of loan purpose (unless otherwise exempt). *See, e.g.,* 12 CFR 1003.2(e); 82 FR 43088 (Sept. 13, 2017); 85 FR 28364 (May 12, 2020). As such, HELOCs reported in HMDA data may include loans secured by a dwelling but not connected to a dwelling-related purpose (*i.e.,* home purchase, home refinance, or home improvement).

TABLE 1—LIST OF BENCHMARKS FOR RETAIL LENDING DISTRIBUTION METRICS AND DATA SOURCES—Continued

Distribution metric	Community benchmark	Market benchmark
Data Point	Percentage of small businesses with gross annual revenue less than $1M in LMI census tracts in assessment area.	Percentage of small business loans in LMI census tracts by all lender-reporters in assessment area.
Data Source	Dun & Bradstreet	CRA Data.
Borrower:		
Data Point	Percentage of small businesses with gross annual revenue less than $1M in assessment area.	Percentage of small business loans to small businesses with gross annual revenue less than $1M by all lender-reporters in assessment area.
Data Source	Dun & Bradstreet	CRA Data.
Small Farm		
Geographic:		
Data Point	Percentage of small farms with gross annual revenue less than $1M in LMI census tracts in assessment area.	Percentage of small farm loans in LMI census tracts by all lender-reporters in assessment area.
Data Source	Dun & Bradstreet	CRA Data.
Borrower:		
Data Point	Percentage of small farms with gross annual revenue less than $1M in assessment area.	Percentage of small farm loans to small farms with gross annual revenue less than $1M by all lender-reporters in assessment area.
Data Source	Dun & Bradstreet	CRA Data.
Consumer		
Geographic:		
Data Point	Percentage of households in LMI census tracts in assessment area.	Percentage of consumer loans in LMI census tracts by all lender-reporters in assessment area.
Data Source	American Community Survey (Census)	To be determined.
Borrower:		
Data Point	Percentage of LMI households in assessment area	Percentage of consumer loans to LMI borrowers by all lender-reporters in assessment area.
Data Source	American Community Survey (Census)	To be determined.

To limit data burden for small banks that opt in to the metrics-based approach, the Board proposes using HMDA and CRA reporter data to construct the market benchmark for mortgage, small business, and small farm product lines. In calculating the market benchmark for mortgage lending, the Board also proposes including all mortgage lenders, not just depository institutions. This is intended to capture the full breadth of lending to LMI borrowers in constructing the benchmark.

As noted in Table 1, the Board has not yet identified a data source for the market benchmark for consumer loans due to the lack of consistent data collection on consumer lending.[74] To use the same kind of benchmarks for consumer loans as for other product lines, market benchmarks would be needed that measure: (1) The percentage of consumer lending in LMI census tracts as a comparison point for the geographic distribution metric; and (2) the percentage of consumer lending to LMI borrowers as a comparison point for the borrower distribution metric.

The Board is considering the use of commercially available data from one or more of the nationwide credit reporting agencies to establish a market benchmark for the geographic distribution metric based on the rate of new account openings in LMI census tracts. This could facilitate a metrics-based approach to evaluate consumer lending without additional data reporting requirements. A downside of this approach is that it would not provide a measure of consumer lending to LMI borrowers that is necessary to create a market benchmark for the borrower distribution metric for consumer lending. However, it could be used to create a market benchmark for the geographic distribution metric for certain consumer lending products, such as motor vehicle loans and credit cards. Alternatively, consumer lending could continue to be evaluated under current examination procedures, which do not incorporate a standardized benchmark, or the Board could consider other data sources to develop benchmarks for consumer lending.

c. Establishing Quantitative Thresholds Based on Community and Market Benchmarks

The Board proposes using the community and market benchmarks to set the quantitative thresholds used for determining whether a bank receives the presumption of ''satisfactory.'' Through this process, the Board believes that the quantitative thresholds in place for a presumption of ''satisfactory'' will directly incorporate aspects of performance context.

The approach for setting thresholds would involve first calibrating each benchmark to align with the Board's expectations for ''satisfactory'' performance sufficient to obtain the certainty of a presumption. This calibration would involve multiplying each benchmark by a fixed percentage. The Board would then refer to the calibrated benchmarks as the community threshold and market threshold, respectively. While the same fixed percentage would be used to calibrate each benchmark in each assessment area, the resulting thresholds would, in fact, be tailored for local community and market conditions

[74] Regulation BB provides large banks with the option to collect and maintain consumer loan data for one or more categories of consumer loans in the event that a bank opts to have its consumer lending evaluated. *See* 12 CFR 228.42(c)(1). Regulation BB does not require small banks or intermediate small banks to collect, maintain, or report loan data. Instead, examiners evaluate these banks using information maintained in a bank's internal operating systems or gathered from individual loan files.

because the benchmarks are based on local data specific to each assessment area.

For each distribution metric, the lower of the community threshold or market threshold would be selected as the binding threshold. For example, for the geographic distribution metric, if the community threshold was 30 percent and the market threshold was 35 percent, then the community threshold of 30 percent would be used as the binding threshold for this metric.

There are several benefits of the proposed approach to setting quantitative thresholds for a presumption of ''satisfactory'' on the Retail Lending Subtest as described above. One benefit would be providing a bank with greater certainty about CRA performance expectations in an assessment area because the thresholds would be tailored to the different conditions in different local communities across the country. Rather than setting a static threshold level across the country that might be too high or too low in certain areas, this customized approach would facilitate a bank's ability to rely on the thresholds in each of its assessment areas.

Another benefit is that the Board's approach would automatically adjust the threshold levels over time in a way that reflects changes in the business cycle because the market benchmarks reflect overall lending activity in each assessment area. This approach could reduce the instances in which the Board would need to adjust the threshold levels through a rulemaking or other regulatory action. If, for example, a market downturn affected an assessment area by making LMI lending more difficult, the downturn would likely have a similar effect on all lenders in an area, thereby causing the market benchmark to decline. Because the proposed approach would set a threshold by selecting the lower of the community threshold or market threshold, the decline in the market threshold itself during a downturn could have the effect of lowering the applicable threshold. Conversely, if overall LMI lending opportunities expanded, the threshold associated with the lower of the community threshold or market threshold may increase, creating greater expectations of local banks to make loans in LMI tracts, to LMI borrowers, and to small businesses and small farms.

On the other hand, thresholds could be set low in areas where credit markets as a whole are underserving LMI census tracts, LMI borrowers, or both, which could have the effect of providing the presumption of ''satisfactory'' too often in communities with significant unmet credit needs. An approach that set performance standards too low could fail to fulfill one of the core purposes of CRA, which is to encourage banks to serve LMI communities. Additionally, given CRA's nexus with fair lending laws and the broader context of CRA as one of several complementary laws that address inequities in credit access, the Board is also mindful of analyzing how the proposed approach to setting thresholds would impact majority-minority assessment areas relative to other assessment areas. As part of its ongoing analysis of threshold options, the Board intends to closely analyze these issues.

d. Meeting Quantitative Thresholds Across Retail Product Lines

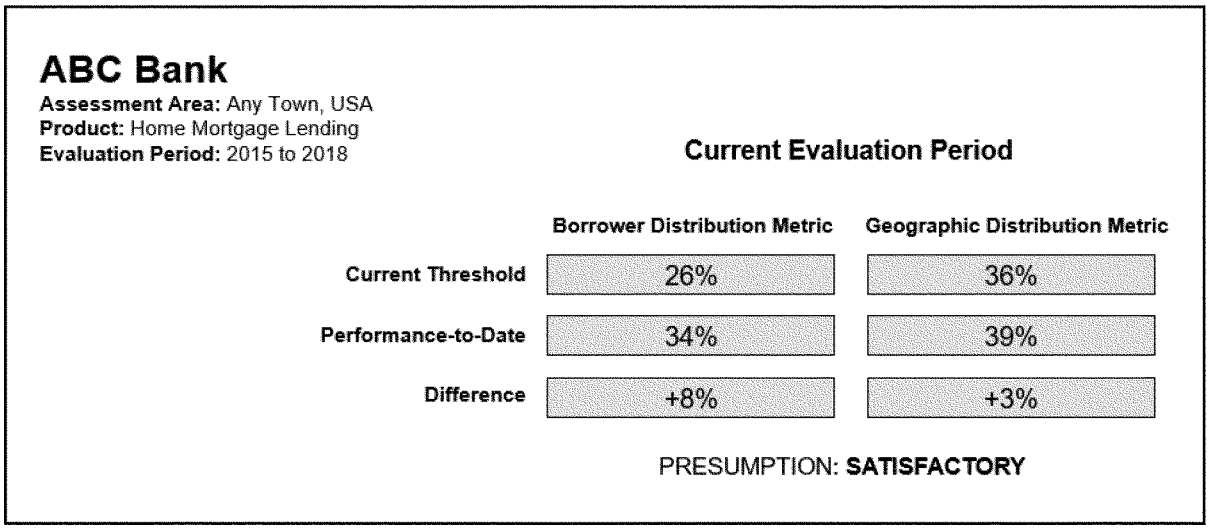
In addition to requiring that a bank meet the binding thresholds for both distribution metrics for a specific product line, the Board also proposes that banks should meet the binding thresholds across all retail lending product lines evaluated under the Retail Lending Subtest in order to receive a presumption of ''satisfactory.'' For example, if a bank were evaluated based on its home mortgage and small business lending in an assessment area, the bank would need to meet or exceed both distribution metric thresholds for its mortgage lending *and* both distribution metric thresholds for its small business lending—overall, a set of four thresholds. An approach that allowed such a bank to receive the presumption based on only one of its retail lending product lines could result in overlooking major product lines where the bank failed to serve LMI communities or LMI borrowers.

Some stakeholders have expressed concern that requiring banks to pass a series of thresholds in an assessment area could be onerous and complex for banks evaluated under multiple retail lending product lines. The Board seeks to lessen this concern by only evaluating major product lines under the Retail Lending Subtest, which is discussed in more detail in Section VI. The Board also seeks to mitigate this concern by using the same metrics for the presumption of ''satisfactory'' approach and the performance ranges approach described in Section V, and by providing simple dashboards to reduce complexity and make the thresholds transparent.

e. Ease of Use: Providing Dashboards To Track Progress

The proposed approach is intended to help advance the objectives of certainty and transparency in setting CRA performance expectations for retail lending, and the Board is interested in ways to make the approach easy to adopt for banks and for the public. To this end, the Board is exploring providing banks with an online portal with dashboards, as shown in Figure 1, that would show thresholds for each major product line for a specific assessment area, with updates made on a quarterly or annual basis, as applicable. This would enable banks to track their own performance throughout an evaluation period against the relevant standards. For HMDA and/or CRA reporters, the dashboards could display a bank's metrics calculations to date in addition to the applicable thresholds.

Figure 1*: Example Retail Lending Dashboard*



f. Limited Circumstances To Rebut the Presumption

The Board believes that granting a presumption of ''satisfactory'' can provide banks with greater certainty about performance expectations and their results on the Retail Lending Subtest. To preserve this certainty, the Board is considering allowing examiners to rebut a ''satisfactory'' presumption in a specific assessment area only in cases of consumer compliance violations involving discrimination and other illegal credit practices, as specified in Section X. Discrimination and other illegal credit practices can be indicative of performance that is lower than the metrics and quantitative thresholds would otherwise indicate. The process for rebutting a presumption in an assessment area would not change the process for potentially downgrading a rating for an institution overall. Discrimination and other illegal credit practices would also be considered separately under the ratings provisions, as discussed in Section X.

Request for Feedback:

Question 15. Are the retail lending distribution metrics appropriate for all retail banks, or are there adjustments that should be made for small banks?

Question 16. Should the presumption of ''satisfactory'' approach combine low- and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?

Question 17. Is it preferable to retain the current approach of evaluating consumer lending levels without the use of standardized community and market benchmarks, or to use credit bureau data or other sources to create benchmarks for consumer lending?

Question 18. How can the Board mitigate concerns that the threshold for a presumption of ''satisfactory'' could be set too low in communities underserved by all lenders?

5. Threshold Levels for Presumption of ''Satisfactory''

A foundational part of the presumption of ''satisfactory'' approach is determining where to set the threshold level for this presumption. Threshold levels that are set too low could provide a presumption of ''satisfactory'' for too many banks and potentially erode CRA performance over time due to inadequate incentives. Threshold levels that are set too high could be seen as unachievable and provide few banks with the certainty of obtaining a presumption.

a. Overview of Proposed Threshold Levels

The Board has conducted an analysis of potential threshold levels for a presumption of ''satisfactory,'' and this section suggests a threshold level for the retail lending distribution metrics. This threshold level would establish the fixed percentages for calibrating the community benchmarks and market benchmarks for purposes of identifying the level of performance necessary to obtain a presumption of ''satisfactory.''

Specifically, the threshold level would set the ''satisfactory'' presumption level at 65 percent of the community benchmark and 70 percent of the market benchmark. An example illustrates this approach using the borrower distribution metric for mortgage lending. If the community benchmark shows that 30 percent of families in an assessment area are LMI, then the community threshold would be 19.5 percent (30 percent times 65 percent). If the market benchmark shows that 35 percent of mortgage originations in the assessment area are to LMI borrowers, then the market threshold would be 24.5 percent (35 percent times 70 percent). Because the community threshold is lower than the market threshold, a bank's performance on the borrower distribution metric for mortgage lending (which measures the percentage of a bank's mortgage lending to LMI borrowers) would need to meet or exceed the binding threshold of 19.5 percent in order to earn the presumption of ''satisfactory.''

b. Analysis of Proposed Threshold Level Using CRA Analytics Data Tables

To understand the impact of different threshold levels for the retail lending distribution metrics using past CRA examinations, the Board used the CRA Analytics Data Tables. These data tables combine publicly available information, proprietary data, and data that the Board compiled from past CRA performance evaluations. In total, the CRA Data Analytics Tables include data from a stratified random sample of approximately 6,300 performance evaluations from 2004 to 2017, with the sampling designed to capture the range of bank sizes, regulatory agencies, stages of the business cycle, and performance ratings.

The Board used the CRA Analytics Data Tables to evaluate two related issues. First, the data were used to identify threshold options that would

likely provide a presumption of ''satisfactory'' performance for banks that had received assessment area conclusions or ratings of ''high satisfactory'' or ''outstanding'' on the lending test in their past examinations. Second, the data were used to identify options that were not likely to provide a presumption for banks that had received assessment area conclusions or ratings of ''needs to improve'' or ''substantial noncompliance'' lending performance on past examinations. In this way, the Board's analysis sought to identify the level of performance on the proposed Retail Lending Subtest that would be strongly associated with a conclusion of ''satisfactory'' or better based on past performance evaluations.

Based on this analysis of past examinations using the CRA Analytics Data Tables, the Board identified the threshold level that separates ''high satisfactory'' or ''outstanding'' performance from ''needs to improve'' or ''substantial noncompliance'' performance on past examinations. The Board first analyzed how many individual assessment areas would have received the presumption of ''satisfactory'' using the threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark. This analysis showed a presumption of ''satisfactory'' performance being granted to over 70 percent of assessment areas with a ''high satisfactory'' or ''outstanding'' on a past examination and less than 15 percent of the assessment areas with a ''needs to improve'' or ''substantial noncompliance'' on a past examination.[75]

To understand instances where threshold levels would have provided a different result compared to past examinations, the Board also undertook a review of a sample of performance evaluations where the CRA examination conclusions on past examinations did not match the presumption approach using the retail lending distribution metrics. For banks that received a ''needs to improve'' in an assessment area on the existing lending test but would have passed the distribution metric based on the threshold level described above, the review found that the most common reason given in the performance evaluation was a low absolute level of either retail or community development lending. Substantive fair lending or unfair or deceptive acts or practices violations also explained some of these outliers. The Board's proposals to use a retail lending screen and to allow discrimination or other illegal credit practices to rebut the presumption of ''satisfactory'' are intended to address these kinds of situations.

Conversely, where applying the distribution metrics would not have resulted in the bank receiving a presumption of ''satisfactory'' performance in an assessment area but the assessment area conclusion recorded in the past performance evaluation was ''satisfactory'' or better, the conclusion frequently was justified in the performance evaluation by a perceived compensating factor. For example, in some cases, a high percentage of loans in LMI geographies was viewed as making up for a low percentage of loans to LMI borrowers. Another common reason was the examiner making use of different comparators, or making adjustments to the comparators, relative to the presumption of ''satisfactory'' approach discussed above. The presumption of ''satisfactory'' proposal would increase rigor and consistency, and reduce uncertainty caused by examiner discretion. This analysis supports the conclusion that the proposed approach, in combination with the retail lending screen and the limited rebuttals of a presumption, would follow the same criteria and guidelines that banks would have been evaluated under in the past, but would do so with improved clarity, transparency and consistency.

To better understand the potential impact of a threshold level set at 65 percent of the community benchmark and 70 percent of the market benchmark, the Board also analyzed how the proposed threshold level would perform for banks of different sizes, locations, and market conditions. To this end, using a sample of 7,067 assessment areas from the CRA Analytics Data Tables, the Board determined how frequently banks would obtain a presumption of ''satisfactory'' performance in an assessment area at different points in the market cycle, in metropolitan and nonmetropolitan areas, and for different bank asset sizes.[76]

Results of these comparisons are shown in Table 2. Examination years from 2005 through 2009 are defined as falling in a boom period, from 2010 through 2013 are defined as falling in a downturn period, and from 2014 through 2017 are defined as falling in a recovery period. Performance evaluations generally cover lending over a period of years prior to the actual examination date, so performance evaluations even into 2009 were covering loans made prior to the financial crisis. Assessment areas were defined as metropolitan if they were located in a metropolitan statistical area and as nonmetropolitan if they were not. Finally, banks were divided into categories of less than $300 million in assets, between $300 million and $1 billion, between $1 billion and $50 billion, and greater than $50 billion.

[75] The sample used to conduct this analysis was limited to assessment areas for which the bank in question: (1) Passed the retail lending screen (limiting the sample to large banks, for which the necessary data was available); and (2) had some amount of community development lending reported in its performance evaluation. These restrictions were imposed so that the sample would be limited to banks whose lending test performance conclusions were most tightly tied to the borrower income and geographic distribution of their loans. Banks with low levels of retail or community development lending could have received a ''needs to improve'' or ''substantial noncompliance'' conclusion or rating on the lending test despite a good distribution of retail lending due to this low level of lending, so these observations were dropped from this analysis, which was intended to focus solely on the distribution metrics.

[76] For each assessment area in the publicly available merged data table, the analysis used the available data to calculate each component necessary to retroactively apply the retail lending distribution metrics to banks' home mortgage and small business lending activities in individual assessment areas for a given examination. To be included in this analysis, a loan product had to constitute a major product line, as described in Section VI, in that assessment area. Loan counts were used to approximate the major product line threshold to account for the lack of loan dollar amount data for small banks in the merged data table. The banks' geographic and borrower distribution metrics, as well as the community and market benchmarks, were calculated for each assessment area, using HMDA and CRA small business reported data or loan data extracted from performance evaluations for small banks where applicable. If all of the data necessary to calculate the retail distribution metrics and benchmarks were available then each major product line was tested using the thresholds of 65 percent for the community benchmark and 70 percent for the market benchmark. Some assessment areas were not scored due to lack of data or other data quality issues, but of the 7,069 assessment areas that were scored, 63 percent received the presumption.

TABLE 2—PERCENT OF ASSESSMENT AREAS OBTAINING PRESUMPTION ACROSS DIFFERENT BUSINESS CYCLES, LOCATIONS, AND BANKS OF DIFFERENT ASSET SIZES

Scenario	Category	Result	Number of assessment areas	Percent
Market Cycle	Boom	Pass	871	66
		Not Pass	444	34
	Downturn	Pass	1,755	64
		Not Pass	970	36
	Recovery	Pass	1,836	61
		Not Pass	1,191	39
Assessment Area Location	Nonmetropolitan	Pass	1,389	62
		Not Pass	840	38
	Metropolitan	Pass	3,073	64
		Not Pass	1,765	36
Asset Category	<$300 Million	Pass	423	59
		Not Pass	288	41
	$300 Million to $1 Billion	Pass	901	66
		Not Pass	467	34
	$1 to $50 Billion	Pass	2,118	62
		Not Pass	1,324	38
	>$50 Billion	Pass	1,020	66
		Not Pass	526	34

Under the proposed threshold levels, the retail lending distribution metrics grant the presumption of ''satisfactory'' to similar percentages of assessment areas across the three phases of the market cycle, metropolitan and nonmetropolitan areas, and bank asset sizes. The share of assessment areas meeting this potential presumption standard falls slightly over the course of the previous economic cycle from boom, to downturn, to recovery period, starting at 66 percent and falling to 61 percent. Metropolitan and nonmetropolitan bank assessment areas met the potential presumption standard in 64 and 62 percent of cases, respectively. Finally, there was some variation in the share of assessment areas meeting the standard across bank sizes, without a clear pattern by size. For banks with less than $300 million in assets, 59 percent of assessment areas would meet the presumption, compared to 66 percent of the largest bank assessment areas.[77] Overall, this analysis suggests that the proposed metrics-based approach appropriately tailors for different economic circumstances, geographies, and bank sizes.

Request for Feedback:

Question 19. Would the proposed presumption of ''satisfactory'' approach for the Retail Lending Subtest be an appropriate way to increase clarity, consistency, and transparency?

Question 20. Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?

Question 21. Will the approach for setting the presumption for ''satisfactory'' work for all categories of banks, including small banks and those in rural communities?

6. Using ''Performance Ranges'' to Complement the Presumption of ''Satisfactory''

To provide additional certainty, the Board proposes using the retail lending distribution metrics and benchmarks to establish performance ranges for each recommended conclusion—''outstanding,'' ''satisfactory,'' ''needs to improve,'' and ''substantial noncompliance.''

a. Overview of Performance Ranges Approach

Performance ranges could be used to help reach Retail Lending Subtest conclusions in two ways. First, when a bank receives the presumption of ''satisfactory,'' this approach would provide transparency and consistency about the level of performance that would merit upgrading to an ''outstanding.'' Second, when a bank does not receive the presumption of ''satisfactory,'' the performance ranges could help provide greater consistency and predictability on which of the four possible conclusions the bank receives on the Retail Lending Subtest. In these two situations, the *recommended* conclusions developed through the performance ranges approach could be combined with an examiner's review of specific performance context factors along with any details about the bank's specific activities to reach a *final* conclusion for the Retail Lending Subtest.

For each product line evaluated under the Retail Lending Subtest in an assessment area, the Board would derive performance ranges from community benchmarks and market benchmarks, similar to the approach to calculate the threshold for a presumption of ''satisfactory.'' The Board would then compare how well a bank performed on the retail lending distribution metrics relative to these performance ranges. However, while the presumption test would combine low- and moderate-income groups for each distribution metric, the performance ranges would assess performance separately for low-income and moderate-income

[77] Data constraints make it difficult to precisely estimate the figure for the smallest banks because the data are neither as complete nor as precise as the data for large banks. For example, although large banks report assessment area boundaries at the census tract level, small and intermediate small bank assessment areas (derived from extracting data from performance evaluations) are generally recorded only at the county level. In cases when a small or intermediate small bank took only part of a county in its assessment area, the Board was not able to identify which census tracts within that county were included. As a result, the Board's analysis calculated the presumption of ''satisfactory'' performance thresholds for specific assessment areas based on benchmarks for the full county, even when the bank took a partial county. The Board also analyzed how the retail lending screen would work in conjunction with the retail lending distribution metrics by comparing bank performances using *both* metrics approaches for large retail banks, because the data to assess the impact of the screen on small banks and intermediate small banks is not currently available. This analysis found that the retail lending screen slightly decreased the share of large bank assessment areas receiving the presumption, to about 58 percent for banks above $1 billion in asset size.

borrowers. This would focus more attention (that of banks, examiners, and interested members of the community) on how a bank is serving the low-income segment of the population, in addition to the broader LMI category.

The Board would compute a weighted average to determine how well the bank performed on different components of the retail lending distribution metrics relative to the performance ranges in order to reach an overall recommended assessment area conclusion on the Retail Lending Subtest.[78] Averaging the different components of the retail lending distribution metrics would allow excellent performance in one part of a bank's retail lending to potentially offset lower performance in another aspect of that lending. This approach could address feedback from some stakeholders that raised concerns about the presumption of ''satisfactory'' approach reducing the retail lending evaluation to a pass-fail test.

Another benefit of using the performance ranges approach in addition to a presumption of ''satisfactory'' approach would be to encourage excellent performance by providing clear ranges for an ''outstanding.'' This is intended to address concerns that banks currently outperforming the threshold for a presumption of ''satisfactory'' could reduce their levels of performance closer to the threshold level.

b. Incorporating Targeted Performance Context and Qualitative Aspects of Performance Into the Performance Ranges Approach

In addition to seeking greater clarity in CRA performance evaluations, stakeholders have also expressed support for considering performance context and other qualitative aspects in CRA examinations. Although the approach to setting thresholds described in this section already incorporates key aspects of performance context information through the use of the quantitative benchmarks for each assessment area that are calibrated to local data, it is also important to consider the limited aspects of performance context not considered in the metrics, including qualitative information about performance. For example, a bank with capacity and constraint issues may deserve a ''satisfactory'' conclusion instead of ''needs to improve'' if additional lending would not be consistent with safety and soundness considerations. Further, performance context and qualitative aspects of lending could merit an increase from ''satisfactory'' to ''outstanding'' when considered cumulatively.

Under the proposed approach, examiners would consider a combination of factors showing responsiveness, such as the margin by which a bank surpasses the thresholds applicable to the retail lending distribution metrics, flexible or innovative lending products and programs, activities undertaken in cooperation with MDIs, women-owned financial institutions, or low-income credit unions that help meet the credit needs of local communities in which these institutions are respectively chartered,[79] and the bank's record of taking action, if warranted, in response to written comments submitted to the bank about its performance in responding to the credit needs in its assessment area(s).

For example, a bank that falls within the ''satisfactory'' range of performance could be considered to have an ''outstanding'' retail lending record by forming lending consortiums with, or purchasing loans originated by, MDIs. Providing a list of these kinds of activities related to ''outstanding'' performance could provide additional transparency and consistency when considering performance context and qualitative information.

Unlike current examination procedures, this approach would specifically exclude using performance context based on economic or other conditions affecting the assessment area as a whole. Any such factors that would either limit or bolster lending in LMI tracts, or to LMI borrowers or small businesses or farms, would generally already be reflected in the benchmarks. As a result, examiners would be restricted to using bank-specific performance context factors that affect the bank being evaluated differently than its in-market peers.

Request for Feedback:

Question 22. Does the performance ranges approach complement the use of a presumption of ''satisfactory''? How should the Board determine the performance range for a ''satisfactory'' in conjunction with the threshold for a presumption of ''satisfactory''? How should the Board also determine the performance ranges for ''outstanding,'' ''needs to improve,'' and ''substantial noncompliance''?

Question 23. Should adjustments to the recommended conclusion under the performance ranges approach be incorporated based on examiner judgment, a predetermined list of performance context factors, specific activities, or other means to ensure qualitative aspects and performance context are taken into account in a limited manner? If specific kinds of activities are listed as being related to ''outstanding'' performance, what activities should be included?

B. Retail Services Subtest Evaluation Approach

The Board proposes a Retail Services Subtest that would use a predominately qualitative approach, while incorporating new quantitative measures, and that would apply only to large retail banks. In contemplating how to evaluate retail services, the Board seeks to encourage banks to offer important services in LMI communities; to increase transparency of evaluation criteria; and to account for changes in the way some customers interact with their banks, including the widespread use of mobile or online banking and the declining number of bank branches. As many banks nationwide closed their branch lobbies in response to the COVID–19 pandemic, consumers have relied more on self-service delivery channels such as ATMs, online banking, and mobile banking services. At the same time, branches remain a vital component of providing banking services to many LMI communities, as well as many rural communities.

1. Current Structure for Evaluating Retail Services Activity

Retail services are currently evaluated only for large retail banks under the large bank service test. The evaluation of retail services incorporates quantitative and qualitative criteria, but does not specify a level of retail services activity that is tied to certain performance conclusions.

Under Regulation BB, examiners review the following four factors when evaluating a bank's retail services activity: (1) The distribution of branches among low-, moderate-, middle-, and upper-income census tracts; (2) an institution's record of opening and closing branches and its effects,

[78] The different components (geographic and borrower distribution metrics, low-income and moderate-income categories, and each major product line) could be weighted by the amount of business that the bank conducts in each product line, and, within each product line, by the value of the community benchmark. The proposed community benchmarks are the share of LMI households, small businesses or farms, or households or establishments in LMI neighborhoods, as applicable, in the assessment area. The weighting would be intended to ensure that the bank's recommended conclusion based on the performance ranges appropriately reflects both the bank's business model (giving more weight to products the bank specializes in for each assessment area) and the credit opportunities and needs in that assessment area.

[79] 12 U.S.C. 2903(b).

particularly regarding those branches located in LMI census tracts or primarily serving LMI individuals; (3) the availability and effectiveness of alternative (subsequently to be referred to as non-branch) delivery systems [80] for delivering retail banking services in LMI census tracts and to LMI individuals; and (4) the range of services provided in low-, moderate-, middle-, and upper-income census tracts and the degree to which the services are tailored to meet the needs of those census tracts.[81]

The primary emphasis for the large bank retail services test is on branches. Examiners evaluate the distribution of branches by comparing the percentage of branches and ATMs among low-, moderate-, middle-, and upper-income census tracts to the percentage of the population that resides in these tracts, particularly LMI tracts. Examiners also consider the reasonableness of business hours and services offered at branches and whether there is any notable difference between hours of operation and services offered at branches in LMI tracts compared to branches in middle- and upper-income tracts. Lastly, examiners analyze a bank's record of opening and closing branches relative to its current branch distribution and the impact of branch openings and closings, particularly on LMI census tracts or individuals.[82]

The evaluation of retail banking services relies on quantitative data from the bank's public file to assess the number of branches in an assessment area and the banking services provided, including the hours of operation and available products at each branch. Examiners have discretion to review these data in light of performance context, but there is little guidance on the factors that should be considered. Under current examination procedures, non-branch delivery channels are considered only to the extent that these channels are effective alternatives in providing services to LMI individuals and to LMI census tracts.[83]

In addition to delivery systems, examiners consider any other information provided by a bank related to both retail products and services, such as the range of products and services generally offered at their branches, transaction fees, and the degree to which services are tailored to meet the needs of particular geographies.[84] Current guidance explains that examiners will consider products and services that improve access to financial services, or decrease costs, for LMI individuals. Examiners will also review data regarding the costs and features of deposit products, account usage and retention, geographic location of accountholders, and any other relevant information available demonstrating that a bank's services are tailored to meet the convenience and needs of its assessment area(s), particularly LMI geographies or LMI individuals.[85] However, there is no guidance on how products and services activities will be weighed in deriving retail test conclusions or the data used to evaluate performance. Additionally, banks typically collect this type of information on products and services at the institution level. As a result, examiners do not typically have the data needed to evaluate differences in products and services across assessment areas and this component receives minimal weight in determining assessment area conclusions for the service test.

2. Stakeholder Feedback on Retail Services

Some community group stakeholders expressed support for CRA's role in encouraging banks to maintain branches in LMI communities and for the current structure of the retail services evaluation. Community group and industry stakeholders expressed support for clearer standards for evaluating products and a more robust analysis of products, and advocated for an approach to evaluating retail services that relies on more data and standard measures of performance.

Community group stakeholders have expressed a range of opinions regarding the primary emphasis on branches in the current retail services evaluation based on their historic importance in providing consumers, particularly LMI individuals, with home mortgage loans and basic banking services and providing credit to small businesses.[86] Some community group stakeholders worry that removing the primary emphasis on the location of branches in the evaluation of retail services could hasten the pace of branch closures. This is supported by research findings that current CRA requirements are associated with a lower risk of branch closure, particularly in neighborhoods with fewer branches and in major metropolitan areas.[87]

Industry stakeholders have suggested that greater weight should be placed on the evaluation of non-branch delivery channels given ongoing trends in the banking industry. Although branches were still the most widely used bank channel prior to the COVID–19 pandemic, branch usage overall has declined in recent years. Community group stakeholders expressed support for giving a bank more credit for non-branch delivery channels if the bank maintains data demonstrating corresponding benefits to LMI consumers.

Community group stakeholders have also expressed concern that a reduced focus on retail services could result in banks offering fewer products and services to LMI individuals and in LMI census tracts. These stakeholders expressed support for an enhanced evaluation of banking products that places greater emphasis on assessing deposit account features and their usage, with a particular focus on products and services for LMI individuals. Some community group stakeholders also suggested that banks should be assessed on the impact of their products, not simply upon usage.

3. Proposed Retail Services Subtest Framework

The Board proposes a Retail Services Subtest for large banks that would evaluate retail services under two components: (1) Delivery systems; and (2) deposit products. For the delivery systems component, the Board proposes evaluating the distribution of a bank's branches, branch-based services (*e.g.,* hours of operation, bilingual services, disability accommodation, payroll and check cashing services, remittance services), and non-branch delivery channels. This approach is intended to recognize the importance of branches, particularly for LMI individuals and LMI communities, while also ensuring that CRA is flexible enough to give credit to other delivery channels and services that promote accessibility and usage.

For the deposit products component, the Board proposes evaluating a bank's deposit products, including checking and savings accounts, focusing on those tailored to meet the needs of LMI individuals. Compared to how evaluations are currently conducted, this proposed approach would elevate

[80] Regulation BB provides a non-exhaustive list of ''alternative (non-branch) delivery systems'' which include: ''ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs.'' 12 CFR 228.24(d)(3).

[81] *See* 12 CFR 228.24(d).

[82] *See* 12 CFR 228.24(d)(2); Q&A § ____0;.24(d)—1.

[83] *See* Q&A § ____.24(d)—1.

[84] See Q&A § ____.24(a)—1.

[85] *See* Q&A § ____.24(d)(4)—1.

[86] *See* Ding and Reid, ''The Community Reinvestment Act (CRA) and Bank Branching Patterns.''

[87] *See id.*

the focus on deposit products offered and the degree to which these products are available and responsive to the needs of LMI individuals and LMI communities. The Board is also exploring the option of requiring the very largest banks to provide a strategic statement in advance of their CRA examinations outlining their business strategy for offering deposit products that are responsive to the needs of LMI and other underserved communities.

The approach of dividing the Retail Services Subtest into delivery systems and deposit products would more clearly articulate the different components of the evaluation of retail services and how they relate to one another. Additionally, the proposed approach would leverage quantitative benchmarks to evaluate a bank's branch distribution. Lastly, the Board is considering what additional quantitative information could best facilitate transparent and meaningful evaluations of delivery systems and deposit products, while taking into account the objective of minimizing data burden for institutions where possible.

a. Delivery Systems

The Board proposes evaluating the full breadth of bank delivery systems by maintaining the emphasis on the importance of branches and increasing the focus on non-branch delivery channels. The proposed approach would evaluate all four current branch-related evaluation factors (branch distribution, the record of opening and closing branches, branch-related services, and non-branch delivery systems) under the delivery systems component of the retail services evaluation. The proposal also would leverage quantitative benchmarks to inform the branch distribution analysis. Additionally, the Board is exploring whether banks should receive additional consideration for operating branches in banking deserts. As part of modernizing the CRA framework, the Board also proposes more fully evaluating non-branch delivery systems to address the trend toward greater use of online and mobile banking.

i. Branch Distribution

Under the proposed Retail Services Subtest, analyzing the distribution of bank branches across census tracts of different income levels would continue to be a core part of evaluating delivery systems. The Board is considering incorporating several quantitative benchmarks that would complement a qualitative evaluation in order to provide greater transparency in evaluations and to provide a more comprehensive picture of the physical distribution of branches in assessment areas. The record of opening and closing branches would continue to rely on examiner judgment to determine whether changes in branch locations affected the accessibility of branch delivery channels, particularly in LMI areas or to LMI individuals.

Branch Distribution Benchmarks. The Board is proposing using data specific to individual assessment areas, referred to as benchmarks, as points of comparison for examiners when evaluating a bank's branch distribution. Building on current practice, three community benchmarks and one market benchmark would be used in conjunction with examiner judgment and performance context information to assess a bank's branch distribution.

Table 3 describes the proposed community benchmarks and their respective data sources. These benchmarks would allow examiners to compare a bank's branch distribution to local data to help determine whether branches are accessible in LMI communities, to individuals of different income levels, and to businesses in the assessment area, and would standardize examiner practice that is used today in some evaluations.

TABLE 3—COMMUNITY BENCHMARKS FOR RETAIL SERVICES—BRANCH DISTRIBUTION

Benchmark(s)	Data source
Percentage of census tracts in an assessment area by tract income level	American Community Survey (Census).
Percentage of households in an assessment area by tract income level	American Community Survey (Census).
Percentage of total businesses in an assessment area by tract income level	Dun & Bradstreet.

The Board is also considering a new aggregate measurement of branch distribution—referred to as a market benchmark—that would measure the distribution of all bank branches in the same assessment area by tract income. Table 4 provides an overview of the proposed market benchmark and the associated data source.

TABLE 4—MARKET BENCHMARK FOR RETAIL SERVICES—BRANCH DISTRIBUTION

Benchmark	Data source
Percentage of all bank branches[88] in an assessment area by tract income level	FDIC SOD Survey

The use of a market benchmark could improve the branch distribution analysis in several ways. First, making such a comparison could give examiners more context for determining how much opportunity exists for providing retail services in tracts of different income levels. Second, examiners may be able to identify assessment areas with a relatively low concentration of branches in LMI areas, which could be indicative of a banking desert. If a bank has a branch in a low-income or moderate-income census tract where few other lenders have branches, this could indicate particularly responsive or meaningful branch activity for the bank.

Table 5 provides an example of how the community and market benchmarks could be used in evaluating a bank's branch distribution.

Table 5: *Geographic Branch Distribution*

[88] The aggregate number of branches in an assessment area figure includes full-service and limited-service branch types as defined in the FDIC SOD.

Geographic Branch Distrbution

	BRANCHES		COMMUNITY BENCHMARKS				MARKET BENCHMARK	
Tract Income Levels	Total Branches		Census Tracts		Households	Businesses	Total Branches from FDIC SOD as of 6/30/2018	
	Number	Percent	Number	Percent	Percent	Percent	Number	Percent
Low	**0**	**0.0%**	11	8.5%	7.9%	5.4%	**9**	**4.9%**
Moderate	**2**	**25.0%**	30	23.3%	25.7%	20.1%	**40**	**22.0%**
Middle	**4**	**50.0%**	53	41.1%	40.0%	43.1%	**91**	**50.0%**
Upper	**2**	**25.0%**	35	27.1%	26.3%	31.4%	**42**	**23.1%**
Unknown	**0**	**0.0%**	0	0.0%	0.0%	0.0%	**0**	**0.0%**
Totals	**8**	**100.0%**	129	100.0%	100.0%	100.0%	**182**	**100.0%**

In the example above, the bank has eight total branches in an assessment area, with none of those branches in low-income tracts and two in moderate-income tracts. An examiner could compare the fact that the bank has no branches in low-income tracts with the above community benchmarks. For example, as shown in the table above, 8.5 percent of all census tracts in the assessment area are low-income census tracts. The examiner could also compare the bank's lack of branches in low-income census tracts with the market benchmark showing that 4.9 percent of branches for all banks in the assessment area are in low-income census tracts.

Similarly, the examiner could also compare the fact that 25.0 percent of the bank's branches are located in moderate-income tracts in the assessment area with the above community benchmarks. For example, 25.7 percent of all households in the assessment area are moderate-income households. The examiner could also compare the bank's distribution of branches in moderate-income census tracts with the market benchmark showing that 22.0 percent of branches for all banks in the assessment area are in moderate-income census tracts.

An examiner could evaluate these data in different ways based on performance context. For example, examiners could give more weight to the bank's lack of branches in low-income census tracts combined with the fact that community benchmarks demonstrate there may be additional opportunity to provide banking services in these tracts. Alternatively, an examiner could consider performance context indicating that existing bank branches in low-income census tracts are adequately serving the needs of low-income households, particularly in light of the percentage of branches the bank has in moderate-income census tracts. As part of this performance context, an examiner might consider the proximity of the bank's branches in moderate-income census tracts to the low-income census tracts in the assessment area.

Formalizing the use of benchmarks would promote transparency in the evaluation process, but given the importance of the branch distribution analysis, the Board does not believe setting thresholds to inform recommendations is appropriate.

Minimum Number of Branches for Branch Distribution Analysis. When a bank has a limited number of branches in an assessment area, the Board is also considering whether the branch distribution analysis should be done qualitatively without the use of the community and market benchmarks described above. Currently, examiners review branch distribution for each assessment area, regardless of the bank's number of branches or the income distribution of census tracts in the assessment area. As a result, a branch distribution analysis is conducted even when a bank has only one branch in an assessment area. Instead, the Board is considering whether a minimum number of branches should be established in order to use the community and market benchmarks.

Assessing Branches in Banking Deserts. The Board is also exploring whether to give additional consideration if a bank operates a branch in a designated banking desert within its assessment area(s). Creating such a standard would involve determining

how to define banking deserts, including the appropriate geographic standards and whether standards should be different for urban and rural areas. Examiners could consider any information an institution provides to determine the degree to which delivery systems are tailored to the convenience and needs of banking deserts in the assessment area.

ii. Branch-Related Services

As part of evaluating delivery systems, the Board proposes clarifying that the evaluation of branch-related services would assess services that are not covered in the branch distribution analysis and that could improve access to financial services, or decrease costs, for LMI individuals. Examples of such services include:

- Extended business hours, including weekends, evenings, or by appointment;
- Providing bilingual/translation services in specific geographies and disability accommodations;
- Free or low-cost government, payroll, or other check cashing services; and
- Reasonably priced international remittance services.

The Board is exploring how these services could be evaluated more consistently and what data could inform an analysis of how these services are meeting the needs of the assessment area, particularly in LMI areas.

Consideration of Branches in Middle-Income and Upper-Income Tracts. Some industry stakeholders have suggested that branches located in middle- and upper-income census tracts and adjacent to LMI tracts can provide needed financial services to residents in the LMI tracts. Some stakeholders have raised concerns about inconsistencies in the treatment and criteria that are currently used to evaluate these branches and have suggested that common guidelines should be developed to ensure a more consistent evaluation. The Board is considering whether and how these branches should be incorporated into the analysis of branch-related services. On one hand, incorporating these branches into the analysis could capture more of the banking services banks are providing to meet the needs of LMI areas. Additionally, providing standard guidelines would ensure that examiners are treating these branches consistently. On the other hand, including these branches could de-emphasize the importance of branches in LMI areas.

To balance these objectives, the Board believes that if a bank requests consideration of branches in middle- and upper-income census tracts as a means for delivering services to LMI individuals or areas, the Board would consider information provided by the bank demonstrating that LMI consumers use the branches. A review of this information would inform the qualitative review of branch-related services and would not be incorporated into the branch distribution analysis described above. The Board is exploring what type of data banks could provide to demonstrate that branches located in middle- and upper-income census tracts serve LMI individuals or areas.

iii. Non-Branch Delivery Channels

In light of the growing use of online and mobile banking services, the proposed Retail Services Subtest would enhance the approach to evaluating the availability and effectiveness of non-branch delivery channels in helping to meet the needs of LMI census tracts and individuals. An important consideration in establishing a strengthened non-branch delivery channels evaluation is grounding this analysis in better and more consistent data, while also being mindful of the objective to minimize the burden for banks in providing additional data.

Under current guidance, examiners consider a variety of factors to determine whether a bank's non-branch delivery channels (ATMs, mobile, and internet) are an effective means of delivering retail banking services in LMI areas and to LMI individuals. For example, this includes the ease of access, cost to consumers, and rate of adoption and use of these delivery channels. However, the type of data that banks provide to examiners is inconsistent and, as a result, consideration of non-branch delivery channels is uneven. Furthermore, there are no clear standards on how data are to be used to determine what constitutes a specific level of performance.

Incorporating data on non-branch delivery channels would enhance the evaluation of non-branch delivery channels. However, there are questions about how to measure non-branch delivery channels consistently and what data points could be considered to demonstrate usage by LMI individuals. Possible data that could be considered include rates of usage of online and mobile services by customers (grouped by census tract) and rates of usage by customers (grouped by census tract) for the different types of ATMs offered by a bank. One challenge, however, is that usage data is proprietary and varies widely by bank. Due to proprietary business considerations, the data might be available only to examiners and may not enhance public insight.

Request for Feedback:

Question 24. In addition to the number of branches and the community and market quantitative benchmarks discussed above, how should examiners evaluate a bank's branch distribution?

Question 25. How should banking deserts be defined, and should the definition be different in urban and rural areas?

Question 26. What are the appropriate data points to determine accessibility of delivery systems, including non-branch delivery channel usage data? Should the Board require certain specified information in order for a bank to receive consideration for non-branch delivery channels?

Question 27. Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?

Question 28. Would establishing quantitative benchmarks for evaluating non-branch delivery channels be beneficial? If so, what benchmarks would be appropriate?

b. Deposit Products

The Board is considering creating a second prong of the Retail Services Subtest that focuses specifically on the degree to which deposit products are responsive to the needs of LMI consumers. Given the number of LMI individuals who are unbanked or underbanked,[89] deposit products that are tailored to meet the needs of LMI consumers could be considered to be responsive under the Retail Services Subtest. Examples of such products include:

- Low-cost transaction accounts which are accessible through debit cards or general-purpose reloadable prepaid cards;
- Individual development accounts;
- Accounts with low or no monthly opening deposit or balance fees;
- Accounts with low or no overdraft and insufficient funds fees;
- Free or low-cost government, payroll, or other check cashing services; and
- Reasonably priced remittance services.

As noted, under current examination procedures, examiners review deposit

[89] *See* Board of Governors of the Federal Reserve System, ''Report on the Economic Well-Being of U.S. Households in 2018—May 2019,'' *https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm.*

products on a limited basis when considering the full range of services offered by a bank in census tracts of different income levels.[90] One key reason the review of deposit products is generally given minimal weight is that data provided by banks to examiners on deposit accounts are generally limited and often provided only for the institution overall, rather than at the assessment area level.

The Board proposes to elevate and strengthen the evaluation of deposit products that are responsive to the needs of assessment areas, and particularly LMI communities and consumers. In addition to assessing the *availability* of deposit products and the degree to which these products are tailored to meet the needs of LMI consumers, the Board is also considering how to evaluate the *usage* and *impact* of such products. To accomplish these objectives, the Board is exploring whether it would be beneficial to have additional data to inform the analysis of deposit products, such as the types of deposit products offered, product costs, account features tailored for needs of LMI consumers, and product usage by LMI consumers versus usage by all consumers. Access to this type of data could help examiners determine whether the bank offers deposit products that are responsive to the needs of LMI consumers and the usage of such products by LMI consumers. Additionally, presenting relevant data on the availability and usage of deposit products in performance evaluations would increase transparency and provide more information to all stakeholders on the types of deposit products that are most responsive to the needs of LMI consumers.

The Board recognizes that evaluating deposit products presents challenges. First, expanding the focus on deposit products would require banks to provide new information for CRA evaluations, as well as the establishment of new supervisory standards for evaluating deposit products. Additionally, due to proprietary business considerations, data on deposit products and customer usage might be available only to examiners and may not enhance public insight.

Despite these challenges, the Board believes that the review of deposit products is an important component of CRA modernization given the critical role of these products in providing an entry point to the banking system for LMI consumers, as well as a pathway for these individuals to obtain access to credit.

Other Revisions to Retail Services Evaluation. The Board is also contemplating whether additional clarity and transparency could be gained by requiring a subset of the largest banks (*e.g.,* banks with assets over $10 billion or banks with assets over of $50 billion) subject to the Retail Services Subtest to provide a statement articulating their approach to offering retail banking products for serving LMI individuals and communities across their assessment area(s). Such statements would allow examiners and stakeholders to understand how the largest banks—which serve a unique role in providing financial services to a large percentage of the population—identify, monitor, track, and serve the needs of LMI communities and individuals through their product offerings. A consideration with this approach would be assessing the potential benefits of requiring these strategic statements relative to any burden associated with preparing them. Another consideration is whether this strategic statement would be appropriate to include in a bank's public file.

Request for Feedback:

Question 29. What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?

Question 30. Are large banks able to provide deposit product and usage data at the assessment area level or should this be reviewed only at the institution level?

Question 31. Would it be beneficial to require the largest banks to provide a strategic statement articulating their approach to offering retail banking products? If so, what should be the appropriate asset-size cutoff for banks subject to providing a strategic statement?

4. Retail Services Subtest Conclusions

The Board proposes reaching a single Retail Services Subtest conclusion for large banks in each of their assessment areas. The Board proposes doing so in a qualitative manner that draws on the delivery systems and deposit products component assessments described above. In reaching an assessment area conclusion for the Retail Services Subtest, the Board is considering how examiners should weight the delivery systems component and the deposit products component, respectively. The Board recognizes the foundational and practical importance of delivery systems to creating and maintaining meaningful access to banking products and services for LMI consumers and communities. Therefore, the Board proposes that more weight be given to the delivery systems component than to the deposit products component when determining a single Retail Services Subtest conclusion. When deriving a conclusion for the delivery systems component, the weight given to branch distribution, branch-related services, and non-branch delivery channels would depend on a bank's profile and its capacity and constraints, as well as performance context. Relevant consumer compliance violations, including any unfair, deceptive or abusive acts or practices, would have a negative impact on the deposit products conclusion, and would be taken into account in determining a Retail Services Subtest conclusion.

Request for Feedback:

Question 32. How should the Board weight delivery systems relative to deposit products to provide a Retail Services Subtest conclusion for each assessment area? Should a large bank receive a separate conclusion for the delivery systems and deposit products components in determining the conclusion for the Retail Services Subtest?

VI. Retail Lending Subtest Definitions and Qualifying Activities

In contemplating revisions to Regulation BB, the Board has considered what qualifying retail lending activities should be considered in specific assessment areas, including what targeted updates should be made to retail lending definitions [91] and qualifying activities, as part of CRA modernization. The Board is considering the following proposals:

- To use a clear quantitative threshold, perhaps 15 percent, to determine whether a bank's home mortgage, small business, and small farm lending should be evaluated as major product lines at the assessment area level, given the availability of public data for these product lines;
- To establish a substantial majority threshold for the treatment of consumer loans using measures based on either the number, the dollar value, or a hybrid approach, and that accounts for different characteristics, purposes and sizes by evaluating loan categories separately;

[90] *See* Q&A § ____.24(d)(3)—1.

[91] *See* 12 CFR 228.12(l) (defining ''home mortgage loan''); 12 CFR 228.12(v) (defining ''small business loan''); 12 CFR 228.12(w) (defining ''small farm loan''); and 12 CFR 228.12(j) (defining ''consumer loan'').

- To update the thresholds for small business loans and small farm loans that were last set in 1995, while retaining the nexus with the *smallest* small businesses and small farms, which often have the greatest unmet credit needs;
- To give consideration for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate), in order to strike a balance between recognizing the importance of first-time purchases for originating banks that rely on other lenders to directly provide liquidity and addressing concerns about loan churning; and
- To expand eligibility for retail lending CRA activities in Indian Country where there are high poverty rates and a relative lack of bank activities.

A. Determining Which Loans Are Evaluated Using Retail Lending Metrics

Currently, large banks are evaluated on all home mortgage, small business, and small farm lending products, regardless of lending volume. Additionally, a large bank's consumer loans are currently considered at its option or if these loans constitute a substantial majority of the bank's business. There is not an established threshold for this standard, and examiner judgment is used to determine whether consumer loans constitute a substantial majority of a bank's business, which can be a source of confusion among stakeholders.[92]

In contrast, small banks are evaluated on only those retail lending categories that are considered major product lines. Currently, there is no Regulation BB definition of a major product line. Instead, examiners select major product lines for evaluation at small banks based on a review of information, including the bank's business strategy and its areas of expertise. Examiners may evaluate all of a small bank's consumer loans taken together or select a category of consumer lending (*e.g.,* credit card, motor vehicle) if those consumer loans are deemed to constitute a major product line.

1. Treatment of Home Mortgage, Small Business, and Small Farm Loans

The Board proposes to use metrics to evaluate CRA performance on home mortgage, small business, and small farm lending, given the availability of appropriate public data for these product lines. Under such an approach, major product line designations for a bank could vary across its assessment areas. For example, a bank that is primarily a home mortgage and small business lender overall but specializes in small farm lending in certain rural assessment areas would have small farm lending considered in those specific assessment areas, but not in assessment areas where the bank makes few or no small farm loans.

For large banks, reviewing major product lines at the assessment area level for home mortgage, small business, and small farm lending would constitute a change compared to the current approach that automatically includes reviews of these product lines in all of their assessment areas. Adopting a major product line approach for large banks would focus CRA evaluations on their actual retail lending, but would also eliminate consideration of some lending that the Board currently considers in large bank examinations. For small banks, adopting a major product line approach to home mortgage, small business, and small farm lending would be similar to the standards in place today, although the standards for determining major product lines would be quantitatively defined to ensure transparency and promote certainty.

A benefit of evaluating all banks on their major product lines is that this approach could streamline evaluations and focus on the retail lending activity that has the biggest impact at each bank. Although some may be concerned about no longer including a review of home mortgage or small business loans in particular assessment areas where loan volume is low, a large bank's lower volume lending is currently already given less weight when evaluating a bank's retail lending performance. The Board is considering a threshold of 15 percent of the dollar value of a bank's retail lending in individual assessment areas for a major product line designation for home mortgage, small business, and small farm lending. Specifically, retail product lines would be evaluated using the metrics discussed in Section V if they constituted 15 percent or more of a of the dollar value of a bank's retail lending in a particular assessment area over the evaluation period.

Many stakeholders have supported designating a major product line standard for purposes of using metrics to evaluate retail lending. Some stakeholders have provided feedback that a threshold of 15 percent of an institution-level (not assessment area) dollar volume of total retail loan originations during the evaluation period could be too high for large banks. Some of these stakeholders have suggested choosing major product lines considering contextual information about the bank, or the bank's assessment area(s), such as its market share within the community. The approach discussed above would select major product lines at the assessment area level, and would likewise take into account this kind of local performance context information.

Request for Feedback:

Question 33. Should the Board establish a major product line approach with a 15 percent threshold in individual assessment areas for home mortgage, small business, and small farm loans?

Question 34. Would it be more appropriate to set a threshold for a major product line determination based on the lesser of: (1) The product line's share of the bank's retail lending activity; or (2) an absolute threshold?

2. Treatment of Consumer Loans

Consumer loan categories, as currently defined in Regulation BB, include motor vehicle, credit card, other secured consumer loans, and other unsecured consumer loans (*e.g.,* education loans).[93] Consumer lending is an important credit vehicle, and can fulfill key needs for LMI borrowers; however, it raises different considerations in determining when a bank is evaluated for CRA purposes based on its consumer lending. If households with urgent liquidity needs are unable to access a credit card or other consumer loan at a reasonable rate, they may turn to more costly and less sustainable forms of short-term credit. For example, motor vehicle loans can be especially important in areas where public transportation is not readily available and where jobs are distant from where people live.

a. When To Evaluate Consumer Loans Under CRA

Some stakeholders note the importance of small dollar loans and consumer lending to LMI borrowers, while others argue against mandatory inclusion of consumer lending, citing the burden of originating and reporting these loans. The Board proposes setting clear quantitative standards to determine whether to evaluate consumer lending for purposes of CRA. Specifically, the Board is considering establishing a substantial majority threshold, using measures based on the

[92] Current interagency guidance on when to consider consumer lending at large banks states, ''[t]he Agencies interpret 'substantial majority' to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.'' *See* Q&A § __.22(a)(1)—2.

[93] 12 CFR 228.12(j).

number of consumer loans, the dollar value of consumer loans, or a hybrid approach combining both loan counts and dollar values of consumer loans. A benefit of using a loan count standard is that it would be the clearest indicator of how many consumers receive consumer loans from a specific bank or how many consumers use particular consumer lending products.

Alternatively, using the dollar value of lending to designate a major product line threshold for consumer loans would ensure that consumer products are selected for evaluation in a manner that is consistent across retail products, as well as across examinations. Using the dollar amount of loans to determine major product line designations would include consumer loans only when quantitative standards defined in the regulation are met. For example, consumer lending could be evaluated if the dollar amount of consumer loans accounted for 25 percent of a bank's overall activity in an assessment area or, alternatively, 15 percent of a bank's lending in a particular consumer loan category.

b. Evaluating Consumer Loans as an Entire Product Line or at the Category Level

The Board proposes applying the metrics-based approach to the entire product line of home mortgage loans, small business loans, and small farm loans, while evaluating consumer loans at the level of separate consumer loan categories (*e.g.,* motor vehicle, credit card, other secured consumer loans, and other unsecured consumer loans). Evaluating separate consumer loan categories would recognize the different characteristics, purposes, average loan amounts, and uses of motor vehicle loans, credit cards, and other secured and unsecured consumer loans.

Request for Feedback:

Question 35. What standard should be used to determine the evaluation of consumer loans: (1) A substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?

Question 36. Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (*e.g.,* motor vehicle loans, credit cards) merit a separate evaluation for each?

B. Small Business and Small Farm Thresholds

The Board recognizes the importance of small business and small farm loans as essential financial services, particularly in underserved communities. Smaller revenue firms (with gross annual revenues of $1 million or less) frequently have small dollar financing needs and typically have distinct credit challenges, but may not meet traditional bank underwriting criteria. Additionally, when applying for credit, small firms in general seek smaller loan amounts. According to the Federal Reserve's 2020 Small Business Credit Survey, nearly 60 percent of businesses that sought credit were seeking $100,000 or less in financing, and one in five sought less than $25,000.[94]

The Board is considering whether the existing CRA small business and small farm loan definitions are appropriate. The Board also seeks comment on whether the asset-size thresholds for determining whether these loans are helping to meet the needs of smaller revenue businesses and smaller revenue farms should be updated to reflect changes to the industry since the thresholds were set in 1995.[95] In considering updates to the thresholds, the Board seeks to retain the nexus of the small business and small farm definition with *smaller* small businesses and small farms that often have the greatest unmet credit needs.

Currently, in order to qualify as a small business or small farm loan, the loan amount must not exceed a specified dollar threshold. Specifically, based on the instructions for the Reports of Condition and Income (Call Reports), loans to small businesses are defined as loans with origination amounts of $1 million or less and loans to small farms are defined as loans with origination amounts of $500,000 or less.[96] Regarding the gross annual revenues standards, Regulation BB's borrower characteristics criteria, as reflected in the large bank lending test, consider small business loans or small farm loans that have gross annual revenues of $1 million or less.[97]

The Board is considering updating the thresholds for both loan size and gross annual revenue. First, the Board requests feedback on adjusting the loan size thresholds based on inflation, which would equal approximately $1.65 million dollars for small business loans and approximately $800,000 dollars for small farm loans.[98] Updating these thresholds for inflation would adjust eligibility so that the small business and small farm loan thresholds would reflect the current value of the dollar relative to the last update. Another option would be to maintain the loan thresholds at their current levels as an incentive for banks to meet smaller dollar financing needs.

Input received from industry stakeholders generally supports raising the thresholds from the current levels, with some suggesting an adjustment to the loan thresholds to reflect inflation or raising them to $2 million. Community organizations generally support either maintaining the current loan thresholds or adjusting them only to reflect inflation.

A challenge to determining the appropriate updated loan size thresholds, if any, is a lack of available data on business and farm loans. As noted above, currently the CRA small business and small farm loan thresholds correlate with Call Report requirements.[99] Constraints on data availability raise the question of whether the small business and small farm loan thresholds should be raised without an ability to capture new information related to revised standards. The Board is considering whether to continue to define CRA small business and small farm loans based on the Call Report definitions or, alternatively, whether Regulation BB should define small business and small farm loan amount thresholds independently. Defining loan amount thresholds independently for CRA purposes may allow for greater flexibility and precision in determining threshold

[94] Federal Reserve Banks, ''Small Business Credit Survey: 2020 Report on Employer Firms'' (Aug. 2020) *https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report.*

[95] See 12 CFR 228.22(b)(3)(ii).

[96] The Call Report defines ''loans to small businesses'' as loans with original amounts of $1 million or less that have been reported as ''Loans secured by nonfarm nonresidential properties.'' It defines ''loans to small farms'' as: (1) Loans with original amounts of $500,000 or less that have been reported as ''Loans secured by farmland (including farm residential and other improvements)''; or (2) Loans with original amounts of $500,000 or less that have been reported as ''Loans to finance agricultural production and other loans to farmers.'' *See* ''Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 031, 032, 033, and 034), RC–C-Small Business and Small Farm Loans, RC–C–37, *https://www.ffiec.gov/PDF/FFIEC_forms/FFIEC031_034inst_200006.pdf.*

[97] 12 CFR 228.22(b)(3).

[98] Threshold inflation adjustments are based on 2018 numbers from Bureau of Labor Statistics Consumer Price Index conversion table and recalibrated to December 1995=100 (Source: *https://www.bls.gov/cpi/research-series/home.htm*).

[99] Updating the small business loan and small farm loan thresholds for inflation would decouple them from Call Report data. Current Call Report data collection would not capture any revisions to these CRA loan thresholds.

levels, but could require that Regulation BB incorporate a new mechanism for collecting related data.

The Board is also considering updating the gross annual revenue thresholds used for the borrower distribution analysis of small businesses and small farms. Similar to the loan size thresholds, one option would be to increase these thresholds to reflect inflation. Adjusting the $1 million gross annual revenue thresholds based on inflation would result in revised thresholds today of approximately $1.65 million.[100]

A related question is whether adjusted small business and small farm loan size and gross annual revenue thresholds should also be regularly adjusted for inflation moving forward, such as at three-year or five-year intervals. A benefit of regularly adjusting thresholds is ensuring that similar ranges of activities would continue to qualify over time. However, one possible drawback to regular adjustments is additional burden and complexity for stakeholders.

Request for Feedback:

Question 37. Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?

C. Treatment of Purchased Loans

The Board is reviewing whether to treat non-securitized home mortgage loan purchases equivalently with home mortgage originations, particularly in conjunction with a metrics-based approach in the Retail Lending Subtest.[101] Currently, purchased loans receive the same CRA consideration as loan originations, consistent with their treatment on the Call Report. The market for purchased loans is more concentrated than that for loan originations, with 15 banks accounting for approximately 90 percent of total loan purchases reported in both HMDA and CRA data. Although the market for purchased loans is concentrated, these loans can be viewed as providing liquidity by freeing up capital so that retail banks and other lenders, such as CDFIs, can originate additional loans to LMI individuals and in LMI areas.

Some stakeholders support continuing to provide equivalent consideration for purchases of home mortgage loans, noting that such purchases extend the capacity of lenders, including CDFIs, to make needed LMI loans. Some stakeholders have additionally noted that loan purchases are an important tool for banks that do not have the on-the-ground capabilities to originate loans in certain markets in which they seek business opportunities. However, other stakeholders have expressed that purchased loans and originations should not receive equal consideration because of the lower level of effort required for loan purchases relative to loan originations, which require marketing, outreach, and business development resources that are not necessary for purchased loans.

Moreover, other stakeholders have indicated that some banks solely purchase loans from other institutions that have previously purchased those loans, in order to garner CRA credit—a practice often described as ''loan churning.'' [102] These stakeholders note that such banks are not using the liquidity generated to benefit either the originating or purchasing bank's community.

Although there are multiple reasons for banks to purchase loans, Board analysis indicates some CRA-motivated repeat purchases of home mortgage loans may be occurring. A review of 2017 HMDA data found that LMI loans are over five times as likely to be purchased within a year as other home mortgage loans. This analysis finds that 0.6 percent of home mortgage loans to non-LMI borrowers purchased by commercial banks were sold to another commercial bank within the same year, whereas the share was 3.3 percent for LMI borrower loans. At the same time, this analysis indicates that including purchased home mortgage loans in CRA evaluations may not have a significant impact on performance outcomes.

The Board is considering including only home mortgage loans purchased directly from an originating lender (or affiliate) in CRA evaluations. This approach strikes a balance between recognizing the importance of first-time purchases to banks that rely on other lenders to directly provide liquidity in order to originate new loans and addressing the concern about loan churning.

An alternative option the Board is considering would be an additional review to help exclude loan churning from the above-referenced retail lending screen and distribution metrics. Although, generally, home mortgage loan purchases would remain eligible on par with originations, purchased loans added solely for purpose of inflating CRA lending performance would not. This option would minimize burden on banks by allowing them to continue their current data collection and reporting processes, but introduce a deterrent to prevent the repeat selling and purchasing of loans solely for the purposes of garnering consideration in CRA evaluations.

Request for Feedback:

Question 38. Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?

Question 39. Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

D. Broadening Consideration for Retail Activities in Indian Country

The Board is proposing broadening consideration for retail lending activities conducted in Indian Country.[103] These activities would be reviewed qualitatively and in conjunction with the proposed Retail Lending Subtest performance ranges approach described previously. Public feedback received from both community organizations and industry is generally supportive of expanding eligibility for retail CRA activities in Indian Country due to high poverty rates and relative lack of banking services. The Board believes that expanding eligibility may encourage greater retail lending activity in areas long identified as having unmet credit needs.

Currently, a retail activity located within Indian Country must also satisfy additional eligibility criteria under

[100] Threshold inflation adjustments are based on 2018 numbers from Bureau of Labor Statistics Consumer Price Index conversion table and recalibrated to December 1995=100, *https://www.bls.gov/cpi/research-series/home.htm.*

[101] In 2017, over 75 percent of HMDA loans purchased by commercial banks were securitized or sold to the government-sponsored enterprises within the same calendar year.

[102] In this practice, loans to LMI borrowers are purchased and sold repeatedly by different banks, with the possibility of each bank receiving CRA credit at an equivalent level to the banks that originated the loans.

[103] *See* 18 U.S.C. 1151. Indian Country would be defined as federal Native Areas including Federally Designated Indian Reservations, Off Reservation Trust Lands, Alaskan Native Village Statistical Areas, and Hawaiian Home Lands.

Regulation BB to qualify for consideration. For example, such loans must be within a bank's assessment area. Under the proposed approach, the qualitative aspects of a bank's performance would include a review of any retail activity conducted in Indian Country, including loans to low-, moderate- and middle-income borrowers. The Board's proposed approach would make retail activities in Indian Country located both inside and outside of a bank's assessment area eligible for CRA consideration, as long as a bank satisfies the needs of its own assessment area(s). Activities outside of a bank's assessment area(s) would be evaluated qualitatively, and could be considered as a possible enhancement to a bank's Retail Test institution rating, as discussed in Section X.

Request for Feedback:

Question 40. Should CRA consideration be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s)?

Question 41. Should all retail lending activities in Indian Country be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail activities?

VII. Community Development Test: Evaluation of Community Development Financing and Community Development Services Performance

The Board is proposing a new Community Development Test that would include a Community Development Financing Subtest and a Community Development Services Subtest. The Board proposes that the Community Development Test would apply only to large retail banks and wholesale and limited purpose banks in order to tailor performance expectations by bank size and business model. Banks evaluated under the Community Development Test would receive separate Community Development Financing Subtest and Community Development Services Subtest conclusions in each assessment area.

A. Community Development Financing Subtest Evaluation Approach

In order to provide clear and consistent incentives for effective community development financing, the Board is considering a quantitative assessment of community development financing activities. The Board is proposing using a ''community development financing metric'' that measures the ratio of the dollar amount of a bank's qualifying community development financing activities compared to its deposits [104] within each assessment area. The Board is also considering how to use local and national data to establish benchmarks for the community development financing metric at the assessment area level. Wholesale and limited purpose banks, whose business models generally do not involve retail deposit accounts, would be evaluated under separate procedures that would not involve retail deposits.

1. Current Approach for Evaluating Community Development Loans and Qualified Investments

Under current CRA standards, community development financing activities are considered differently based on the asset size and business model of a bank. For small retail banks, community development investments and services are reviewed only at a bank's option for consideration for an ''outstanding'' rating for the institution overall.[105] For intermediate small retail banks and wholesale and limited purpose banks, community development loans, qualified investments, and community development services are considered together under one community development test.[106]

For large retail banks, community development loans are considered as part of the lending test together with retail loans, while qualified investments are considered separately in the investment test.[107] A large retail bank receives consideration for both the number and dollar amount of community development loans originated and qualified investments made during the review period, as well as the remaining book value of qualified investments made during a prior review period, but not of community development loans made during a prior review period. Examiners also consider qualitative factors including the innovativeness or complexity of these activities, how responsive the bank has been to opportunities in its assessment area(s), and the degree of leadership a bank exhibits through its activities. The evaluation of qualitative factors is currently based on any information that a bank provides on the impact of its activities, along with an examiner review of performance context, which includes community needs and opportunities.

Under current guidance, a bank receives consideration for loans and investments that serve the bank's assessment area(s) when evaluating assessment area performance.[108] Activities in broader statewide or regional areas that include the bank's assessment area(s) may be considered in evaluating performance for an assessment area, state, multistate MSA, or the institution overall, depending on the scope of the activities and whether they are shown to benefit or be targeted to the bank's assessment area(s). Broader statewide and regional activities that do not serve a bank's assessment area(s) are considered at the state or institution level only if the bank is first determined to have been responsive to the credit and community development needs within its assessment areas.

The current geographic treatment of community development activities recognizes that many activities have a geographic scope that extends beyond a single assessment area, such as a statewide or regional fund for affordable housing. Broader regional and statewide activities are an important source of community development capital in many communities, especially in places where strictly local community development organizations may lack the capacity to absorb large loans and investments.

2. Stakeholder Feedback on Evaluating Community Development Financing

Stakeholders believe that evaluations of community development loans and investments could be improved by encouraging patient capital; increasing the clarity, consistency, and transparency of performance expectations; and by providing stronger incentives to serve underserved areas. Some stakeholders have noted that the current approach of considering community development loans and qualified investments under separate tests may inadvertently distort the choice of whether to make a loan or investment as well as the choice of term of a loan. A large bank seeking to improve its investment test performance may prefer to structure a community

[104] Options for defining deposits, as well as potential data sources, are discussed in Section XI.B.

[105] *See* Q&A § ____.26(d).

[106] 12 CFR 228.25(c) and 12 CFR 228.26(c).

[107] 12 CFR 228.22 and 12 CFR 228.23.

[108] *See* CA 14–2 (''Revised Interagency Large Institution CRA Examination Procedures and Consolidation of Interagency CRA Examination Procedures and Supporting Materials''), p. 21 (Apr. 18, 2014), *https://www.federalreserve.gov/supervisionreg/caletters/CA_14-2_attachment_1_Revised_Large_Institution_CRA_Examination_Procedures.pdf. See also* Q&A § ____.12(h)—6. (''The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).'').

development financing activity as an investment for the purpose of receiving CRA credit, even if a loan would otherwise be preferable for the bank and the project. In addition, the current practice of counting community development loans originated during the review period, but not those held on balance sheet from prior review periods, is inconsistent with the treatment of qualifying investments, and could discourage patient longer-term loans that often yield the most enduring benefits for communities.

Stakeholders have also pointed to a lack of consistency and transparency in the quantitative evaluation of community development financing activities. Current examination procedures consider the number and dollar amount of community development loans and qualified investments, but do not provide guidance on suitable benchmarks or thresholds against which to evaluate this performance.[109] As a result, examiners may measure the volume of community development loans and investments differently, and it can be challenging to know what level of a bank's activities corresponds to a certain conclusion. In addition, both industry and community stakeholders have noted community development activities may benefit larger statewide or regional areas that do not align with a bank's assessment area(s), and stakeholders have expressed concerns that these activities are not always treated consistently in the evaluation process.

Stakeholders have also emphasized that CRA should encourage more community development activities in areas with significant unmet credit needs, such as rural communities, communities that lack institutional capacity for community development, and areas with few bank branches. Stakeholders have noted that there is limited publicly available data on the location and type of community development financing activities. Currently, only community development lending data are reported, and only at an aggregate level for a bank. Data on qualifying investments are included inconsistently in performance evaluations, and with varying levels of detail. The lack of available data makes it difficult to know which activities banks are conducting to meet needs in different communities. Finally, some stakeholders have noted that the qualitative aspects of community development activities are not considered consistently.

Existing guidance states that examiners can weigh community development activities differently based on the responsiveness, innovativeness, and complexity of the activities.[110] There are no established standards for what should be considered to determine the responsiveness of activities, or clear examination procedures for how community development activities should be reviewed relative to performance context. Information regarding the impact of activities on LMI communities, such as the number of housing units built, is not routinely available to examiners.

3. Combined Consideration of Community Development Loans and Investments

The Board proposes evaluating community development loans and qualified investments together under a new Community Development Financing Subtest. The subtest would evaluate new loans and investments made or originated during each year of an evaluation period, as well as loans and investments made or originated in a prior year and held on balance sheet. Evaluating these activities under one subtest would give banks more flexibility to provide the type of financing—loans or investments—most appropriate to support their local communities without concern about meeting different evaluation criteria. Additionally, capturing the book value of qualifying community development loans that remain on the balance sheet from prior evaluation periods, as currently happens with qualifying investments, would more effectively encourage patient capital. These changes would allow banks to receive CRA credit for extending and maintaining long-term financing activities, regardless of whether they are financed by debt or equity. However, some stakeholders worry that combining loans and investments could reduce direct incentives to make Low-Income Housing Tax Credit (LIHTC) investments.

Request for Feedback:

Question 42. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

4. Community Development Financing Metric

The Board is proposing a community development financing metric that would form the core of assessment area Community Development Financing Subtest conclusions. Only qualifying activities and deposits that are within an assessment area would be included in calculating a bank's community development financing metric for that assessment area, in order to precisely measure how banks are meeting the needs of their local communities. At the same time, to emphasize the importance of community development activities in broader statewide and regional areas, the Board would consider all qualifying activities that are contained within an eligible state, territory, or region in which a bank has an assessment area, as discussed in Section VIII, and would factor these activities into the state, multistate MSA, or institution conclusion or rating, respectively, as discussed in Section X. While the treatment of these broader activities in state, multistate MSA, and institution ratings would no longer depend on a bank's performance within an assessment area, the community development financing metric creates a strong incentive for banks to maintain a focus on serving local communities because it includes only those activities within a bank's assessment area(s).

[109] CA Letter 14–2, p. 9.

[110] *See* Q&A § ____.21(a)—2.

The metric would be the ratio of a retail bank's community development financing dollars (the numerator) relative to deposits (the denominator) within an assessment area.[111] For example, if a bank has drawn $1 million in deposits from an assessment area and has conducted $20,000 in qualifying community development financing activities in that assessment area, its community development financing metric would be 2.0 percent.

$$\frac{CD\ loans+CD\ investments\ (\$20{,}000)}{deposits\ (\$1{,}000{,}000)} = \text{Community development financing metric (2.0 percent)}$$

The numerator of the community development financing metric would be a bank's average annual dollars of community development financing activity loaned or invested in a given assessment area. This would include the value of community development loans and qualifying investments originated or purchased in each year of the evaluation period, as well as the value of community development loans and qualifying investments originated or purchased in a prior year and remaining on a bank's balance sheet. For the denominator, the Board proposes that a bank's annual average dollar amount of deposits within a given assessment area could be the most appropriate measure for a bank's financial capacity, and it aligns with the intent of CRA that a bank meet the credit needs in the communities where it conducts business. The Board is considering two options for how to construct this denominator for large retail banks. The first option would use FDIC SOD data to measure the dollar amount of deposits assigned to branches within a bank's assessment area.[112] The second option would use the dollar amount of retail domestic deposits held on behalf of depositors residing within each assessment area.

Some stakeholders have expressed concerns that a dollar-based metric would not adequately measure impact and responsiveness, and that it may provide incentives for banks to seek larger dollar activities that may not be as responsive to community needs as smaller transactions that may require the same amount, or more, of due diligence and preparation on the part of the bank. The Board has evaluated different options for metrics in order to maintain an emphasis on LMI individuals and communities, such as using the number of community development financing activities rather than the associated dollar amount. However, the Board determined that the overall dollar amount would more appropriately reflect the potential impact and scale of a bank's community development activities. This also would be more consistent with the current evaluation approach. Additionally, the Board proposes to complement the use of the community development financing metric with a qualitative review of responsiveness and impact, which would help give greater consideration to highly impactful, small dollar activities than the metric alone would reflect.

The Board is considering how to use metrics to evaluate wholesale and limited purpose banks under the Community Development Financing Subtest. The deposit-based denominator of the community development financing metric that the Board is considering for large retail banks would not be appropriate for wholesale and limited purpose banks, which generally do not offer deposit accounts as part of their business model. There are two alternatives that the Board has considered: the community development financing metric could be modified to use assets as the denominator instead of deposits or the metric could be based on the amount of qualifying loans and investments without scaling to deposits or assets. Under either approach, examiners would also consider the impact and responsiveness of activities and other performance context factors.

Request for Feedback:

Question 43. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?

Question 44. For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?

5. Benchmarks for the Community Development Financing Metric

The Board is proposing to establish one local and one national benchmark tailored to each assessment area that would serve as appropriate comparators for the community development financing metric. Both of these benchmarks would be based on the dollar amount of community development financing and the dollar amount of deposits provided by all large retail banks at the corresponding geographic level. These benchmarks would be used by examiners to inform a Community Development Financing Subtest conclusion for large retail banks in each assessment area.

Local Benchmark. The numerator for the *local* benchmark would be the annual average of the total dollar amount of all large banks' qualifying community development financing activities in the assessment area. The denominator for the *local* benchmark would be the annual average of the total dollar amount of all deposits held by large banks in the assessment area.

[111] The Board would calculate the assessment area average annual value of new loan originations, investments, and purchases by adding together the initial origination or purchase value of all qualifying activities during the examination period and dividing that result by the number of years in the examination period. The Board would also calculate the assessment area average annual value of qualifying activities remaining on the bank's balance sheet from a prior year by adding together the remaining balance sheet value of qualifying activities that were originated or purchased in a prior year at the end of each calendar year of the examination period and dividing that result by the number of years in the examination period. The numerator is the sum of these two annual averages. The denominator is the average annual value of a bank's deposit holdings within its assessment area.

[112] FDIC SOD data includes deposits pertaining to: 1. Individuals, partnerships, and corporations. 2. The U.S. Government. 3. States and political subdivisions in the United States. 4. Commercial banks and other depository institutions in the United States. 5. Banks in foreign countries. 6. Foreign governments and official institutions (including foreign central banks). *See* FFIEC, ''Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031,'' Schedule RC–E, Deposit Liabilities, p. 34, *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202006_f.pdf.*

$$\text{Local Benchmark} = \frac{\textit{Local total CD loans+CD investments}}{\textit{Local total deposits}}$$

Given the high level of variation in community development financing activities across different communities, the Board believes that the local benchmark would enable the community development financing metric to be tailored to local conditions. This would control for factors such as economic and demographic differences, the availability and capacity of community development financing partners, the stage of the local business cycle, and the presence of other financial institutions, which contribute to differences in the level of community development activity across communities and within a community across time.

National Benchmark. The Board is considering developing benchmarks for, respectively, all metropolitan areas and all nonmetropolitan areas nationally.[113] One of these national benchmarks would be applied to each assessment area, depending on whether the assessment area was located in a metropolitan area or a nonmetropolitan area. Based on a Board analysis of performance evaluations from the Board's CRA Analytics Data Tables and existing FDIC SOD information, the ratio of banks' community development loans and qualifying investments to deposits is significantly higher for metropolitan assessment areas relative to nonmetropolitan assessment areas.[114] Setting the national benchmark separately for metropolitan and nonmetropolitan areas would help examiners account for this difference.

The numerator for the national benchmarks would be the annual average of the total dollar amount of all large retail banks' qualifying community development financing activities (in either metropolitan or nonmetropolitan areas, depending on the assessment area), and the denominator would be the dollar amount of all deposits (again, either in metropolitan or nonmetropolitan areas).

$$\text{National Benchmark-metropolitan} = \frac{\textit{National total metropolitan CD loans+CD investments}}{\textit{National metropolitan total deposits}}$$

$$\text{National Benchmark-nonmetropolitan} = \frac{\textit{National total nonmetropolitan CD loans+CD investments}}{\textit{National nonmetropolitan total deposits}}$$

In addition to accounting for differences across assessment areas, the use of separate benchmarks calibrated to local and national conditions could help account for factors that vary over time, including local and national business cycles. For example, a negative shock to a local economy could adversely affect the capacity of banks to lend and invest within an assessment area, such that the local benchmark would adjust downward. Similarly, a change in economic conditions that impacts the amount of large bank community development activities nationally would be reflected in the national benchmarks.

Additionally, the formulae, data sources, and historic data for calculating the benchmarks could be made publicly available in simple dashboards and updated regularly, in order to provide the most transparency and clarity to banks to allow them, and the public, to track their performance.

The Board recognizes the use of local and national benchmarks could require enhanced data collection and reporting procedures, discussed further in Section XI. In addition, the typical level of community development financing varies widely across assessment areas, which means that the local benchmark may vary widely as well. Although this variation would reflect past community development financing patterns, it could result in performance standards that are very low in some assessment areas and very high in others, depending on how standards are calibrated. In contrast, national benchmarks based on metropolitan and nonmetropolitan areas would be equal for all metropolitan and nonmetropolitan assessment areas, respectively. The national benchmarks could be much higher than the typical level of activity in some areas and much lower than the typical level of activity in other areas.

Request for Feedback:

Question 45. Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?

6. Establishing Thresholds for the Community Development Financing Metric

This section discusses potential ways of setting thresholds for the community development financing metric that are derived from the local and national benchmarks, but it does not offer specific threshold levels based on the local and national benchmarks. The Board believes that enhanced data would be important for evaluating where to set the thresholds. This section also discusses two different options that could leverage thresholds based on the local and national benchmarks.

[113] The Board would define ''metropolitan areas'' as any county or county equivalent that is part of an MSA, and ''nonmetropolitan areas'' as any county or county equivalent that is either part of a micropolitan statistical area or falls outside of an MSA or a micropolitan statistical area, based on U.S. Census designations.

[114] The analysis used a sample of 5,735 assessment areas from large retail bank performance evaluation records from 2005 to 2017, which note the dollar amount of current period community development loan originations as well as current period and prior period qualifying investments in each assessment area. The total dollar amount of activities was divided by the length in years of each examination review period, to produce an annual average for each assessment area evaluation. FDIC SOD data was used to identify the dollar amount of deposits associated with the corresponding bank's branches in the assessment area. The aggregate ratio of annualized dollars of community development activities to dollars of deposits was computed separately for all metropolitan assessment areas and all nonmetropolitan assessment areas in the sample, respectively. Under this analysis, the metropolitan ratio was 1.4 percent, and the nonmetropolitan ratio was 0.9 percent, based on examinations from 2014 to 2017. The metropolitan ratio remained significantly larger than the nonmetropolitan ratio when limiting the sample to only full-scope examinations, across different periods of the sample, and when computing the median ratio of all examinations, rather than a mean.

a. Setting Thresholds Using Local and National Benchmarks

Establishing thresholds for the community development financing metric would have several advantages. First, the formulae, data sources, and thresholds themselves could be shared publicly and updated on an annual basis for each assessment area so that the expected level of community development financing activity is transparent and predictable. Second, such thresholds would create a more consistent and predictable evaluation process. Third, the quantitative thresholds could be set dynamically, using the local and national benchmarks, to account for varying market conditions across assessment areas, in a way that makes them adjust automatically to differences in local community development activity and economic cycles.

The Board proposes establishing a threshold for each assessment area that would be the value of the community development financing metric consistent with at least a ''satisfactory'' conclusion. For example, if a bank had a community development financing metric of 3.0 percent in an assessment area, and the threshold for ''satisfactory'' performance was 1.5 percent, then examiners could interpret the value of the bank's metric as indicative of at least a ''satisfactory'' conclusion on the Community Development Financing Subtest in this assessment area.

The Board has considered whether this threshold should be based solely on the local benchmark, the greater of the local benchmark and the relevant national benchmark, or another method of combining the two benchmarks. More precise and comprehensive data would aid in analyzing these and other options. While the Board's CRA Analytics Data Tables provide information from a sample of performance evaluations, they include little or no information on prior period community development loans, on financing activities in broader statewide and regional areas, or on activities in many smaller cities and rural areas. Calibrating the thresholds appropriately based on thorough data and analysis is essential to developing an approach that neither sets performance standards too low relative to current levels of activities in some assessment areas nor unrealistically high in others.

b. Using Thresholds To Evaluate Community Development Financing Performance

The Board is considering how to use the national and local community development financing thresholds for purposes of granting a presumptive conclusion of ''satisfactory'' performance, similar to the Retail Lending Subtest proposed in Section V. Under a presumption approach, if a bank's community development financing metric surpasses a certain threshold, the bank could be presumed to have achieved at least ''satisfactory'' performance. Examiners would evaluate qualitative factors to help determine whether a bank that surpasses the threshold should receive a ''satisfactory'' or ''outstanding'' conclusion, or to help determine the appropriate conclusion for a bank that does not meet the threshold, which could be any conclusion. This approach would provide banks and communities with greater clarity and certainty regarding the evaluation criteria and expectations, and would decrease the role of examiner discretion. However, in light of initial data limitations, it might be necessary at least initially to treat the thresholds as a general guideline to help evaluate a bank's community development financing metric rather than creating a presumption of ''satisfactory.'' Under this gradated approach, surpassing a threshold would be taken into consideration, but would not initially grant a presumption of a specific conclusion. This gradated approach would start with a more incremental change from the current evaluation approach until more data permitted a presumption approach. The addition of a quantitative benchmark may provide banks and communities with somewhat more certainty regarding performance expectations relative to the current approach, which does not have any consistent quantitative thresholds. At the same time, stopping short of using the thresholds to grant a presumption of satisfactory could be beneficial in cases where the dollar amount of a bank's activities is large, but the activities are not determined to be particularly responsive or impactful. In such cases, examiners may determine that a bank may not merit a conclusion of ''satisfactory'' performance on the Community Development Financing Subtest, even if it has surpassed a quantitative threshold.

Under either approach, a bank that does not surpass a quantitative threshold reflecting ''satisfactory'' performance may still be assigned a ''satisfactory'' or even ''outstanding'' conclusion based on an examiner's review of performance context factors and a detailed review of the banks activities.[115] This framework could help examiners account for variations in the types of community development activities that banks engage in.

Request for Feedback:

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

7. Qualitative Considerations Within the Community Development Financing Subtest Framework

The Board believes that a revised evaluation framework for community development loans and qualified investments should incorporate performance context and other qualitative factors into the evaluation process, in a way that is transparent and consistent. Banks, examiners, and the public should have clarity regarding how especially impactful activities, such as a significant capital investment in an MDI, are factored in to a bank's performance conclusion on the Community Development Financing Subtest. In addition, impactful smaller dollar activities, including qualifying contributions, may have little impact on a bank's community development financing metric and would need qualitative consideration in order to be adequately reflected in a bank's performance conclusions and ratings. Performance context factors would continue to play an important role in identifying the unique community development needs of each assessment area, which would help inform examiners' evaluation of the impact and responsiveness of a bank's activities.

Activity-based Multipliers. The Board has considered the use of multipliers to weight certain categories of lending and investment activities differentially in calculating the community development financing metric, to help give greater weight to activities that are considered by many stakeholders as especially impactful and responsive. However, the impact and responsiveness of particular

[115] The use of local and national benchmarks would reflect the level of community development financing opportunities in each assessment area, while the examiners' review of performance context factors would emphasize a bank's capacity and constraints.

community development financing activities can vary considerably, which could not be captured using uniform weights. Moreover, the calibration of appropriate weights would require developing robust empirical measurements of the community development impact associated with different types of activities.

Impact Scores. Instead, the Board is proposing the use of ''impact scores.'' Examiners would assign an impact score to each bank community development financing activity based on their assessment of its impact locally that could range from 1–3, with 3 being the highest. This approach would build on the current evaluation approach, in which banks submit data to demonstrate that their activities have a primary purpose consistent with the definition of community development and have the option to provide information to describe the qualitative aspects of activities, such as the number of housing units developed or the number of jobs created. Examiners could use bank-provided information along with a review of performance context to determine an impact score for a bank's community development activities in an assessment area. All Community Development Financing Subtest conclusions could include a statement about both the community development financing metric and the impact score, which could be used to adjust the bank's performance conclusion relative to the quantitative assessment. This approach would increase the transparency of the CRA evaluation process by making more information available to banks and communities regarding the consideration of qualitative factors in determining assessment area conclusions.

Supplementary Metrics. The Board is also considering the use of supplementary metrics to provide greater transparency and consistency. For instance, the Board could provide examiners with a series of data points, including the percentage and dollar amount of the bank's total qualifying community development financing activities that are loans, investments, and contributions, respectively, which would help to illustrate the composition of the bank's activities and how different financing vehicles were used to respond to community needs. These supplementary metrics would be consistent with the current approach of considering investment types differently and evaluating contributions separately from other qualifying investments. The supplementary metrics could be included in performance evaluations for purposes of providing more transparency to help stakeholders better understand how well banks are leveraging their resources to meet the needs of local communities. However, the Board is mindful of potential data burden that supplementary metrics could entail for banks, and would seek to minimize the need for enhanced data collection or reporting to create these metrics.

Request for Feedback:

Question 47. Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

B. Community Development Services Subtest Evaluation Approach

The Board is proposing a new Community Development Services Subtest within the Community Development Test. Separately assessing and assigning a Community Development Services Subtest conclusion would focus a bank's attention on these services and underscore their critical importance for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development, including in rural areas. In developing a revised framework, the Board anticipates that the evaluation of community development services would be primarily qualitative, but the Board is also exploring several options for quantitative measures that could supplement a qualitative approach.

1. Current Structure for Evaluating Community Development Services and Stakeholder Feedback

Community development services generally include activities such as service on boards of directors for community development organizations or on loan committees for CDFIs, financial literacy activities targeting LMI individuals, and technical assistance for small businesses.[116] Current guidance advises that community development services should be tied to either financial services or to a bank employee's professional expertise (*e.g.,* human resources, legal).[117] Under the current regulation, community development services are evaluated for large banks as part of the service test, along with retail services. For small retail banks, community development services are reviewed at a bank's option for consideration for an ''outstanding'' rating for the institution overall. For intermediate small retail banks and wholesale and limited purpose banks, community development services are considered along with community development loans and qualified investments under one community development test.[118]

Examiners consider the extent to which a bank provides community development services, as well as the innovativeness and responsiveness of the activities.[119] Examiners may consider a variety of measures, such as the number of LMI participants; the number of organizations served; the number of sessions sponsored; or the bank staff hours dedicated. Additionally, the Interagency Questions and Answers provides some guidance on the qualitative evaluation of community development services, including whether the service activity required special expertise and effort on the part of the bank, the impact of a particular activity on community needs, and the benefits received by a community.[120]

Both industry and community stakeholders recognize the value of community development services in establishing the partnerships needed to build capacity and foster the growth of the community development ecosystem. Stakeholders have noted the high value of bank staff serving on local nonprofit boards and providing technical expertise to local organizations, particularly in rural or underserved areas. Stakeholders have also suggested improving the consistency and transparency of the evaluation of community development services, which is heavily reliant on examiner judgment. Many stakeholders have stated that a qualitative review of community development services and consideration of performance context would be more effective than an approach that tried to quantify the value of community development services. These stakeholders have expressed support for efforts to standardize the qualitative evaluation of the impact of community development services. Additionally, some stakeholders have argued that community development services should be weighted more heavily in a revised framework compared to current procedures.

[116] *See* Q&A § ____.12(i)—3.

[117] *See* Q&A § ____.12(i)—1.

[118] 12 CFR 228.25(c), 12 CFR 228.26(c); Q&A § ____.26(d).

[119] *See* 12 CFR 228.24(e).

[120] Q&A § ____.24(e)—2.

2. Potential Community Development Services Subtest Framework

The Board is proposing a Community Development Services Subtest that is primarily qualitative and would focus on the impact and responsiveness of these activities in each of a bank's assessment area(s). The Board is exploring whether there are quantitative measures that banks could submit on their activities, such as the number and hours of community development services, the community development purpose, and the geographies impacted by the activity. A standardized data format provided by the Board could streamline the process for banks and examiners and produce a more consistent and transparent evaluation methodology.

The Board is also interested in whether other standardized metrics could improve the consistency of the evaluation, such as the ratio of community development services hours to the number of bank employees. Both industry and community stakeholders have expressed concerns that monetizing community development services based on an hourly wage for all employees would result in measuring inputs rather than impact.

Impact Score for Community Development Services. In addition to quantitative measures, the Board is contemplating the use of an ''impact score'' to establish more consistent and transparent standards for the qualitative review of community development services. This concept is similar to the one described above for the Community Development Financing Subtest, and would measure the impact of a bank's community development services activities on community needs. A bank could submit information, such as the number of clients in financial education classes who opened a bank account or a description of how a banker's service on the board of directors of a local organization supported the creation of a new small business lending program. Examiners would assign an impact score to community development service activities based on the information provided by the bank and other performance context information, with more responsive activities receiving a higher score. The overall impact score for the assessment area could be used in conjunction with some of the quantitative measures described above. This use of the impact score could make the qualitative review more transparent and would provide greater clarity on the types of activities that are considered responsive to community needs.

Request for Feedback:

Question 48. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?

Question 49. Would an impact score approach for the Community Development Services Subtest be helpful? What types of information on a bank's activities would be beneficial for evaluating the impact of community development services?

3. Community Development Services and Volunteer Activities

The Board is considering several options for revising the definition of community development services to include a wider range of volunteer activities that help to support local communities and address important community needs. Currently, community development services are defined as activities that: (1) Have a primary purpose of community development; (2) are related to the provision of financial services; and (3) have not been considered in the evaluation of a bank's retail banking services.[121] A primary community development purpose is generally determined by assessing whether a majority of those served by the activity are LMI individuals or communities, small businesses or small farms, and/or certain distressed or underserved rural geographies, or based on the express, bona fide intent of the activity.[122] Additionally, guidance advises that community development services should be generally tied to either financial services or a bank employee's professional expertise in order to receive CRA consideration.[123] Community development services currently qualify under one of the four prongs of the existing definition of community development, as discussed in Section VIII: Affordable housing; community services; economic development; and revitalization and stabilization.[124]

Volunteer Activities in Rural Areas Unrelated to the Provision of Financial Services. The Board is proposing to broaden the range of qualifying community development services for banks in rural assessment areas to include volunteer activities that have a primary purpose of community development, but do not use the employee's technical or financial expertise. Under this option, activities such as volunteering at a homeless shelter or serving food at a soup kitchen could become eligible. Some stakeholders have argued that this expansion would allow for increased bank employee participation in community development activities in rural areas, where community development capacity is limited.

Other Volunteer Activities in Rural Areas. The Board is proposing to expand consideration of activities in rural communities to include activities that address local community needs generally, without having to demonstrate a primary purpose of community development. In these communities, bank employees often provide needed leadership for nonprofit and civic organizations that are addressing community needs and serve as a catalyst for local economic development, even though some of these organizations do not necessarily have a primary purpose of community development as defined in the regulation.

For example, serving on a board of a local chamber of commerce focused on economic development in a rural area could qualify, even if the organization was engaged in activities that did not typically qualify as economic development under the definition of community development. This approach is intended to provide incentives for additional civic and nonprofit volunteer activity in places with limited community development capacity, and it could encourage banks to take a leadership role in developing solutions to address unmet community needs in rural communities.

Financial Literacy and Housing Counseling Without Regard to Income Level. Finally, the Board is contemplating whether financial education and literacy activities should be considered without regard to the income level of the beneficiaries. Under current guidance, eligible financial education and literacy activities must be targeted toward LMI beneficiaries, such as a housing counseling program in a low-income neighborhood.[125] Broadening eligibility for financial literacy and housing counseling activities to all income levels would expand the range of eligible activities. For example, a financial planning seminar with senior citizens or a financial education program for

[121] 12 CFR 228.12(i).

[122] *See* Q&A § ____.12(h)—8.

[123] *See* Q&A § ____.12(i). ''Providing financial services means providing services of the type generally provided by the financial services industry.'' Q&A § ____.12(i)—1. Examples include ''providing services reflecting a financial institution's employees' areas of expertise at the institution, such as human resources, information technology, and legal services.'' Q&A § ____.12(i)—3.

[124] *See* 12 CFR 228.12(g).

[125] *See, e.g.,* Q&A § ____.12(h)—8.

children in an upper-income school district could qualify for consideration.

Some stakeholders were supportive of expanding consideration of some of these activities to include activities that benefit all income levels, due to the presumed benefit to the financial well-being of the entire community. However, many community organization stakeholders expressed concern that expanding financial education and literacy activities to recipients of all income levels could result in a reduction in programs directly benefiting LMI people and places.

Request for Feedback:

Question 50. Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?

Question 51. Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?

VIII. Community Development Test Qualifying Activities and Geographies

The Board is proposing ways to clarify what activities would be considered under the Community Development Test, as well as clarifying where a bank could receive credit for community development activities outside of assessment areas. First, the Board presents approaches to establish more consistent standards for the existing community development definition subcomponents. Second, this section discusses available options to encourage more community development activity through mission-oriented banks and financial intermediaries, including MDIs, women-owned financial institutions, low-income credit unions, and CDFIs. Third, the section discusses options to increase certainty about how qualifying activities in broader statewide and regional areas outside of a bank's assessment areas will be considered. Finally, the Board proposes increasing *ex ante* clarity regarding qualifying activities by publishing an illustrative list of example activities and providing a pre-approval process.

A. Definitions for Community Development Subcomponents

This section describes potential changes to clarify eligibility criteria for the affordable housing, community services, economic development, and revitalization and stabilization subcomponents of the definition of community development to give banks and communities greater certainty about what activities will be considered, and to continue to emphasize activities that are impactful and responsive to community needs.

1. Affordable Housing

Regulation BB defines ''community development'' to include ''affordable housing (including multifamily rental housing) for low- or moderate-income individuals.'' [126] Stakeholders have emphasized the critical importance of CRA-motivated capital as a source of funding for affordable housing around the country and promoting homeownership among LMI populations. Therefore, as the Board contemplates revisions to Regulation BB, an important goal is to ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, both rental and owner-occupied.

Broadly, the term ''affordable housing'' refers to housing that is targeted to LMI individuals. The concept of ''affordable housing'' for LMI individuals hinges on whether LMI individuals benefit, or are likely to benefit, from the housing. Affordable housing currently could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.[127]

Current CRA guidance does not expressly clarify that unsubsidized affordable housing (often referred to as naturally occurring affordable housing) is eligible. Many stakeholders have noted the importance of preserving unsubsidized housing that is affordable to LMI households. These stakeholders have suggested that financing the renovation of unsubsidized affordable units, in addition to constructing new affordable units, be considered as a CRA-eligible activity. However, stakeholders had different views about whether and how to ensure that the financing supports unsubsidized affordable housing units that will remain affordable to LMI households over a meaningful period of time.

a. Subsidized Affordable Housing

The Board is contemplating new regulatory language that would specify that a housing unit would be considered affordable if it is purchased, developed, rehabilitated, or preserved in conjunction with a federal, state, local, or tribal government affordable housing program or subsidy, with the bona fide intent of providing affordable housing. This definition is intended to capture a wide variety of subsidies, including tax credit programs (such as the LIHTC), federal government direct subsidies (such as U.S. Departments of Housing and Urban Development (HUD) and Agriculture programs), and state and local government direct subsidies for the production or preservation of affordable housing. These programs could be for rental (such as HUD Section 8 vouchers) or homeownership (such as down-payment assistance programs for LMI borrowers). The suggested language could also cover programs that are not monetary subsidies, but that have the express intent of producing or preserving affordable housing, such as a loan in support of a land bank program.

b. Unsubsidized Affordable Rental Housing

The Board is considering several options to clarify that the affordable housing prong of the community development definition includes the financing of certain unsubsidized affordable housing units and projects—both the preservation of existing units and the production of new unsubsidized affordable housing.

The Board is considering a definition for eligible unsubsidized affordable housing requiring that: (1) The rent be affordable (potential definitions of ''affordable'' are discussed below); *and* (2) the unit(s) be located in either an LMI geography or a geography where the median renter is LMI. These two criteria are intended to be a proxy for tenant income certification to determine that the housing benefits LMI households; as many owners and managers of buildings with unsubsidized, yet affordable units, do not certify tenant income on an ongoing basis, that information might not be available to examiners. To ensure that CRA acts as an incentive for affordable housing preservation and development in all communities, the Board is also considering alternatives to define unsubsidized affordable housing.

Finally, in commenting on expanding the affordable housing definition to include unsubsidized affordable housing, many stakeholders have noted the danger of providing CRA credit for initially affordable units that later increase rents to an unaffordable level in gentrifying areas. The Board is considering options to ensure that community development financing activities ensure long-term affordability

[126] 12 CFR 228.12(g)(1).

[127] Q&A § ____.12(g)(1)—1.

and limit displacement, while also being mindful of additional burden associated with supplementary documentation requirements.

c. Determining Affordability

In considering which data sources and calculations should be used to determine rental affordability in lieu of verifying tenant income for unsubsidized units, ''affordable'' rents could be calculated based on area median income (AMI) using the standard that families should pay no more than 30 percent of their income toward housing. Other options include using HUD Fair Market Rents (FMR) or LIHTC rents to determine rental affordability.

Similarly, the Board is contemplating what documentation should be requested to determine affordability of single-family developments by for-profit entities. Under current guidance, construction and other temporary financing of the construction-only portion of a construction-to-permanent loan to a for-profit entity secured by residential real estate is considered *if* it can be demonstrated that the activity has a primary purpose consistent with the definition of community development. However, examiners have not consistently evaluated these activities partly due to lack of documentation reflecting that the activity has a primary purpose of community development and is intended for households earning 80 percent or less of AMI.

d. Responsiveness of Affordable Housing Activities

The Board is also considering specifying certain activities that could be viewed as particularly responsive to affordable housing needs. Such activities could include, but would not be limited to, the financing of new or rehabilitated affordable housing units that include renewable energy facilities, energy-efficiency upgrades, or water conservation upgrades. The Board is also considering whether financing of housing that is close to public transportation, often referred to as ''transit-oriented development,'' [128] should be designated as particularly responsive. Finally, housing for very low-income, homeless or other harder to serve populations would be considered particularly responsive.

e. Pro Rata Credit in Mixed-Income Projects

For mixed-income developments, an important issue is how to provide credit for buildings where a portion of units—but not all units—is affordable to families meeting LMI definitions. There are negative effects of concentrating poverty to a geographic area or building, and one way to counteract this is the development of mixed-income housing projects in areas with lower poverty rates. However, providing credit for mixed-income housing requires considering how credit is calculated in the community development financing metric both for buildings where over 50 percent of units are affordable and buildings where this level falls below 50 percent.

Under the current ''primary purpose'' guidance, a bank can receive full credit for a loan or investment if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes. For mixed-income housing where less than a majority of the dollars benefit LMI families or less than a majority of the beneficiaries are LMI, a bank can receive a *pro rata* share.[129]

One option would be continuing to provide the same *pro rata* consideration where 50 percent or fewer of the units are affordable. Another option would be to provide 50 percent consideration for buildings or projects that meet a minimum percentage of affordable units, such as 20 percent, which could serve as a greater incentive for mixed-income housing. Another consideration is whether *pro rata* treatment should be the same for unsubsidized affordable housing, compared to subsidized affordable housing or buildings subject to affordable housing set-asides required by federal, state, or local governments.

f. Mortgage-Backed Securities Related to Affordable Housing

The Board is contemplating the appropriate CRA treatment of mortgage-backed securities (MBS).[130] Currently, bank purchases of MBS receive CRA credit if they are backed by loans that finance subsidized multifamily rental housing, loans for mixed-income housing that includes affordable housing for LMI families, or loans to LMI borrowers.[131] Issuance of qualifying MBS can improve liquidity for lenders that make home mortgage loans to LMI borrowers, increasing the capacity of these lenders to make more loans that are needed in the community. Some stakeholders, however, are concerned that some banks rely heavily on purchases of qualifying MBS for CRA purposes instead of pursuing more impactful and responsive community development activities, which often involve deeper engagement with communities and entail a greater level of complexity for the bank. Other stakeholders voiced concern that some banks purchase large amounts of MBS just prior to their CRA examinations and then sell them shortly afterwards to another bank, which has little positive impact in their community.

Request for Feedback:

Question 52. Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?

Question 54. Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

Question 55. Should the Board change how it currently provides *pro rata* consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?

2. Community Services

Regulation BB also defines community development to include ''community services targeted to low- or moderate-income individuals,'' but does not further define community services.[132] The Interagency Questions

[128] Transit-oriented development, or TOD, includes a mix of commercial, residential, office, and entertainment real estate centered around or located near a transit station, *https://www.transit.dot.gov/TOD.*

[129] *See* Q&A § ____.12(h)—8.

[130] MBS generally are ''debt obligations that represent claims to the cash flows from pools of mortgage loans, most commonly on residential property.'' *See* U.S. Securities and Exchange Commission, ''Mortgage-Backed Securities,'' *https://www.sec.gov/fast-answers/answersmortgagesecuritieshtm.html.*

[131] *See* Q&A § ____.23(b)—2.

[132] 12 CFR 228.12(g)(2). Among possible changes to update Regulation BB, the Board is examining ways to alleviate possible confusion between the definition for ''community development services'' and the definition for ''community services.'' Although there is some overlap, these activities are generally considered under different components of CRA examinations and under different standards. Among differences, community development services generally include a broader set of service activities and can be defined using any of the four primary community development definitions. The

Continued

and Answers includes examples of what counts as community services, such as programs for LMI youth, homeless centers, soup kitchens, healthcare facilities, battered women's centers, and alcohol and drug recovery programs serving LMI individuals.[133]

The Board believes that it is important to maintain the focus of this community development subcomponent on community services ''targeted to low- or moderate-income individuals,'' and is considering how to build on existing guidance to define this standard. One option is to define more specifically the different categories of eligible community services activities, such as childcare, education, healthcare, financial education, job training, and social services.

The Board is also considering several ways to standardize how a bank can determine whether an activity meets the ''targeted to low- or moderate-income individuals'' standard. One option under consideration would be to clarify the use of a geographic proxy to determine eligibility: If the activity or relevant organization were located in an LMI census tract, the activity would meet the ''targeted to low- or moderate-income individuals'' standard. A second option would also build on current guidance by both clarifying, and expanding upon, the proxies that banks can use to demonstrate that 50 percent of participants served by a program or organization are LMI individuals. Examples from current guidance include, but are not limited to, services that are provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program or are targeted to individuals who receive or are eligible to receive Medicaid.[134] The Board is considering expanding this list to include activities targeted to recipients of federal disability programs and recipients of federal Pell Grants.

Request for Feedback:

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

3. Economic Development

The Board believes that activities qualified through the economic development prong of Regulation BB provide key support for small businesses and small farms, as well as incentives for other types of important assistance for business development efforts. Research indicates that the smallest segment of small businesses often have more difficulty obtaining credit and are more challenging for banks to serve,[135] and the COVID–19 pandemic has raised significant new challenges for small businesses. The Board is therefore considering ways to revise the economic development definition to better encourage activities most supportive of small businesses and farms, while also improving the overall transparency of the definition.

Current Economic Development Standards and Guidance. The Regulation BB definition of community development includes ''activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs [136] or have gross annual revenues of $1 million or less.'' [137] Thus, to qualify for CRA consideration under this provision, a bank's financing activity must be for small businesses and small farms that fall beneath a regulatory ''size'' ceiling, and the financing must ''promote economic development.''

The Interagency Questions and Answers identifies several types of activities to satisfy the requirement that an activity ''promote economic development'':

- Activities that support permanent job creation, retention, and/or improvement:
  - For persons who are currently LMI or in LMI geographies or areas targeted for redevelopment by federal, state, local or tribal government; or
  - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms, or through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; [138] and
- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by LMI persons to jobs or to job training or workforce development.[139]

Stakeholders have noted various challenges with the current definition of economic development. Some observe that while guidance includes a variety of economic development activities, the smallest segment of businesses and farms may still face specific unmet financing needs. Industry stakeholders also indicate that it can be difficult to demonstrate that an activity meets both the ''size test'' and ''purpose test.'' Specifically, industry stakeholders have indicated that it can be difficult to demonstrate that small business or small farm activity has created, retained, and/or improved LMI employment.

Encouraging Activities Supporting Small Businesses and Farms and Minority-Owned Small Businesses. The Board is considering ways to provide incentives for economic development activity with the smallest businesses and farms, as well as minority-owned small businesses. One approach would be specifying that economic development activity focused on the smallest businesses, smallest farms, and minority-owned small businesses would be considered responsive and impactful in developing a Community Development Test conclusion or rating. In recent years, the number of minority-owned businesses has grown rapidly; however, research reports small businesses owned by minorities as having more difficulty than white-owned firms gaining approval for loans from banks.[140] Access to financing for these businesses is vital in fostering continued growth and broader economic opportunity in their communities.

This approach, focused on responsiveness, would have the benefit of encouraging activity with smaller businesses and minority-owned small businesses without changing the business size standards for the

Board is considering ways of alleviating any existing confusion, including changing the similar names of these definitions.

[133] *See* Q&A § ____.12(t)—4.

[134] Q&A § ____.12(g)(2)—1.

[135] *See, e.g.,* Karen G. Mills, *Fintech, Small Business & the American Dream,* Ch. 4 (2018); Federal Reserve Banks, ''Small Business Credit Survey: 2020 Report on Employer Firms'' (Aug. 2020), *https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report.*

[136] 13 CFR 121.301.

[137] 12 CFR 228.12(g)(3).

[138] *See* Q&A § ____.12(g)(3)—1. Under current guidance, the Board presumes any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity, or CDFI that finances small businesses or small farms promotes economic development. *Id.*

[139] *See id.*

[140] *See, e.g.,* Federal Reserve Banks, ''Small Business Credit Survey: 2019 Report on Minority-Owned Firms'' (Dec. 2019), *https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf.*

definition overall. However, this approach might provide insufficient incentives for engaging in activities with smaller businesses and minority-owned businesses given that loans to other businesses might have larger loan amounts and, therefore, more of an impact on the community development financing metric.

Another option would be to qualify economic development activities using only a revised gross annual revenue threshold, and not SBIC or SBDC size standards. This approach could help focus economic development activities on smaller businesses and farms and might also reduce confusion about multiple size standard options by establishing a single, transparent threshold. The Board recognizes that a possible drawback to using only a revised gross annual revenue threshold is that certain currently eligible activities that qualify under the economic development definition might no longer qualify for consideration.

Relatedly, the Board is also considering the appropriate gross annual revenue standards for defining a small business or farm, and for making these standards uniform under both the Retail Test and the Community Development Test. Revisions to the gross annual revenue thresholds for small businesses and small farms are discussed in Section VI.[141]

Demonstrating an Economic Development Purpose Through Job Creation. Another area of focus is how to provide more clarity on the standard that financing activities for small businesses demonstrate LMI job creation, retention, or improvement. Meeting this economic development purpose standard by documenting the number of jobs created, retained or improved can be challenging. In addition, activities supporting small businesses and small farms may serve important purposes beyond employment, including by covering start-up or working capital costs. The COVID–19 pandemic has further underlined the need for a broad range of financing activities to help sustain small businesses and farms overall. The Board is considering what standards could be established to demonstrate that an activity led to job creation, retention and improvement or whether the smallest businesses below a specified threshold could be exempted from the standard to demonstrate LMI job creation, retention, or improvement.

Workforce Development and Job Training Programs. The Board is also considering whether workforce development activities should be included as a separate prong of the economic development definition, regardless of whether these activities also support small businesses and farms. This approach would include federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by LMI persons to jobs, job training, or workforce development.

Request for Feedback:

Question 57. What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?

Question 58. How could the Board establish clearer standards for economic development activities to ''demonstrate LMI job creation, retention, or improvement''?

Question 59. Should the Board consider workforce development that meets the definition of ''promoting economic development'' without a direct connection to the ''size'' test?

4. Revitalization and Stabilization

The Board is considering how to update and clarify the revitalization and stabilization subcomponent of the community development definition, which currently encompasses activities that revitalize or stabilize three targeted geography categories: LMI census tracts, designated disaster areas, and distressed or underserved nonmetropolitan middle income census tracts.[142] Since its inception, the revitalization and stabilization prong of community development has included eligible activities in LMI geographies, defined as census tracts where the majority of households have incomes at or below 80 percent of area median income. Originally, these tracts often overlapped with federally designated Empowerment Zones and Enterprise Communities, marked by high poverty rates and elevated levels of emigration. In 2005, the agencies broadened eligible geographies to include federally designated disaster areas and distressed or underserved middle-income nonmetropolitan areas.[143]

The Interagency Questions and Answers provides examples of a broad range of qualifying revitalization and stabilization activities for each targeted geography category. Some of these activities span across each targeted geography category and some activities are unique to a specific geography category. Based on the regulation and accompanying guidance,[144] CRA consideration could extend to activities that range from attracting an industrial park for businesses whose employees include LMI individuals, to financing new broadband internet infrastructure in poorer rural communities. Other examples include providing financing to attract a major new employer that will create long-term job opportunities, including for LMI individuals, or activities that provide financing or other assistance for essential infrastructure in distressed or underserved nonmetropolitan middle-income census tracts.[145]

Considering activities under the existing revitalization and stabilization prong of the community development definition often involves a fact-specific review by examiners. To determine whether activities revitalize or stabilize a qualified geography, examiners evaluate an activity's actual impact on the targeted geography. The Interagency Questions and Answers also instructs examiners to give greater weight to activities most responsive to community needs and that primarily benefit LMI individuals.[146]

Given the complexity of the existing definition and guidance on the revitalization and stabilization category, in addition to the particularly fact-specific nature of eligibility and responsiveness determinations, the Board is considering how to both provide more detail in the regulation on which activities qualify in which targeted geographies *and* simplify the definition overall. Some of the key

[141] As discussed in Section VI, the Board is also currently considering adjusting the small business and small farm loan size thresholds based on inflation and whether to update these thresholds for inflation at regular intervals.

[142] 12 CFR 228.12(g)(4).

[143] Designated disaster areas are geographic areas covered by a major federal disaster declaration by the President pursuant to the declaration process specified by the Federal Emergency Management Agency. *See* 44 CFR part 206, subpart B. A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average; (2) a poverty rate of 20 percent or more; or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five year period preceding the most recent census. A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. Q&A § ____.12(g)(4)(iii)—1.

[144] *See* Q&A § ____.12(g)(4).

[145] *See* Q&As § ____.12(g)(4)(i)—1, § ____.12(g)(4)(ii)—2, and § ____.12(g)(4)(iii)—4.

[146] *See* Q&As § ____.12(g)(4)—2, § ____.12(g)(4)(ii)—2, and § ____.12(g)(4)(iii)—3.

issues that would need resolution are described below.

Activities That Attract New, or Retain Existing, Residents and Businesses. The Interagency Questions and Answers states that eligible activities in each of the targeted geography categories include activities that attract new, or retain existing, residents and businesses, with greater weight given to activities that are most responsive to community needs.[147] The Board is considering whether to codify the treatment of these activities across each of the targeted geography categories. This approach would provide greater consistency in defining eligible activities that help to attract or retain businesses or residents, which in turn could provide greater certainty regarding which activities qualify and could also help support greater investment in targeted geographies. The Board is interested in ensuring that, in addition to serving a revitalization and stabilization purpose, these activities include benefits to LMI communities and individuals, or other underserved communities. For example, some community group stakeholders have noted that existing guidance qualifies new housing for middle- or upper-income individuals as an activity that revitalizes or stabilizes an LMI geography, as long as the housing attracts new residents to the community. The concern raised by these stakeholders is that, in some LMI communities, this new housing may in fact contribute to the displacement of existing LMI residents in the community.

Definitions for Infrastructure, Community Facilities, and Other Large-Scale Projects. The Board recognizes that investments in large-scale projects, infrastructure, and community facilities can be essential for revitalizing and stabilizing targeted geographies and is interested in how to define the eligibility of these activities in a way that retains a strong connection between these projects and meeting the needs of these communities.

Currently, this issue is addressed differently across targeted geography categories. For example, for underserved nonmetropolitan middle-income census tracts, current guidance describes activities that help meet essential community needs as including financing the construction, expansion, improvement, maintenance, or operation of essential infrastructure or community facilities. Community facilities noted in current guidance include facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services.[148] The Interagency Questions and Answers does not explicitly discuss infrastructure and community facilities in other targeted geographies.

Stakeholders have indicated that these inconsistencies leave some banks uncertain about what qualifies, and that the use of different standards across the geographies is a significant source of confusion for banks and communities alike. Community stakeholders have also commented that large-scale development and infrastructure projects may sometimes have limited benefit for targeted geographies. Given the large size of these projects, with a dollar-based metric approach for evaluating community development financing, stakeholders worry that resources may be directed to these activities instead of smaller and more impactful activities.

Activities Specific to Designated Disaster Areas. The Interagency Questions and Answers includes examples of certain qualifying activities specific to designated disaster areas. For example, current guidance includes eligibility for activities that provide financial assistance for rebuilding needs, or for services to individuals who have been displaced from designated disaster areas.[149] The Board is considering whether codifying the treatment of qualifying activities specific to designated disaster areas would help provide stakeholders with additional certainty. Additionally, the Board is considering whether the list of relevant activities related to disaster recovery should be expanded to include disaster preparedness and climate resilience in certain targeted geographies.

Treatment of a Government Plan. According to existing guidance, examiners will presume an activity revitalizes or stabilizes a geography if the activity is consistent with a government plan for the revitalization or stabilization of the area. However, the types of government plans and the required degree of formality of the plan differ across the three qualified geography categories. The Interagency Questions and Answers indicates that activities in LMI areas are presumed to qualify if the activities receive official designation as consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography.[150] In other qualified geographies, however, guidance indicates that an activity need only be consistent with a government plan and does not need an official designation to be eligible for consideration.[151] To clarify when this standard applies, the Board proposes to specify in Regulation BB which activities require association with a federal, state, local, or tribal government revitalization plan and the standards for the type of plan required for eligibility. The Board is also exploring the alternative standards necessary for demonstrating that an activity revitalizes or stabilizes a targeted geography in the absence of a government plan.

Request for Feedback:

Question 60. Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?

Question 61. What standards should the Board consider to define ''essential community needs'' and ''essential community infrastructure,'' and should these standards be the same across all targeted geographies?

Question 62. Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?

Question 63. What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?

B. Minority Depository Institutions and Other Mission-Oriented Financial Institutions

Recognizing the importance of mission-oriented financial intermediaries in helping retail and community development financing reach LMI and minority individuals and communities, the Board is proposing ways to encourage more activities that support MDIs, CDFIs, and other mission-oriented financial institutions.

[147] *See* Q&As § ____.12(g)(4)—2, § ____.12(g)(4)(i)—1, § ____.12(g)(4)(ii)—2, and § ____.12(g)(4)(iii)—3.

[148] *See* Q&A § ____.12(g)(4)(iii)—4.

[149] *See* Q&A § ____.12(g)(4)(ii)—2.

[150] *See* Q&A § ____.12(g)(4)(i)—1. In certain situations, guidance instructs examiners to determine whether an activity is consistent with a community's informal plans for the revitalization and stabilization of the LMI geography without standards for determining consistency. *Id.*

[151] *See* Q&As § ____.12(g)(4)(ii)—2, and § ____.12(g)(4)(iii)—3.

1. Minority Depository Institutions, Women-Owned Financial Institutions, and Low-Income Credit Unions

The Board recognizes the importance of MDIs in providing equitable financial access to LMI and minority consumers and communities. MDIs are banks that are owned by, or that predominately serve and have a board composed of a majority of, African Americans, Native Americans, Hispanic Americans, or Asian Americans.[152] Most MDIs are small community banks that specialize in serving a minority, and often LMI, customer base. Congress has recognized these institutions in the CRA statute, including special consideration for MDIs as well as for women-owned financial institutions and low-income credit unions.[153] Specifically, majority-owned institutions receive CRA credit for capital investment, loan participation, training, technical assistance, and other ventures undertaken by the bank in cooperation with MDIs, women-owned institutions, and low-income credit unions.[154]

Majority-owned institutions are also eligible for CRA credit for donating or selling on favorable terms a branch located in a predominately minority neighborhood to an MDI or women-owned depository institution.[155] These activities must help meet the credit needs of local communities in which the MDIs, women-owned institutions, and low-income credit unions are chartered.[156] Unlike other provisions of CRA, these activities need not also benefit a bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).[157]

The Board has focused on ways to provide better incentives to majority-owned institutions to partner with MDIs and other mission-oriented financial institutions. The Board seeks to ensure that any provisions to assist MDIs are clearly defined and applied in CRA performance evaluations, and that these special provisions are prominent and clear in a revised Regulation BB, supervisory guidance, and other agency public documentation.

a. Clarify Treatment of Activities With MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions Outside of a Bank's Assessment Area

Although majority-owned institutions currently may receive CRA consideration for investments in MDIs, women-owned financial institutions, and low-income credit unions outside of the majority-owned institution's assessment areas(s) or the broader statewide or regional area, such activities are not common. Stakeholders have noted that bankers do not know with confidence where and how these activities will count in their CRA evaluations. Therefore, the Board proposes that activities in support of these entities should be counted at the institution level when they are outside of the bank's assessment areas or eligible states and regions, as discussed in Section VIII.C below. This would ensure that there is a clear ''place'' for such activities to be counted.

b. Consider Activities With MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions as a Factor in Achieving an ''Outstanding'' Rating

An additional change the Board is considering to increase the incentives for activities in support of MDIs, women-owned financial institutions, and low-income credit unions is to consider these activities as a factor in determining whether a bank qualifies for an ''outstanding'' rating for the Retail Test or Community Development Test. The Board believes that explicitly designating these activities as a criterion for an ''outstanding'' rating would give them greater emphasis and would provide banks with additional certainty regarding how these activities would be considered.

c. Provide Credit for MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions Investing in or Partnering With Other MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions

Currently, only majority-owned institutions can receive CRA consideration for investing in MDIs, women-owned financial institutions, and low-income credit unions. MDIs, in particular, vary greatly in size, and there are several large MDIs that could invest in smaller MDIs. Similarly, MDIs and women-owned financial institutions that are subject to CRA may choose to partner in unique and mutually beneficial ways, and could receive credit for such activities. Therefore, the Board is considering whether MDIs and women-owned financial institutions should receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions.

d. Provide Credit for MDIs and Women-Owned Financial Institutions Investing in Limited Activities To Improve Their Own Banks

The Board is proposing that MDIs and women-owned financial institutions be eligible for CRA credit for investing in limited activities to improve their own banks. Under this approach, MDIs and women-owned financial institutions could receive CRA consideration for retained earnings (less the amount of any dividends or stock repurchases) that are reinvested in the bank. Eligibility could be limited to activities that demonstrate meaningful investment in the business, such as staff training, hiring new staff, opening new branches in minority neighborhoods, or expanding products and services.

Request for Feedback:

Question 64. Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an ''outstanding'' rating provide appropriate incentives?

Question 65. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?

Question 66. What additional policies should the Board consider to provide incentives for additional investment in and partnership with MDIs?

2. Community Development Financial Institutions

CDFIs, which can be banks, credit unions, loan funds, microloan funds, or venture capital providers, are common intermediaries for bank financing to reach underserved communities.[158] CDFIs certified by the U.S. Department of the Treasury's (Treasury Department) CDFI Fund must meet seven criteria to demonstrate that they are specialized organizations that provide financial

[152] *See, e.g.,* SR Letter 13–15/CA Letter 13–11 (''Federal Reserve Resources for Minority Depository Institutions''), (Aug. 5, 2013), p.1, note 1, *https://www.federalreserve.gov/supervisionreg/srletters/sr1315.pdf.*

[153] 12 U.S.C. 2903, 2907.

[154] 12 U.S.C. 2903(b). Majority-owned institution is defined as a ''nonminority-owned and nonwomen-owned financial institution.'' *Id.*

[155] 12 U.S.C. 2907(a).

[156] 12 U.S.C. 2903(b).

[157] 12 CFR 228.21(f).

[158] U.S. Department of the Treasury CDFI Fund, CDFI Certification, *https://www.cdfifund.gov/programs-training/certification/cdfi/Pages/default.aspx.*

services in low-income communities and to people who lack access to financing.[159]

While banks generally receive CRA consideration for investing in Treasury Department-certified CDFIs, bankers and community groups have commented that the regulation could provide a stronger incentive for these activities. Stakeholders noted that examiners sometimes require extensive paperwork to document that a CDFI assists low-income populations, even though the Treasury Department certification of a CDFI is already a clear indication of having a primary mission of community development.

To provide greater certainty and clarity, the Board proposes to grant automatic CRA community development consideration for community development activities with Treasury Department-certified CDFIs. For activities in support of other financial entities that use the term ''CDFI'' but are not formally certified by the Treasury Department, the activity would continue to be reviewed individually, as in current practice.

Another issue is whether geographic limitations should apply to granting CRA credit for CDFI-related activities. Several stakeholders have suggested that investments in CDFIs should be considered on a nationwide basis, regardless of whether the CDFI operates in a bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s), which is a condition for consideration under current practices. Commenters noted that this condition can be confusing for banks considering investments in larger CDFIs that serve multistate areas, and that it limits capital investments for the underserved areas that need it the most.

To address this concern, the Board is considering whether to treat activities with CDFIs similarly to activities with MDIs, women-owned financial institutions, and low-income credit unions, so that banks could receive CRA consideration for loans, investments, or services in conjunction with CDFIs anywhere nationwide.[160] This approach would remove the geographic uncertainty about whether a CDFI's service area(s) appropriately overlaps with a bank's assessment area(s). This could also incent banks to invest in CDFIs that serve parts of the country with few or no bank assessment areas.

However, the Board is mindful that this approach could inadvertently reduce the incentive for banks to focus on their assessment areas by granting them CRA credit for investing in CDFIs that serve entirely different geographies. The proposed use of the community development financing metric and associated benchmarks to evaluate a bank's assessment area activities is intended to maintain a strong emphasis on serving local communities. For this reason, the Board believes that the proposed Community Development Financing Subtest will help to address concerns that eligibility for certain activities on a nationwide basis, such as support of MDIs and other specific institutions, would discourage banks from meeting the needs of their assessment areas. Alternatively, the Board is considering whether CDFIs should instead be subject to the provisions of the broader geographic areas for consideration for community development activities described below.

Request for Feedback:

Question 67. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

C. Geographic Areas for Community Development Activities

The Board is considering approaches for providing greater clarity regarding where a bank's community development financing and services activities are eligible for CRA consideration, and for encouraging activities in areas with high unmet needs. First, the Board is proposing an approach that would consider community development activities anywhere within states, territories, or regions where a bank has at least one facility-based assessment area, with the activities counted towards the state or institution rating.[161] In addition, the Board is considering designating geographic areas of need where banks could conduct activities outside of assessment areas. The Board believes that these approaches could help alleviate the CRA hot spots and deserts dynamic and increase community development lending and investment in areas where they are needed the most.

1. Current Approach for Reviewing Activities Outside of Assessment Areas and Stakeholder Feedback

Under current examination procedures, the standards for whether a bank receives consideration for community development loans, investments, and services differ depending on where that activity takes place. First, banks can receive consideration for community development financing activities that have a purpose, mandate or function of serving the bank's assessment area(s). Banks can also receive consideration for community development activities in a ''broader statewide or regional area'' that includes the bank's assessment areas *if* they have a purpose, mandate or function of serving the bank's assessment area(s). Additionally, activities that do not have a purpose, mandate or function of serving a bank's assessment area(s) are considered when evaluating the bank's performance at the state level or for the institution overall, but only if the bank is first determined to have been responsive to the credit and community development needs in its assessment area(s).[162]

Banks have indicated that the standard for being sufficiently responsive to the needs of their assessment area(s) is not clearly defined, and that this creates uncertainty regarding whether a bank's activities in broader areas will be considered for CRA credit. In addition, stakeholder feedback suggests that a bank's physical presence within an assessment area enables them to access local community development opportunities and form partnerships to expand these opportunities. For these reasons, most banks focus their community development activities within their branch-based assessment areas, which may exacerbate CRA hot spots and deserts, and may make certain banks less likely to pursue impactful community development opportunities that are statewide or regional in nature.

2. Expanding Geographic Areas for Community Development Activities

a. Eligible States and Territories and Eligible Regions

As discussed in the Community Development Test section, the Board is proposing to allow banks to receive CRA credit for community development activities not only within defined assessment areas, but also within ''eligible states and territories'' and ''eligible regions.'' This approach would build on, clarify, and broaden the ''broader statewide and regional area'' approach in place today under CRA guidance, and would complement the implementation of the community development financing metric at the assessment area level.

Under the proposed approach, qualified community development activities contained within one

[159] *Id.*

[160] 12 CFR 228.21(f).

[161] In this context, region or regional refers to a multistate area.

[162] *See* Q&A § ____.12(h)—6; CA Letter 14–2, p. 21.

assessment area would receive CRA credit when evaluating assessment area performance and would count toward a bank's community development financing metric for the specific assessment area. Banks could also receive credit for qualified community development activities that benefit areas outside of bank facility-based assessment area(s) anywhere within a bank's eligible states and territories, defined as any state or territory in which the bank has at least one facility-based assessment area. Qualified activities in each eligible state or territory that are partially or entirely outside of a bank's assessment area(s) would be considered when assessing a bank's performance for state and institution ratings, as applicable.

Banks could also receive credit for qualified activities in an ''eligible region,'' defined as a multistate or other regional area that includes at least one eligible state or territory. As noted in current guidance, a ''regional area'' may be an intrastate area or a multistate area that includes the financial institution's assessment area(s), and that typically has some geographic, demographic, and/or economic interdependencies and may conform to commonly accepted delineations, such as ''the tri-county area'' or the ''mid-Atlantic states.'' [163] Qualified activities in an eligible region would be considered when evaluating the bank's performance for an institution rating.

The Board believes that this approach would provide *ex ante* certainty about when activities outside of an assessment area would be considered. This *ex ante* certainty could result in investments in areas that lack financial institutions, thus helping to alleviate CRA deserts. At the same time, banks would still have incentives to meet the needs of their assessment areas because the community development financing metric would include only activities within each assessment area, and would inform a bank's Community Development Financing Subtest conclusion. Performance in assessment areas would also be the foundation for determining the bank's state rating for the Community Development Test.

b. Designated Areas of Need

The Board is considering whether a bank should receive consideration for activities outside of its eligible state(s), territories and regions if the activity is located in designated areas of need. This approach would help ensure that community development activities outside of a bank's assessment areas, eligible states and territories, or eligible regions, are occurring in areas of highest need. The Board is exploring the following criteria for defining areas of need:

- Economically distressed rural or metropolitan areas that meet certain criteria, for example an unemployment rate that is persistently 1.5 times the national average or a persistent poverty rate of 20 percent or more.[164]
- Areas where the local benchmark for the community development financing metric is below an established threshold.
- Areas that have low levels of home mortgage or small business loans as identified by lending data.
- Areas with limited bank branches or ATMs.
- Targeted geographies designated by other federal agencies that exhibit persistent economic distress, such as: Federal Native Areas including Federally Designated Indian Reservations, Off Reservation Trust Lands or Alaskan Native Village Statistical Areas, or Hawaiian Home Lands; ARC and DRA Areas, which are areas designated as distressed by, respectively, the Appalachian Regional Commission or Delta Regional Authority; and Colonias areas, which are low-income communities on the U.S.-Mexico border as designated by HUD.

Careful consideration of CRA's statutory purpose would be needed in determining what criteria should be used to designate areas of need, and designations would need to be updated periodically to reflect current data. One approach would be for the Board to publish and update a list of designated areas of need on an annual or biennial basis. Areas could be removed from the list if they receive substantial amounts of community development financing, and others may be added that have pressing needs.

Request for Feedback:

Question 68. Will the approach of considering activities in ''eligible states and territories'' and ''eligible regions'' provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

Question 70. In addition to the potential designated areas of need identified above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?

D. Options To Provide Additional Certainty About Eligible Activities

The Board is considering options to improve upfront certainty related to what community development activities qualify for consideration. The Board believes that greater *ex ante* certainty will provide stakeholders with additional transparency about what, how, and where activities are considered. Significant *ex ante* certainty could be achieved through several mechanisms, including clarifying qualifying activities directly in regulatory language as discussed above. However, the Board recognizes that changes to regulatory text alone might not provide the full upfront certainty sought by banks and community groups.

Current Approaches to Determining What Community Development Activities Qualify. Currently, as part of their CRA examinations, banks submit community development activities that have already been undertaken without an assurance these activities are eligible. Previously qualified activities can frequently provide banks with some confidence that the same types of activities are likely to receive consideration in the future. However, new, less common, or more complex or innovative activities might require examiner judgment and the use of performance context to determine whether an activity qualifies for CRA purposes. For these activities, stakeholders might know only after an examination—and after a loan or investment qualification decision has been made—whether an activity will receive CRA credit. The lack of upfront certainty is a disincentive to undertake such activities, even if they potentially have great value to the local community.

Some current processes provide upfront ''non-binding'' feedback to banks on eligibility of certain projects. For example, the Federal Reserve's Investment Connection platform provides a popular approach to proactively engage stakeholders on CRA-eligible community development

[163] Q&A § ____.12(h)—7.

[164] Such an approach could leverage persistent poverty county definitions, which are defined in the Consolidated Appropriations Act of 2012 as any county that has had 20 percent or more of its population living in poverty over the past 30 years. Public Law 112–74, 125 Stat. 786, 887 (2011).

financing activities.[165] Operated through multiple Reserve Banks, the platform provides a forum for community-based organizations, financial institutions, and other funders to review planned projects that are deemed to be CRA-eligible. In addition, Investment Connection provides website portals to help provide stakeholders advance transparency on eligibility of possible investments.

To provide additional upfront certainty, the Board is exploring two proposals. The Board requests feedback on a proposal to publish an illustrative, non-exhaustive list of activities that meet requirements for CRA consideration. The Board also requests feedback on a proposal to establish a ''pre-approval'' process to improve certainty about qualification of community development activities.

Create an Example List of Eligible Activities. The Board proposes publishing an illustrative, non-exhaustive list of community development activities that meet the requirements for CRA consideration. The list would be illustrative, but not exhaustive, as to the type and scope of eligible activities. Stakeholders have supported providing example activities as a way to further explain required standards of the CRA definitions while retaining definitional standards as the determinative factor in eligibility for activities.

Although an illustrative list could provide greater information on required CRA criteria, it is important that it not have the unintended consequence of dissuading stakeholders from engaging in innovative activities simply because they are not included on the list. Some community organization and industry stakeholders have supported developing an illustrative list of eligible activities through a formal notice and public comment rulemaking process. However, alternative, and less burdensome, approaches for building and maintaining an example list may also exist.

Pre-Approval Process. The Board is considering developing a formal option for stakeholders to receive feedback in advance on whether proposed activities would be considered eligible for CRA credit. Depending on the design of the process, it could either provide full confirmation that a submitted activity would qualify for consideration, including a review of transaction terms and counterparties, or instead provide information on the requirements necessary for the activity to garner consideration during a CRA evaluation.

Request for Feedback:

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

IX. Strategic Plan Evaluation

The Board is considering amending the strategic plan option to provide more clarity and transparency about evaluation standards and where performance will be assessed. The Board is also considering how to tailor the strategic plan option for different bank business models as well as how to leverage the internet to facilitate public engagement in the strategic plan process. Over the past several years, 48 banks representing six percent of overall banking system assets opted to submit strategic plans; of those, five were wholesale and limited purpose banks, representing one percent of overall banking system assets.[166]

A. Current Strategic Plan Framework

Currently, the CRA strategic plan option is available to all types of banks,[167] although it has been used mainly by non-traditional banks and banks that make a substantial portion of their loans beyond their branch-based assessment areas. The strategic plan option is intended to provide banks with flexibility in meeting their CRA obligations tailored to community needs and opportunities as well as their own capacities, business strategies, and expertise. Therefore, not all of the performance tests and standards described in Regulation BB necessarily apply to each bank's strategic plan.

Banks that elect to be examined under strategic plans have a great deal of latitude in designing a strategic plan, but are subject to several key requirements. They must seek approval from the Board and solicit community feedback prior to submitting a strategic plan for regulatory approval.[168] In addition, they are required to delineate assessment areas in the same manner as traditional banks,[169] and large banks are obligated to report relevant lending data.[170]

Strategic plans also offer banks flexibility in various areas. Although banks must include measurable goals for helping to meet the credit needs of each assessment area, particularly the needs of LMI census tracts and LMI individuals, they have flexibility in setting these goals.[171] Plan terms can be up to five years in length as long as any multi-year plan includes annual goals that are measurable.[172] Banks are required to include goals for ''satisfactory'' performance, and they may opt to provide goals for ''outstanding'' performance as well.[173] A bank also may provide in the plan that if it substantially fails to meet its goals for a ''satisfactory'' rating, the bank can be examined under the standard examination procedures.[174] In addition, a bank may request the Board to approve an amendment to its strategic plan if there is a material change in circumstances.[175]

Regulation BB states that a bank's plan shall address the lending test, the investment test, and the service test and shall emphasize lending and lending-related activities unless the bank is a designated wholesale or limited purpose bank, in which case the plan would include only community development loans, investments, and services.[176] The regulation also provides flexibility for a bank to choose a different emphasis as long as the change is responsive to the characteristics and credit needs of its assessment area(s) and takes into consideration public comment and the bank's capacity and constraints, product offerings, and business strategy.[177]

When reviewing a strategic plan, the Board considers the public's involvement in formulating the plan, any written public comments on the plan, and the bank's response to any public comments.[178] A bank's engagement with its community is vital to the strategic plan process to develop the requisite information about community needs. Criteria for evaluating strategic plan goals include

[165] The Federal Reserve Bank of Kansas City pioneered the Investment Connection concept, which has been replicated by multiple Reserve Banks, *https://www.kansascityfed.org/community/investmentconnection.*

[166] The banking system assets are based on June 30, 2020 FFIEC Call Report data, *https://cdr.ffiec.gov/public/PWS/DownloadBulkData.aspx.*

[167] 12 CFR 228.27(a).

[168] 12 CFR 228.27(d) and (e).

[169] *See, e.g.,* 12 CFR 228.27.

[170] 12 CFR 228.27(b).

[171] 12 CFR 228.27(f)(1).

[172] 12 CFR 228.27(c)(1).

[173] 12 CFR 228.27(f)(3).

[174] 12 CFR 228.27(f)(4).

[175] Amendments to a CRA strategic plan must include public participation in the same manner as when the plan was initially developed and finalized. 12 CFR 228.27(h).

[176] 12 CFR 228.27(f)(1)(ii).

[177] *Id.*

[178] 12 CFR 228.27(e).

the extent and breadth of lending or lending-related activities; the amount and innovativeness, complexity, and responsiveness of qualified investments; the availability and effectiveness of the bank's retail banking services; and the extent and innovativeness of the bank's community development services.[179]

B. Stakeholder Feedback on Strategic Plan Approach

Both banks and community organizations have expressed support for the strategic plan option, but banks have asked for more flexibility in developing goals and a streamlined strategic plan process. Stakeholder feedback also has emphasized the need to address the increased use of mobile and online banking, which allows banks to offer products and services in areas far from their branch footprint. While there is broad support for community input into the strategic plan process, some have requested that the role of community input be clarified, especially for banks whose strategic plan covers a broad geographic area, including multiple assessment areas or the entire nation.

C. Updating the Strategic Plan Framework

The Board is considering potential revisions to the current strategic plan framework to facilitate effective use of strategic plans, including the options discussed below.

1. Updating the Public Input Process for Strategic Plans

Communication between a bank and the public allows for an exchange of information about community needs and the bank's business model and areas of expertise, which enables banks to develop responsive strategic plan goals that reflect the bank's capacity, constraints, and community needs.

The Board is considering three proposals to improve the public input process. First, banks could be required to post the strategic plan on their website, the Board's website, or both, in place of the current newspaper publication requirement.[180] Second, the Board is considering codifying in regulation the current guidance that it will consult with banks regarding procedural requirements, although it would not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.[181] Finally, some industry stakeholders have suggested that strategic plan requirements should clarify that public comments help a bank to identify community needs and priorities, give a bank the opportunity to develop responsive products and services, and demonstrate the ways a bank has met those needs. Industry stakeholders also suggest that an amended regulation should codify current guidance that banks are not required to enter into community benefit agreements as a condition of developing strategic plans.[182]

2. Increased Flexibility on Assessment Areas and Evaluation Method for Strategic Plans

The Board is considering updating where banks are assessed for performance under the strategic plan framework. Currently, banks are required to delineate assessment areas in the same manner as traditional banks. The Board is considering allowing banks greater flexibility in defining assessment areas through a strategic plan, while also providing greater transparency and certainty about the process. The Board also seeks feedback on providing an option of using metrics to evaluate performance in those assessment areas, rather than the bank proposing measurable goals.

Defining Assessment Areas in Strategic Plans More Broadly than a Branch Network. The Board is considering allowing a bank choosing the strategic plan approach to delineate assessment area(s) in addition to its branch-based assessment area(s) that would capture areas in which the bank has a significant proportion of its business and that align with the bank's capacity and constraints, product offerings, and business strategy.[183] For each assessment area a bank would need to define goals and engage in the same process of seeking community feedback and regulatory approval. Alternatively, the Board is seeking feedback on whether banks that have a significant business footprint beyond their branch-based assessment areas should be required to define associated assessment areas, as opposed to allowing banks to define additional assessment areas voluntarily.

Leveraging Metrics-Based Approaches to Evaluation. The Board is also considering enabling banks electing to prepare a strategic plan to have flexibility in leveraging retail lending and community development financing metrics as part of the bank's performance evaluation. This option could provide banks with greater certainty in how they will be evaluated by opting for the metrics-based approaches described in Sections V (Retail Test) and VII (Community Development Test), as appropriate based on a bank's size and business model.

3. Flexibility in Setting Plan Goals

Regulation BB sets forth general expectations that a strategic plan address the lending, investment, and services performance categories, emphasizing lending but with flexibility to choose a different emphasis if it is responsive to the particular characteristics and credit needs of the bank's assessment area(s). In practice, the Board has exercised flexibility in the types of goals that banks may choose based on business strategy, expertise, capacity, constraints, public involvement, and whether the goals are responsive to assessment area characteristics and credit needs. The Board is considering whether to revise the strategic plan regulatory provisions to codify the flexibility in setting goals that has been allowed in practice.

4. Strategic Plan Amendments

As noted earlier, Regulation BB states that a bank may request its banking agency approve an amendment to its strategic plan on grounds that there has been a material change in circumstances. The Board seeks to provide greater clarity regarding what constitutes a material change that should trigger amendments to strategic plans.

5. Options for Streamlining the Strategic Plan Approval Process

Some stakeholders have noted that the strategic plan procedures could be further streamlined to make the option more appealing to a larger number of non-traditional banks. The Board is considering developing an electronic template with illustrative instructions to make it more straightforward for banks to engage in the strategic plan request and approval process. These changes would be procedural and would not require regulatory changes.

Request for Feedback:

Question 73. In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency's website, their own website, or

[179] 12 CFR 228.27(g)(3).

[180] For LMI, rural, and other areas without broadband service, the Board is considering options to provide access to bank's CRA strategic plans.

[181] *See* Q&A § ____.27(c)—1.

[182] Q&A § ____.29(b)—2.

[183] This option would be an alternative to defining assessment areas based on branches, instead using deposit or lending data. Deposit-based and lending-based assessment areas are discussed in more detail in Section III. These assessment areas would need to consist of at least whole census tracts, not reflect illegal discrimination, and not arbitrarily exclude LMI census tracts.

both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?

Question 74. How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed?

Question 75. In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?

Question 76. Would guidelines regarding what constitutes a material change provide more clarity as to when a bank should amend their strategic plan?

Question 77. Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?

X. Ratings

The Board is proposing an approach to ratings that is grounded in performance in a bank's local communities. This approach would provide a transparent and consistent process for considering assessment area performance conclusions for the Retail Test and the Community Development Test when assigning ratings for each state and multistate MSA, as applicable, and for the institution overall. For large banks subject to the Community Development Test, the proposed approach also incorporates an assessment of community development activities outside of assessment areas in determining the overall state and institution ratings.

The Board recognizes that CRA and fair lending responsibilities are mutually reinforcing. As such, the Board would continue to consider fair lending and illegal credit violations in determining overall CRA ratings for all institutions. Finally, the Board proposes to encourage activities involving MDIs, women-owned financial institutions, and low-income credit unions by making retail and community development activities with these institutions a factor in achieving an ''outstanding'' Retail Test or Community Development Test rating. Additionally, small banks would remain under the current CRA framework and would have the ability to opt into the Retail Lending Subtest and the proposed ratings approach.

A. Current Process for Developing Ratings

Consistent with the CRA statute, Regulation BB provides that a bank is assigned an institution rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' in connection with a CRA examination.[184] Ratings are also required for a bank's performance in each state in which the institution maintains one or more branches, and for each multistate MSA for those institutions that have branches in two or more states within a multistate MSA.[185] As a first step to assigning an overall institution rating, examiners assign state and multistate MSA ratings for each applicable performance test (lending, investment and service tests) based on the performance ''conclusions'' assigned for each assessment area within the state or multistate MSA.[186] Overall state-level or multistate MSA performance test ratings are assigned by combining the performance test ratings within each state or multistate MSA. Institution-level performance test ratings are derived from the state and multistate MSA performance test ratings, which are combined for the overall institution rating.

With one notable exception, the rating scale used for performance test ratings mirrors that of the statutory institution-level ratings—''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance.'' For large banks, however, the ''satisfactory'' rating for each performance test is split into ''high satisfactory'' and ''low satisfactory'' at the state, multistate MSA and institution level. For the overall institution rating for large banks, though, the ''satisfactory'' rating is not split into ''high satisfactory'' and ''low satisfactory.'' [187]

Under existing procedures for large banks, examiners use a rating scale in the Interagency Questions and Answers that assigns points to each test and each rating category, and adds those together to determine the overall institution rating.[188] With the exception of this rating scale, the process of combining performance test ratings to determine the state, multistate MSA or institution ratings relies primarily on examiner judgment, guided by quantitative and qualitative factors outlined in the regulation. There is otherwise not a strictly defined process for assessing how different components of each performance test are combined or how performance conclusions or ratings should be weighted to determine overall ratings. The current rating system is designed to be flexible; for example, exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others.[189]

Current examination procedures also allow for assessment areas to be evaluated either for full-scope or limited-scope review. Full-scope reviews employ both quantitative and qualitative factors, while limited-scope reviews are assessed only quantitatively and tend to have less weight in their contribution to the overall state, multistate MSA, or institution rating. Examiners select assessment areas for full-scope review based on a number of factors, such as community needs and opportunities, comments from community groups and the public regarding the institution's performance, and any apparent anomalies in the reported CRA and HMDA data for any particular assessment areas, among other factors.[190]

Under current examination procedures, the Board uses a fact-specific review to determine whether an overall institution-level CRA rating should be downgraded due to discriminatory and other illegal credit practices. Currently, the Board considers the nature, extent, and strength of the evidence of any discriminatory or other illegal credit practices, as well as any policies and procedures in place, or lack thereof, to prevent these kinds of practices, and any corrective action that the bank has taken or has committed to take.

B. Stakeholder Feedback on Ratings

Stakeholders have consistently stated that CRA ratings should reflect a bank's performance in the local communities they serve. Both banks and community organizations have expressed concern that the current ratings process is subjective and lacks transparency about the levels of performance associated with different ratings. Both have also suggested that more transparency is needed regarding the selection of evaluated products and the weighting of products and tests when rating a bank. Many community organizations have stated that the ratings process should be reformed to add more rigor and stricter standards. Others have suggested that the current rating system using the

[184] 12 U.S.C. 2906(b), implemented by 12 CFR 228.28(a). The narrative descriptions of the ratings for performance under each evaluation method are in Appendix A to Regulation BB, 12 CFR part 228.

[185] 12 U.S.C. 2906(d).

[186] Ratings are not required at the assessment area level. Therefore, examiners provide conclusions about a bank's performance at the assessment area level. If a bank operates in just one assessment area, however, the bank's institution-level rating is equivalent to the performance conclusion within that assessment area.

[187] *See* Q&A § ____.28(a)—3.

[188] *Id.*

[189] Q&A Appendix A to 12 CFR 228—1.

[190] *See, e.g.,* CA Letter 14–2.

statutory ratings does not provide enough detail to gauge a bank's true performance, and that ratings should better differentiate performance to help the public understand a bank's true commitment to its community.

C. Increasing Transparency by Grounding Ratings in Assessment Area Conclusions

The Board proposes revisions to the current CRA ratings framework to provide greater transparency, clarity and consistency in the assignment of ratings. The foundation for the proposed approach to ratings is based on a weighted average of assessment area conclusions. To increase consistency and reflect a more comprehensive assessment of a bank's overall performance, the Board is proposing to eliminate the distinction between full-scope and limited-scope assessment areas. Ratings would continue to be assigned for the institution, as well as for each state and multistate MSA where the bank has a presence, as required by the statute.[191] Additionally, the Board proposes using the same ratings for banks of all sizes.

Weighted Average Approach. The Board is proposing to apply a weighted average approach to combining assessment area conclusions. The weight applied to each assessment area would average the percentage of a bank's deposits from that assessment area and the percentage of a bank's dollars of loans in that assessment area.[192] For example, for a bank with 30 percent of its deposits in an assessment area and 20 percent of its retail lending in an assessment area, the assessment area weight would be 25 percent.

This use of both deposits and loans to weight assessment areas (as well as states and multistate MSAs, as applicable) would help to ensure that ratings accurately reflect performance in all markets, including those where lending volume is low relative to deposits. Compared to the current method, where limited scope assessment areas have less impact on the overall rating, the proposed approach would give full consideration to performance in each assessment area, proportional to a bank's lending level and capacity to lend.

In order to combine assessment area conclusions in a manner consistent with these weights, examiners would first convert a Retail Test conclusion or Community Development Test conclusion to a score in each assessment area according to the following scale: Outstanding = 3, Satisfactory = 2, Needs to Improve = 1, and Substantial Non-Compliance = 0. Examiners would then take the weighted average of these assessment area scores, using the assessment area weights described above, to produce a state, multistate MSA or institution score. These aggregated weighted average scores would be used as the foundation for a bank's ratings. The underlying weights for each assessment area could be made available in the performance evaluations, making the ratings process transparent.

Inclusive of All Assessment Areas. The Board is considering several options to ensure that all assessment areas, including smaller rural assessment areas, are appropriately factored into the Retail and Community Development Test ratings. First, as discussed above, the Board is considering weighting performance in all assessment areas based on deposits and loans to determine state and institution ratings. Second, the Board is considering limiting how high an overall rating can be for the evaluated state or multistate MSA if there is a pattern of weaker performance in multiple assessment areas. For example, the state rating could not be higher than the rating achieved by a certain percentage of the number of assessment areas for a bank that has several assessment areas in a state. Third, the Board is considering downgrading a bank's assessment area conclusion to ''substantial non-compliance'' if the bank's performance in that assessment area was ''needs to improve'' at the prior examination and the bank showed no appreciable improvement (and the performance context does not explain why).[193] The second and third stipulations in particular would be intended to ensure that banks do not count on strong performance in a few assessment areas to offset persistently weak performance in numerous small assessment areas in the overall rating of a state, multistate MSA (as applicable), or institution.

Consistency in Ratings Levels. The Board is proposing to use the four statutory ratings for banks of all sizes—''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance.'' This revision would eliminate the ''high'' and ''low'' distinctions for ''satisfactory'' performance of large banks at the state and multistate MSA levels. While using both the ''high satisfactory'' and ''low satisfactory'' ratings can help to differentiate performance, the Board anticipates that a more transparent and metrics-based approach would help provide a more detailed perspective on performance.

Request for Feedback:

Question 78. Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?

Question 80. Barring legitimate performance context reasons, should a ''needs to improve'' conclusion for an assessment area be downgraded to ''substantial non-compliance'' if there is no appreciable improvement at the next examination?

Question 81. Should large bank ratings be simplified by eliminating the distinction between ''high'' and ''low'' satisfactory ratings in favor of a single ''satisfactory'' rating for all banks?

D. State, Multistate MSA and Institution Ratings for the Retail Test and Community Development Test

The Board is proposing a ratings approach that builds on the weighted average of the bank's assessment area performance on the Retail Test and the Community Development Test, as applicable. The proposed approach would use the 0–3 scale discussed above to translate performance scores into state, multistate MSA, and institution ratings.

This approach would tailor how performance ratings are assigned based on bank size and business model. Small banks opting into the revised framework would be rated on the Retail Lending Subtest, and large banks would be rated based on all four subtests under the Retail Test and Community Development Test. Wholesale and

[191] 12 U.S.C. 2906.

[192] For small banks that opt in to the revised framework, the Board is considering two options to reduce the burden of using deposits data to weight assessment areas: either using FDIC SOD data that allocates deposits to branches, or removing the deposit prong and only weighting assessment areas based on the percentage of a bank's retail lending in each assessment area. For example, if a small bank's assessment area were weighted solely based on retail lending, then a bank with 20 percent of its retail lending in an assessment area would have a weight of 20 percent for that assessment area.

[193] This would, in effect, modify current guidance, which provides that a bank's overall ''needs to improve'' rating can be downgraded when the bank fails to improve performance by the next evaluation. *See* Q&A § ____.21(b)(5)—1. Rather than considering the downgrade on a bank's overall evaluation, the Board is considering applying the downgrade at the assessment area level.

limited-purpose banks would be rated on the Community Development Test alone.

1. Retail Test Ratings

a. Retail Test Conclusions in Assessment Areas

The Board is proposing an approach for developing one Retail Test conclusion at the assessment area level that would provide more consistency and certainty in assigning assessment area conclusions, while accounting for performance context factors. Small banks opting into the revised framework would receive a Retail Lending Subtest conclusion in each assessment area, which would also serve as their overall Retail Test conclusion in each assessment area. For large banks evaluated under both the Retail Lending Subtest and Retail Services Subtest, the Board proposes using the below matrix to standardize how examiners combine these two conclusions into a single Retail Test conclusion in each assessment area.

TABLE 6—RETAIL TEST ASSESSMENT AREA CONCLUSIONS

	Retail services subtest conclusion			
	Outstanding	Satisfactory	Needs to improve	Substantial noncompliance
Retail Lending Subtest Conclusion:				
Outstanding	Outstanding	Outstanding	Satisfactory	Satisfactory or Needs to Improve.
Satisfactory	Outstanding or Satisfactory	Satisfactory	Satisfactory or Needs to Improve.	Needs to Improve.
Needs to Improve	Needs to Improve	Needs to Improve	Needs to Improve	Needs to Improve or Substantial Noncompliance.
Substantial Noncompliance.	Substantial Noncompliance	Substantial Noncompliance	Substantial Noncompliance	Substantial Noncompliance.

Given CRA's traditional emphasis on lending, the Board is proposing to weight the Retail Lending Subtest conclusion more heavily than the Retail Services Subtest conclusion in determining the overall Retail Test assessment area conclusion for large banks. Using this standardized approach, most combinations of subtest conclusions would provide examiners with only one option for the overall Retail Test conclusion. However, in cases where the overall Retail Test conclusion could be one of two options based on the level of performance for each subtest and performance context factors, examiner judgment would be required. In these cases, the specific factors that informed the examiner's decision would need to be clearly articulated within the performance evaluation.

b. State, Multistate MSA, and Institution Retail Test Ratings

As noted above, the CRA statute requires a separate rating for each state and multistate MSA, and for the institution overall.[194] To develop the state, multistate MSA, and institution ratings for the Retail Test, the Board is proposing to aggregate a bank's assessment area performance using the weighted average approach described above. This approach would take a weighted average of the assessment area Retail Test scores to yield (as applicable) a Retail Test state score, Retail Test multistate MSA score, or Retail Test institution score. These scores in turn would translate to one of the four ratings by rounding.

The below example shows how this weighting would work for the Retail Test for a state-level rating where a bank had two assessment areas in a state:

Assessment Area 1: ''Satisfactory'' performance and weight of 25 percent
2 * 0.25 = 0.5
Assessment Area 2: ''Outstanding'' performance and weight of 75 percent
3 * 0.75 = 2.25
Retail Test State Score: 0.5 + 2.25 = 2.75 or ''outstanding''

The Board is considering aggregating assessment area conclusions to calculate the Retail Test institution rating as well, rather than aggregating all Retail Test state ratings. With stipulations in place to ensure that all assessment areas, including smaller rural assessment areas, are appropriately factored into ratings (as discussed above), calculating the Retail Test institution rating based on assessment area conclusions could encourage banks to maintain a focus on retail activities in all of their assessment areas and not just the largest assessment areas in each state.

Finally, to promote additional retail lending activities in Indian Country, the Board is proposing to make retail lending activities in Indian Country (both inside and outside of a bank's assessment area) eligible for CRA consideration. Activities inside a bank's assessment area(s) would be considered when determining assessment area conclusions; activities outside of a bank's assessment area(s) would be evaluated qualitatively, and could be considered as a possible enhancement to a bank's Retail Test state or institution rating.

2. Community Development Test Ratings

a. Community Development Test Conclusions in Assessment Areas

Large retail banks and wholesale and limited purpose banks would receive separate conclusions for the Community Development Financing Subtest and Community Development Services Subtest for each assessment area. To provide greater certainty and transparency in assigning Community Development Test assessment area conclusions, a matrix, such as the one presented in Table 7, would be provided to standardize how examiners would combine the two conclusions into a single Community Development Test conclusion in each assessment area. This would provide transparency to local communities about a bank's overall community development performance within their assessment area.

[194] 12 U.S.C. 2906(b) and (d).

TABLE 7—COMMUNITY DEVELOPMENT TEST ASSESSMENT AREA CONCLUSIONS

	Community development services subtest conclusion			
	Outstanding	Satisfactory	Needs to improve	Substantial noncompliance
Community Development Financing Subtest Conclusion:				
Outstanding	Outstanding	Outstanding	Satisfactory	Satisfactory or Needs to Improve.
Satisfactory	Outstanding or Satisfactory	Satisfactory	Satisfactory or Needs to Improve.	Needs to Improve.
Needs to Improve	Satisfactory or Needs to Improve.	Needs to Improve	Needs to Improve	Substantial Noncompliance.
Substantial Noncompliance.	Needs to Improve or Substantial Noncompliance.	Needs to Improve or Substantial Noncompliance.	Substantial Noncompliance	Substantial Noncompliance.

Using this standardized approach would allow an examiner to determine how to weight the Community Development Financing Subtest conclusion and the Community Development Services Subtest conclusion, with some combinations resulting in a single conclusion option. Where the overall Community Development Test conclusion could be one of two options, examiners would consider the level of performance for each subtest and take into account performance context factors, including the relative need for community development financing and services in the assessment area. In these cases, the specific factors that informed the examiner's decision would need to be clearly articulated within the performance evaluation.

b. State and Multistate MSA Ratings for the Community Development Test

To develop the state and multistate MSA ratings for the Community Development Test, the proposed approach would aggregate a bank's assessment area performance for the Community Development Test using the weighted average approach described above. This would result in a Community Development Test state score or Community Development Test multistate MSA score. After calculating these scores, the examiner would need to take into account community development activities, if any, outside of a bank's assessment area(s) but within the relevant state or multistate MSA.

The Board is proposing to create adjusted state scores or multistate MSA scores when an examiner determines that a bank's community development activities outside of its assessment area(s), but within the respective state or multistate MSA, merit an increase in the bank's Community Development Test score. After factoring in this adjustment for any outside assessment area activity, the adjusted score would then be rounded to the nearest whole number to assign a state or multistate MSA Community Development Test rating. The specific factors that informed the examiner's decision to increase the score would be clearly articulated within the performance evaluation. The Board is considering what standards should be developed to assist examiners in determining whether to increase these scores and, if so, by how much.

c. Institution Ratings for the Community Development Test

The Board proposes to derive a bank's Community Development Test institution score by using a weighted average of the adjusted state scores and multistate MSA scores (as applicable), rather than using assessment area conclusions.[195] Using state and multistate MSA scores would reflect statewide activities, if any, in addition to the conclusions for assessment areas in the state or multistate MSA.

The Board is considering how to incorporate the volume and responsiveness of community development activities (both community development financing and community development services) not previously counted at the assessment area, state or multistate MSA levels.[196] These activities could be reviewed qualitatively in addition to the weighted average calculation of state- and multistate MSA-level performance, to determine the appropriate increase for an adjusted institution Community Development Test score. This score would then be rounded up or down to the nearest whole number to produce the institution level Community Development Test rating.

d. Consistency in Evaluating Community Development Activities Outside of Assessment Areas

The Board is exploring options to provide more consistency in evaluating community development activities outside of a bank's assessment area(s), which would be considered for the state, multistate MSA (as applicable), and institution Community Development Test ratings. For state ratings, one approach could be the use of a statewide community development financing metric. Similar to the community development financing metric for an assessment area, a statewide community development financing metric would compare the total dollar amount of a bank's qualifying community development loans and investments in a state to total deposits from all of the bank's assessment areas in the state. A statewide community development financing metric could provide more consistency to the evaluation of community development financing activities outside of assessment areas.

A second option for evaluating community development activities outside of a bank's assessment area(s) would be the use of an impact score. Examiners could use bank-provided information along with a review of performance context to determine an impact score for activities outside of the bank's assessment area(s). The impact score could then be incorporated into the Community Development Test rating for the state, multistate MSA (as applicable), or the institution. The impact score and the basis for it would be stated in the performance evaluation, which would increase transparency in the evaluation process by clarifying how activities outside of assessment areas are factored in to the overall state, multistate MSA, or institution ratings.

[195] The proposed approach would weight states in a similar way to weighting assessment areas, based on an average of the percentage of a bank's deposits inside each state and the percentage of a bank's retail lending in each state.

[196] See Section VIII.C.2

E. Overall Ratings for Large Retail Banks

The Board is considering how to weight consistently the Retail Test and Community Development Test to determine overall ratings at the state, multistate MSA, and institution levels for large retail banks. One option is to take a weighted average of the Retail Test institution score and the Community Development Test adjusted institution score, assigning a 60 percent weight to the Retail Test and a 40 percent weight to the Community Development Test to reflect the traditional emphasis on retail activities as the most significant aspect of CRA performance. This would result in an overall institution score, which would be rounded up or down to the nearest whole number to produce the institution's overall CRA rating.

F. Overall State, Multistate MSA, and Institution Ratings for Small Banks

The Board is considering basing the overall state, multistate MSA, and institution ratings for small banks on the Retail Lending Subtest, for those opting into the metrics-based approach. Small banks would not be subject to the Retail Services Subtest or the Community Development Test. Consistent with the current Regulation BB, small banks could receive an overall ''outstanding'' rating based solely on the Retail Lending Subtest. Nonetheless, for those small banks who choose to receive an evaluation of their retail services, community development loans, qualified investments, or community development services, including volunteer activities, the Board would rely on a qualitative review of the activities and examiner judgment to determine whether a ratings enhancement is warranted.

The Board is contemplating two options for incorporating community development activities and retail services into the small bank overall institution rating at the bank's request. One approach, similar to current procedures, would be that these activities could be considered only to elevate a ''satisfactory'' rating for the retail lending test to ''outstanding.'' This approach also maintains a primary emphasis on retail lending within the CRA evaluation.

A second option is to use community development activities and retail services to augment performance at any level. For instance, a bank that received a rating below ''satisfactory'' for the Retail Lending Subtest could request a review of community development activities and retail services as a possible enhancement to achieve a ''satisfactory'' rating. Taking this approach would put more emphasis on the full range of activities that small banks engage in to meet community needs. The Board considers that this approach should apply only to small banks that serve primarily rural areas in order to reflect the particular importance of volunteer and community development financing activities provided by community banks in rural areas in advancing economic and community development and strengthening the capacity of community and civic organizations. Alternatively, this option could be limited to small banks with only a small number of assessment areas or an asset size lower than that used to define a small bank.

G. Overall Ratings for Wholesale Limited Purpose Banks

Consistent with current practices, the overall state, multistate MSA and institution ratings for wholesale and limited-purpose banks would be based solely on the Community Development Test.

Request for Feedback:

Question 82. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

Question 83. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?

Question 84. Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider?

Question 85. Would the use of either the statewide community development financing metric or an impact score provide more transparency in the evaluation of activities outside of assessment areas? What options should the Board consider to consistently weight outside assessment area activities when deriving overall state or institution ratings for the Community Development Test?

Question 86. For small banks, should community development and retail services activities augment only ''satisfactory'' performance, or should they augment performance at any level, and if at any level, should enhancement be limited to small institutions that serve primarily rural areas, or small banks with a few assessment areas or below a certain asset threshold?

H. Fair Lending and Other Illegal Credit Practices

As noted in the Background section, the CRA was enacted along with several other important statutes that are mutually reinforcing civil rights laws designed to address systemic inequities in access to credit. Discrimination and illegal credit practices undermine the ability of creditworthy applicants to obtain loans and are thus seen as inconsistent with a bank's affirmative obligation to meet the entire community's credit needs. Accordingly, discrimination and illegal credit practices negatively impact an institution's CRA evaluation. The Board anticipates that in any revised CRA ratings framework, a bank's CRA performance would be adversely affected by evidence of discriminatory or other illegal credit practices by the bank in any geography or by any affiliate whose loans have been considered as part of the bank's lending performance in any assessment area. If examiners determine that a bank has engaged in discriminatory or other illegal credit practices, the Board anticipates that, if warranted, a ratings downgrade could occur when rating the institution overall, similar to current practices and consistent with Regulation BB. This subsection discusses revisions to the criteria considered in determining the impact of fair lending and other illegal credit practices on a bank's overall CRA rating, and revisions to examples of violations that are inconsistent with helping to meet community credit needs. These revisions reflect updates to the Uniform Interagency Consumer Compliance Rating System, as well as relatively recently enacted laws and regulations.

1. Effect of Fair Lending and Other Illegal Credit Practices on a CRA Rating

Currently, in determining the effect of fair lending and other illegal credit practices violations on a bank's assigned rating, the banking agencies consider the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment;

and any other relevant information.[197] These criteria were put in place at a time when the rating system for consumer compliance examinations placed greater emphasis on transaction testing rather than the adequacy of an institution's consumer compliance management system in preventing consumer harm. In 2016, the FFIEC agencies revised the Consumer Compliance Rating System to focus more broadly on an institution's commitment to consumer protection.[198] Accordingly, the Board is considering updating the criteria for determining the effect of evidence of discriminatory or other illegal credit practices to be consistent with the updated Consumer Compliance rating system.

Under a modernized Regulation BB, the Board could determine the effect of evidence of discrimination and other illegal credit practices on a bank's assigned CRA rating based on the root cause or causes of any violations of law, the severity of any consumer harm resulting from violations, the duration of time over which the violations occurred, and the pervasiveness of the violations. In this way, the criteria to determine whether a CRA downgrade is warranted would be aligned with the Uniform Interagency Consumer Compliance Ratings System. In addition to the root cause, severity, duration, and pervasiveness of violations, examiners would also consider the degree to which the financial institution establishes an effective compliance management system across the institution to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and consumer harm. All consumer compliance violations would be considered during a CRA examination, although some might not lead to a CRA rating downgrade.

2. Examples of Fair Lending and Other Illegal Credit Practices

Currently, the Board considers evidence of discriminatory or other credit practices that violate an applicable law or regulation[199] including, but not limited to:

- Discrimination against applicants on a prohibited basis in violation, for example, of ECOA or the FHA;
- Violations of the Home Ownership and Equity Protection Act;[200]
- Violations of section 5 of the Federal Trade Commission Act;[201]
- Violations of section 8 of the Real Estate Settlement Procedures Act;[202]
- Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;[203] and
- Violations of the Fair Credit Reporting Act.[204]

The Board is considering amending Regulation BB to include violations of the Military Lending Act,[205] the Servicemembers Civil Relief Act,[206] as well as the prohibition against unfair, deceptive, or abusive acts or practices (UDAAP),[207] because the Board views violations of these laws as inconsistent with helping to meet community credit needs. It is important to note that this does not represent a substantive change to current examination procedures, since the included list of applicable laws, rules, and regulations is illustrative, and not exhaustive, and violations of these laws and regulations are currently considered in finalizing a bank's CRA rating. Nonetheless, the Board believes adding these laws to the list would provide greater clarity.

Request for Feedback:

Question 87. Should the Board specify in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings? Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?

I. Consideration of ''Outstanding'' for Impactful Support to Minority Depository Institutions, Women-Owned Financial Institutions, and Low-Income Credit Unions

Another change the Board is considering is to use the ratings framework to encourage increased engagement with MDIs, women-owned financial institutions, and low-income credit unions. This approach would make lending or investment activities in these institutions a factor that could be used to enhance ratings for the Retail Test and Community Development Test. These activities could be considered when evaluating performance in an assessment area, state or multistate MSA, or for the institution. Activities with MDIs, women-owned financial institutions, and low-income credit unions located outside of the bank's footprint would be considered when assessing institution performance. The Board is considering that substantive and meaningful engagement with MDIs, women-owned financial institutions, and low-income credit unions would be explicitly designated as criteria for an ''outstanding'' overall rating in order to elevate the profile and importance of investments in these mission-oriented institutions.

Request for Feedback:

Question 88. Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the ''satisfactory'' range of performance?

Question 89. Would it be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a ''satisfactory'' rating to ''outstanding''?

XI. Data Collection and Reporting

The Board is considering what data collection and reporting requirements would be necessary to implement certain options for updating the delineation of assessment areas and the proposed metrics-based approaches in the Retail Lending Subtest and the Community Development Financing Subtest. The Board is mindful of the tradeoff between seeking to minimize burden potentially associated with new data collection and reporting requirements, especially for small banks that opt in to the metrics-based approach, while also enabling greater clarity, consistency, and transparency through the enhanced use of metrics.

A. Current Data Collection and Reporting Requirements

1. Current Data Used for Deposits

Currently, the Board's CRA regulation does not require banks to collect or report deposits data. Instead, for small banks, total deposits and total loans data from the Call Report are used to calculate the loan-to-deposit ratio for the entire bank. Total deposits allocated to each branch from the FDIC SOD are used for performance context for banks of any size. Deposits data by depositor location are not currently collected or reported.

2. Current Small Bank and Intermediate Small Bank Data Standards for Retail Lending

Currently, small banks and intermediate small banks are not

[197] 12 CFR 228.28(c)(2).

[198] *See* FFIEC, ''FFIEC Issues Uniform Consumer Compliance Rating System'' (Nov. 7, 2016), *https://www.ffiec.gov/press/pr110716.htm.*

[199] 12 CFR 228.28(c).

[200] 15 U.S.C. 1601–02, 1639–41.

[201] 15 U.S.C. 45(a)(1).

[202] 12 U.S.C. 2607.

[203] 15 U.S.C. 1635.

[204] 15 U.S.C. 1681 *et seq.*

[205] 10 U.S.C. 987 *et seq.*

[206] 50 U.S.C. 3901 *et seq.*

[207] 12 U.S.C. 5531.

required to collect, maintain, or report loan data, unless they opt to be evaluated under the lending, investment, and service tests that apply to large banks.[208] Examiners use information for a bank's major loan products gathered from individual loan files and maintained on the bank's internal operating systems, including data reported pursuant to HMDA, if applicable.

3. Current Large Bank Data Standards for Retail Lending and Community Development Financing

Large banks collect and report certain lending data for home mortgages, small businesses, small farm, and community development loans pursuant to either HMDA or Regulation BB. Examiners use these data, along with other supplemental data to evaluate CRA performance, as explained below. A bank may use the free FFIEC software for data collection and reporting or develop its own programs.

Retail lending data collection and reporting requirements differ based on the product line. For large banks that do not report HMDA data, examiners use home mortgage information maintained on the bank's internal operating systems and/or from individual loan files. The data elements from home mortgage loans used for CRA include loan amount at origination, location, and borrower income. For small business and small farm loans, Regulation BB requires large banks to collect and maintain the loan amount at origination, loan location, and an indicator of whether a loan was to a business or farm with gross annual revenues of $1 million or less. Large banks report this information at the census tract level.[209] Large banks are not required to collect or report data on consumer loans; however, if a large bank opts to have consumer loans considered as part of its CRA evaluation, the bank must collect and maintain this information and include it in its public file.[210]

Regulation BB also requires large banks to report the total number and dollar amount of their community development loans originated or purchased during the review period, but does not require information for individual community development loans, such as the location of the loan.[211] Regulation BB does not require the reporting or collection of community development loans that remain on the bank's books or the collection and reporting of qualified community development investments. As a result, the total amount (originated and on-balance sheet) of community development loans and investments nationally, or within specific geographies, is not available. Consequently, examiners supplement reported community development loan data with additional information provided by the bank at the time of an examination, including the amount of investments, the location or areas benefited by these activities and information describing the community development purpose.[212]

4. Data Currently Used for CRA Retail Services and Community Development Services Analyses

There are no specific data collection or reporting requirements in Regulation BB for retail services or community development services. A bank must, however, provide examiners with sufficient information to demonstrate its performance in these areas. The bank's CRA public file includes a list of bank branches, with addresses and census tracts; a list of branches opened or closed; and a list of services, including hours of operation, available loan and deposit products, transaction fees, and descriptions of material differences in the availability or cost of services at particular branches, if any.[213] Banks have the option of including information regarding the availability of alternative systems for delivering services.[214] Banks also volunteer information on community development services, such as the number of activities, bank staff hours dedicated or the number of financial education sessions offered.

B. Deposits Data Options

The proposed approaches for the Retail Lending Subtest and Community Development Financing Subtest, as well as the potential approach for designating deposits-based assessment areas, would require deposits data that includes geographic location. The approach to ratings discussed in Section X could also potentially involve the use of deposits data. As discussed below, the Board seeks to balance proposals for a metrics-based approach that could increase certainty and transparency, with the need to minimize additional data reporting and collection requirements wherever possible.

1. Deposits Data Sources

The use of SOD data would rely on an existing FDIC data source that collects information on a bank's total domestic deposits as defined in the Call Report, including deposits of: (1) Individuals, partnerships, and corporations; (2) U.S. Government; (3) States and political subdivisions in the United States;, (4) commercial banks and other depository institutions in the United States; (5) Banks in foreign countries; and (6) foreign governments and official institutions (including foreign central banks).[215] Of these, the first and third components are the data points most relevant to CRA. Importantly, FDIC deposits reporting requirements allocate deposit accounts to specific bank branches, rather than by the address of the depositor.[216]

A requirement for some large banks to collect and report deposits data reflecting the location of those deposits would align evaluations more closely with the purpose of CRA by reporting the community *where* a bank takes deposits. This option would require careful consideration of and comment on the types of deposits that should be used for this purpose, as well as determining appropriate ways to report geographic location.

2. Deposits Data for Small Banks and Large Banks With One Assessment Area

Under the Board's proposal, additional deposits data collection or reporting would not be required for small banks that opt-in to the metrics-based approach and for large banks with one assessment area. For small banks, only the Retail Lending Subtest would apply, and SOD data could be used for the retail lending screen, which would not require additional data. For large banks with one assessment area, SOD data could also be used for the retail lending screen and community development financing metric.

Because SOD data requires banks to allocate deposit accounts to specific bank branches, rather than by the depositor location, using SOD data for

[208] 12 CFR 228.42(a) and 12 CFR 228.42(f).

[209] 12 CFR 228.42(b)(1).

[210] 12 CFR 228.42(c)(1); 12 CFR 228.43(b)(1)(i).

[211] 12 CFR 228.42(b)(2).

[212] FFIEC, ''A Guide to CRA Data Collection and Reporting,'' *https://www.ffiec.gov/cra/guide.htm.*

[213] 12 CFR 228.43(a).

[214] *Id.*

[215] *See* FFIEC, Schedule RC–E, Deposit Liabilities, p. 34, *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202006_f.pdf.*

[216] *See, e.g.,* FDIC, ''Summary of Deposits Reporting Instructions'' (June 30, 2020), *https://www.fdic.gov/regulations/resources/call/sod/2020-06-sod-instructions.pdf.* These instructions provide examples of common allocation methods and state, ''It is recognized that certain classes of deposits and deposits of certain types of customers may be assigned to a single office for reasons of convenience or efficiency. However, deposit allocations that diverge from the financial institution's internal record-keeping systems and grossly misstate or distort the deposit gathering activity of an office should not be utilized.'' *Id.* at 3.

small and large banks with a single assessment area would be more precise than for banks with multiple assessment areas. For small banks with multiple assessment areas, the Board believes SOD data are also appropriate because this data would be used only for the retail lending screen and, potentially, when calculating ratings, and because it would minimize burden for small banks.

3. Options for Deposits Data for Large Banks With More Than One Assessment Area

For large banks with more than one assessment area, the Board is considering whether these banks should also use SOD data for deposits or be required to collect and report deposits data that includes geographic information about the location of the bank's deposits. The Board is also considering whether large banks with more than one assessment area should be further differentiated between those that have deposits concentrated around their branches and those that have a substantial share of deposits that are more diffuse and not concentrated around branches. However, setting a standard to differentiate the location of deposits in this way could be challenging, given the limitations of existing deposits data.

As noted above, large banks would need deposits data for the retail lending screen and community development financing metric. If SOD data is used, large banks would not be required to collect and report deposits data. However, there are several challenges with this approach. For large banks with multiple assessment areas, the practice of allocating deposit accounts to specific bank branches could lead to less accurate calculations of deposits in each of a bank's assessment areas. This lack of precision would likely be even greater for those large banks with business models and practices that generate significant deposits outside of their branch network. Another shortcoming in using SOD data for these banks is that it includes more information than needed for CRA purposes, such as deposits from foreign countries.

This lack of precision in deposits data could misrepresent a bank's deposits drawn from a particular assessment area, as well as the performance of a bank's peers in that market. This lack of precision also could reduce the accuracy of the community development financing metric and increase an examiner's reliance on performance context information to interpret a large bank's performance.

An alternative approach to using SOD deposits data would be requiring certain large banks to collect and report retail deposits data. The data could also be used in the future if deposits-based assessment areas were established. A concern, however, is that the process of implementing systems to compile the requisite data could be costly and burdensome, even for large banks. Stakeholders have noted that deposits data based on the address of a depositor would require a substantial one-time investment in systems and ongoing staff-related costs to identify customer records from multiple loan, deposit and investments platforms that need to be geocoded and allocated to the appropriate assessment areas.

Request for Feedback:

Question 90. Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?

Question 91. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?

C. Retail Lending Data Options for Small Banks Opting for the Metrics-Based Approach

Under the Board's proposed approach, small banks that opt in to the metrics-based approach would be evaluated under only the Retail Lending Subtest, not the Community Development Test or the Retail Services Subtest. Small bank lending is currently evaluated using a sample of data that is gathered from a bank's loan files, data pulled from its internal operating systems, or a combination of the two if a bank maintains some, but not all, information in its internal systems. Many small banks maintain information such as loan amount at origination, loan location, and borrower income or revenue in their internal operating systems, but some do not collect income or business revenue information. These data fields would be needed to calculate the retail lending distribution metrics.

The Board is considering two options for gathering this information. Under the first option, the Board would use a sample of bank data drawn from each assessment area to generate the retail lending metrics for small bank evaluations. This approach could use information maintained by the bank in its internal operating systems and could supplement it with information pulled from loan files, similar to the process used today. A benefit to this approach is that it would not require any changes to a bank's data collection processes. A drawback to this approach is that it would not allow a small bank to obtain the certainty and clarity of knowing its performance in advance of an examination. The bank would not know which loans would be included in the sample used to evaluate performance and, therefore, could not use the metrics dashboard described in Section V with the same degree of confidence. In addition, as is the case today, bank staff would have to gather the information or files needed for examiners to review the loans sampled.

As a second option, a bank could maintain information in a format consistent with its own internal operating systems, with income or revenue information required only to the extent it is used in the bank's underwriting process. A key benefit of this option is that it would provide a bank with certainty about the loans considered in the evaluation and, as a result, would allow it to track its performance using the dashboard to monitor its retail lending performance against the threshold for a presumption of ''satisfactory'' performance. A drawback to this option is that any small bank that uses, but does not capture, revenue or income information in the credit granting process, would need to update its systems and processes to capture this information.

Request for Feedback:

Question 92. Which approach for retail lending data collection would provide the best balance between data collection burden and the transparency and predictability of CRA examinations for small banks that opt in to the metrics-based approach—using a sample of bank data drawn from each assessment area to generate the retail lending metrics, or the use of information maintained by a bank in a format consistent with its own internal operating systems?

Question 93. Are there other approaches to data collection that would benefit small banks and should be considered?

D. Collection and Reporting of Loan and Investment Data and Services Information for Large Banks

The Board is considering how other data collection and reporting requirements would need to change to effectively implement a metrics-based approach for large banks for the Retail Lending Subtest and the Community Development Financing Subtest. In addition, while the Retail Services Subtest and Community Development Services Subtest would remain primarily qualitative in nature, the Board seeks to improve the transparency of these evaluations by making more consistent information available to examiners.

1. Collection of Retail Lending Data

Much of the retail lending data needed to examine a large bank under the proposed Retail Lending Subtest is currently collected and reported. However, additional data would be needed for the retail lending metrics for consumer loan data and home mortgage data for non-HMDA reporters. The data necessary to analyze CRA performance for both home mortgage and consumer loans are loan amount at origination, loan location (state, county, census tract), and borrower income. The two options discussed above for gathering data for small banks (having examiners sample the bank's data or having banks collect the data in their own format) could also be used at large banks. A third option is to have large banks collect data in a format prescribed by the Board, as is done for small business or small farm loans under Regulation BB. The third option would not involve reporting consumer loans for large banks or home mortgage data for non-HMDA reporters that are also large banks.

Request for Feedback:

Question 94. What are the benefits and drawbacks of relying on examiners to sample home mortgage data for non-HMDA reporters and consumer loan data for all large banks, requiring banks to collect data in their own format, or requiring banks to collect data in a common Board prescribed format?

2. Collection and Reporting of Community Development Financing Data

The lack of granular reporting of community development loan data or any community development investment data means that there is no aggregate community development data at a local level available to create the local benchmarks for the community development financing metric described in Section VII. In order to develop the community development financing metric and local benchmarks, large banks would need to report annually the number and dollar amount of community development loans originated and investments made, and the remaining number and dollar amount of community development loans and qualifying investments from prior years as reflected on the balance sheet at the end of the calendar year. As was noted earlier, large banks already report community development loans on an aggregated basis for the institution.

The Board is considering the development of a Board-prescribed, machine-readable format to ensure a consistent and transparent process for collecting community development financing data. Information that could be collected for each community development loan or qualified investment includes the loan or investment amount (original or remaining on balance sheet), area(s) benefitted, community development purpose (*e.g.,* affordable housing or economic development), and type of investments (*e.g.,* equity investment or mortgage-backed security). A subset of that data (*e.g.,* number and dollar amount of community development loans and qualified investments) would be reported at some aggregated level (*e.g.,* county or MSA). The Board acknowledges that the collection and reporting of standardized community development loan and qualified investment data will likely necessitate up front changes to a bank's internal operating systems, including possibly the processes for booking community development loans and investments.

Request for Feedback:

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

Question 96. Is collecting community development data at the loan or investment level and reporting that data at the county level or MSA level an appropriate way to gather and make information available to the public?

Question 97. Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?

3. Collection of Retail Services Information

The Board is considering standardizing the types of data that banks would provide to examiners to make the assessment of the effectiveness and responsiveness of the bank's delivery systems, services, and products more consistent across large bank examinations. Relevant information would be provided in the CRA performance evaluation, thereby providing some transparency to the public.

For the branch distribution analysis, the Board is considering whether it would be beneficial for banks to submit standardized branch data, including the number and location of branches, ATMs, hours of operation by branch location, and record of opening and closing of branch offices and ATMs (as of dates). A standardized (Board-provided) template for services would streamline the process for banks and examiners and produce a more consistent evaluation methodology. Given that branch data are currently required to be retained in the public files, this approach would not require new data collection.

For non-branch delivery channels, a services template could include information on customer usage, number of transactions (rate of adoption), and cost to determine whether non-branch delivery channels are reaching LMI areas and individuals. For branch-related services, banks could include in the template a customized list of services offered that are responsive to LMI needs, including bilingual/translation services in specific geographies, disability accommodation, free or low-cost government, payroll, or other check cashing services, and reasonably priced international remittance services.

Request for Feedback:

Question 98. Would collecting information in a Board-provided standardized template under the Retail Services Subtest be an effective way of gathering consistent information, or is there a better alternative?

4. Collection of Community Development Services Information

In evaluating community development services, examiners currently consider the information a bank chooses to collect and provide to demonstrate the quantitative and qualitative aspects of its community development services. Banks generally provide information related to the lists included in the Interagency Questions and Answers, such as the number of community development service activities, bank staff hours dedicated,

the number of LMI participants, or the number of organizations served.[217]

The Board is considering a standardized (Board-provided) template with free form text fields. Banks would collect information on data points, such as the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Further, a bank could provide information it deems relevant on the impact and responsiveness of its community development services activities. For example, a bank may choose to provide the number of clients in financial education classes who opened a bank account, or a description of how a banker's service on the board of directors of a local organization led to the creation of a new small business lending program. The number of bank employees in an assessment area is another quantitative field that could be collected as a reference point if metrics are used.

Request for Feedback:

Question 99. Possible data points for community development services may include the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Are there other data points that should be included? Would a Board-provided template improve the consistency of the data collection or are there other options for data collection that should be considered?

[217] *See* Q&A § ____.24(e)—2.

By order of the Board of Governors of the Federal Reserve System, September 22, 2020.

Ann E. Misback,

Secretary of the Board.

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Part III

The President

Proclamation 10102—Blind Americans Equality Day, 2020

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Title 3—

The President

Proclamation 10102 of October 14, 2020

Blind Americans Equality Day, 2020

By the President of the United States of America

A Proclamation

On Blind Americans Equality Day, we recognize the valuable contributions of our fellow Americans who are blind or visually impaired. These individuals enrich our national economy and culture through their determination, courage, and strength. Today, we reflect on the progress our Nation has made in removing barriers that have prevented the full participation of blind and visually impaired persons in our society, and we reaffirm our unwavering commitment to defending the inherent dignity of all Americans.

This Blind Americans Equality Day is particularly notable as we mark the 100th anniversary of the Federal Vocational Rehabilitation (VR) program, which empowers individuals with disabilities to pursue competitive employment opportunities consistent with their abilities, interests, and strengths. Through the training and skills gained in the VR program, individuals who are blind or visually impaired can more readily enter the American workforce. We are also proud to celebrate this year the 45th anniversary of the Individuals with Disabilities Education Act and the 30th anniversary of the Americans with Disabilities Act. These landmark pieces of legislation forever changed our society by protecting in law persons with disabilities against discrimination and further promoting their full inclusion in American life.

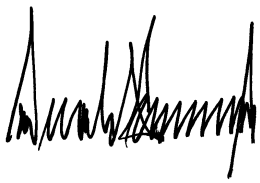
Persons with visual impairments strengthen our communities with their skill and talent across a wide range of professions and industries. My Administration will continue to support programs that combat the stigmas that make it difficult for persons who are blind or visually impaired to find employment. I recently signed an Executive Order on Continuing the National Council for the American Worker and the American Workforce Policy Advisory Board, which is strengthening powerful programs I established in 2018 and provides even more workers of all abilities with tools to secure sustained employment and economic self-sufficiency. By promoting the recruitment of underutilized populations, blind and visually impaired persons are among the direct beneficiaries from these initiatives. As we continue to reopen our economy, we also celebrate the success of the more than 1,800 small businesses operating under the Randolph-Sheppard Act of 1936, which facilitates the entrepreneurial aspirations of the blind and visually impaired. These efforts have helped individuals with disabilities to reach their full potential and achieve their dreams.

By joint resolution approved on October 6, 1964 (Public Law 88–628), the Congress authorized the President to designate October 15 of each year as ''White Cane Safety Day,'' now known as ''Blind Americans Equality Day,'' to recognize the contributions of Americans who are blind or have impaired vision. Today, and every day, we will continue our efforts to ensure and champion the full and active participation of all Americans, including blind or visually impaired Americans, in every facet of our society.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 15, 2020, as Blind Americans Equality Day, to celebrate and recognize the accomplishments and contributions of Americans who are blind or visually impaired.

I call upon all Americans to observe this day with appropriate ceremonies and activities to reaffirm our commitment to achieving equality for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
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FEDERAL REGISTER PAGES AND DATE, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

74.....64404
76.....63116, 64404
79.....64404
80.....64404
87.....64404
90.....64062, 64404
95.....64404
97.....64062
101.....64404

Proposed Rules:

1.....65566
64.....64091

48 CFR

Ch. 1.....62484
1.....62485
2.....62485
3.....62485
5.....62485
6.....62485
8.....62485
9.....62485
10.....62485
12.....62485
13.....62485
15.....62485
16.....62485
17.....62485
19.....62485
22.....62485
26.....62485
32.....62485
36.....62485
42.....62485
50.....62485
52.....62485
53.....62485
204.....65733
212.....65733
217.....65733
252.....65733
515.....62612
532.....61871
538.....62612
552.....62612
Ch. 7.....65734
852.....61872
1503.....66266
1552.....66266
1845.....64069

Proposed Rules:

1.....65610
2.....65610
3.....65610
4.....65610
5.....65610
6.....65610
7.....65610
8.....65610
9.....65610
10.....65610
11.....65610
12.....65610
13.....65610
14.....65610
15.....65610
16.....65610
18.....65610
19.....65610
22.....65610
23.....65610
25.....65610
26.....65610
27.....65610
28.....65610
29.....65610
30.....65610
31.....65610
32.....65610
37.....65610
38.....65610
39.....65610
42.....65610
44.....65610
46.....65610
47.....65610
49.....65610
52.....65610
53.....65610
252.....65787

49 CFR

213.....63362

Proposed Rules:

191.....65142
192.....65142
1039.....62689
1201.....62271

50 CFR

17.....63764, 63806, 65241
622.....64978, 65740
635.....61872, 64411, 65740
648.....62613, 63460
660.....66270
665.....63216
679.....61875, 62613, 63037, 63038, 64070, 64413, 66280

Proposed Rules:

17.....63474, 64618, 64908
20.....64097
36.....64106
660.....61913, 62492
665.....65336

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 15, 2020

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