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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–18–0051; NOP–18–02]

RIN 0581 AD80

National Organic Program; Amendments to the National List of Allowed and Prohibited Substances per April 2018 NOSB Recommendations (Crops and Handling)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture’s (USDA’s) organic regulations to implement recommendations submitted to the

Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule adds elemental sulfur for use as a molluscicide in organic crop production, adds polyoxin D zinc salt to control fungal diseases in organic crop production, and reclassifies magnesium chloride from an allowed synthetic to an allowed nonsynthetic ingredient in organic handling.

DATES: This final rule is effective November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Valerie Frances, Standards Division, National Organic Program. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the National List within part 205 of the USDA organic regulations (7 CFR 205.600 through 205.607). The National List identifies the synthetic substance allowances and nonsynthetic substance prohibitions in organic farming. The National List also identifies synthetic and nonsynthetic nonagricultural substances, and nonorganic agricultural substances that may be used in organic handling.

The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501–6522) (OFPA), and § 205.105 of the USDA organic regulations specifically prohibit the use of any synthetic substance in organic production and handling unless

the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonagricultural substance used in organic handling be on the National List. Under the authority of OFPA, the National List can be amended by the Secretary based on recommendations developed by the NOSB. Since the final rule establishing the National Organic Program (NOP) became effective on October 21, 2002, USDA’s Agricultural Marketing Service (AMS) has published multiple rules amending the National List.

This final rule amends the National List to implement NOSB recommendations on three amendments to the National List that were submitted to the Secretary on April 27, 2018. The amendments in this final rule are discussed in the section on Overview of Amendments below.

II. Overview of Final Amendments

The following provides an overview of the amendments to designated sections of the National List regulations. The background information on each substance and the basis for the NOSB recommendation were addressed in the proposed rule (84 FR 4377) and are not included in this final rule. Table 1 summarizes the final changes to the National List based on these NOSB recommendations.

TABLE 1—FINAL AMENDMENTS TO THE NATIONAL LIST

Substance	National list section	Final rule action
Elemental sulfur	§ 205.601(h)	Add to National List.
Polyoxin D zinc salt	§ 205.601(i)	Add to National List.
Magnesium chloride	§ 205.605(b) to § 205.605(a)	Reclassify listing and move within National List.

The NOSB evaluated each substance by applying the OFPA substance evaluation criteria to determine if the substance is compatible with organic production and handling (7 U.S.C. 6517(c) and 6518(m)). For each substance, AMS reviewed the recommendation submitted to the Secretary to determine if the OFPA evaluation criteria had been appropriately applied and whether the addition to or amendment of the National List would not supersede other federal regulations. Our review determined that the substances

described in this final rule meet these conditions. Therefore, AMS accepted each NOSB recommendation and initiated this rulemaking.

AMS received thirteen comments on the proposed rule. After considering the received comments, AMS has determined that the addition of elemental sulfur and polyoxin D zinc salt to the National List for organic crop production and the reclassification of magnesium chloride from an allowed synthetic to an allowed nonsynthetic ingredient in organic handling will be finalized without change. Section E of

this final rule provides an overview of the public comments and AMS’s response to these comments.

§ 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This final rule adds two substances to § 205.601, synthetic substances allowed for use in organic crop production.

Elemental Sulfur

The final rule amends the National List to add elemental sulfur to § 205.601(h) for use as a molluscicide

bait to control slugs and snails. Table 2 illustrates the final rule action.

TABLE 2—FINAL RULE ACTION FOR ELEMENTAL SULFUR

Current rule ... Final rule action.	N/A. Add elemental sulfur to § 205.601(h) as slug or snail bait.
--	---

This permits the use of elemental sulfur-based bait, providing an additional tool to organic producers to control slugs and snails when other required preventive measures have failed to provide sufficient control (§ 205.206(e)). Elemental sulfur is also on the National List for use in organic crop production as an insecticide (including mite control) in § 205.601(e); as plant disease control in § 205.601(i); as a plant or soil amendment in § 205.601(j); and in organic livestock production for treatment of livestock and livestock housing in § 205.603(b)(2).

The USDA organic regulations require organic crop producers to describe practices to prevent and control pests in their organic system plan (OSP) (§ 205.201(a)(1)). In addition, producers must use preventive practices and physical and mechanical means to control pests before using an allowed synthetic substance, such as elemental sulfur. Finally, producers need to describe the conditions under which elemental sulfur may be used for slug and snail control in their OSP (§ 205.206(e)). Certifying agents must ensure that producers comply with these requirements.

Polyoxin D Zinc Salt

The final rule amends the National List to add polyoxin D zinc salt to control fungal diseases at § 205.601(i). Table 3 illustrates the final rule change.

TABLE 3—FINAL RULE ACTION FOR POLYOXIN D ZINC SALT

Current rule ... Final rule action.	N/A. Add polyoxin D zinc salt to § 205.601(i) as plant disease control.
--	--

This permits the use of polyoxin D zinc salt in organic crop production. The USDA organic regulations require organic crop producers to describe practices to prevent and control crop diseases in their organic system plan (OSP) (§ 205.201(a)(1)). In addition, producers must use preventive practices and management practices, or nonsynthetic substances to suppress the spread of plant disease before using an allowed synthetic, such as polyoxin D

zinc salt. Finally, producers need to describe the conditions under which polyoxin D zinc salt may be used for disease control in their OSP (§ 205.206(e)). Certifying agents must ensure that producers comply with these requirements.

§ 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as “Organic” or “Made With Organic (Specified Ingredients or Food Group(s))”

This final rule reclassifies magnesium chloride from an allowed synthetic ingredient in § 205.605(b) to an allowed nonsynthetic ingredient in § 205.605(a).

Magnesium Chloride

This final rule reclassifies magnesium chloride as a nonsynthetic substance that may be used in organic handling. It also removes the annotation that magnesium chloride must be “derived from sea water.” Table 4 illustrates the final rule change.

TABLE 4—FINAL RULE ACTION FOR MAGNESIUM CHLORIDE

Current rule ... Final rule action.	§ 205.605(b) Magnesium chloride—derived from sea water. Remove magnesium chloride from § 205.605(b) and insert magnesium chloride under § 205.605(a) without annotation.
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The primary uses of magnesium chloride in organic food processing are as a firming agent in tofu processing and as a source of the essential mineral magnesium in organic infant formula. Magnesium chloride is the simple salt of the halogen chlorine and the alkaline earth metal magnesium. Magnesium chloride can be derived from terminal lake brines, subsurface brine deposits, and mined mineral deposits, as well as seawater.¹ This substance is nonsynthetic when derived from natural sources and manufactured in a way that does not chemically change the substance (see § 205.2 definitions of *nonsynthetic (natural)* and *synthetic*). Guidance documents NOP 5033, *Classification of Materials*, and NOP 5033–1, the *Decision Tree for the Classification of Materials as Synthetic or Nonsynthetic*,² describe a procedure

¹ NOSB Recommendations 2018 Spring Meeting: <https://www.ams.usda.gov/sites/default/files/media/HSMagnesiumChlorideReclassRec.pdf>.

² NOP 5033 *Classification of Materials* & NOP 5033–1 *Decision Tree for the Classification of Materials as Synthetic or Nonsynthetic*: https://www.ams.usda.gov/sites/default/files/media/Program%20Handbk_TOC.pdf.

to classify materials as synthetic or nonsynthetic. This final rule prohibits the use of synthetic forms of magnesium chloride in organic handling.

Organic handlers who use magnesium chloride must ensure that the product is a nonsynthetic, compliant form of this substance prior to use. Certifying agents must also verify that the magnesium chloride used is compliant with the nonsynthetic classification. Information about the source of the magnesium chloride and its manufacturing process could provide sufficient details to determine compliance.

III. Related Documents

On January 17, 2018, a Notice was published in the **Federal Register** (83 FR 2373) announcing the spring 2018 NOSB meeting. One purpose of the meeting was to deliberate on recommendations on current substances on the National List, and substances petitioned as amendments. The proposal to add elemental sulfur for use as a molluscicide in organic crop production, add polyoxin D zinc salt to control fungal diseases in organic crop production, and reclassify magnesium chloride from an allowed synthetic to an allowed nonsynthetic ingredient in organic handling was published in the **Federal Register** (84 FR 4377) on February 15, 2019. Additional information on or about the substances in this final rule, including petitions, technical reports, and NOSB recommendations, is available on the AMS website at <https://www.ams.usda.gov/rules-regulations/organic/national-list>.

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List. The current petition procedures for amending the National List published in the **Federal Register** (81 FR 12680, March 10, 2016) can also be accessed through the NOP Program Handbook on the NOP website at <https://www.ams.usda.gov/rules-regulations/organic/handbook>.

A. Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) has designated as not a significant regulatory action under Executive Order 12866. Consequently, this action 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).

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) to delineate which operations qualify as small businesses.³ The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than \$750,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, "All other professional, scientific and technical services." For this category, the small business threshold is average annual receipts of less than \$15 million.

AMS has considered the economic impact of this final rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the U.S. would be considered small entities. According

to the 2017 Census of Agriculture, 18,166 organic farms in the U.S. reported sales of organic products and total farm gate sales in excess of \$7.2 billion.⁴ Based on that data, organic sales average \$400,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the \$750,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database, there are 18,137 certified handlers in the U.S.⁵ The Organic Trade Association's 2018 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has approximately 78 accredited certifying agents who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately \$4,200 in certification fees in order to exceed the SBA's small business threshold of \$15 million. The costs for certification generally range from \$500 to \$3,500, depending on the complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria.

The economic impact on entities affected by this rule would not be significant. The effect of this rule would allow the use of additional and widely available substances in organic crop or livestock production and organic handling. This action would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. AMS concludes that the economic impact of this addition, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

⁴ U.S. Department of Agriculture, National Agricultural Statistics Service. 2017 Census of Agriculture. <https://www.nass.usda.gov/Publications/AgCensus/2017/index.php>.

⁵ Organic Integrity Database: <https://organic.ams.usda.gov/Integrity/>. Accessed on May 31, 2019.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of the OFPA, this final rule would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule.

³ U.S. Small Business Administration regulations: https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=13%3A1.0.1.1.17%3E13.1.121_1104.

Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on tribal governments and will not have significant tribal implications.

E. Congressional Review Act

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

F. Comments Received on Proposed Rule AMS-NOP-18-0051; NOP-18-02

During a 60-day comment period that closed on April 16, 2019, AMS received 13 comments on proposed rule AMS-NOP-18-0051. Two of these comments incorrectly discussed amendments not related to this proposed rule and therefore are not discussed. Of the remaining 11 comments, 3 were from trade or farmers' associations, 1 was from a membership-based advocacy group, 1 was from an accredited certifying agent, and 6 were from unaffiliated commenters. The received comments can be viewed at <https://www.regulations.gov/> by searching for the document AMS-NOP-18-0051.

AMS General Response to Comments on Amendments to § 205.601

Organic crop producers must describe their management practices to prevent specific pest infestations and plant diseases, and the specific conditions under which the use of the allowed synthetic materials may be necessary in their OSP (§§ 205.201(a)(1) and 205.206(e)). The USDA organic regulations require that the producer first use mechanical or physical methods or nonsynthetic materials to control pests and plant diseases. When these are not sufficient, organic producers may use synthetic materials that are listed as allowed on § 205.601 and specified in their OSP. In addition, nonsynthetic and allowed synthetic materials must be used as specified on their material safety data sheet (MSDS) and product label. Certifying agents must ensure that the preventive mechanical and physical practices and the nonsynthetic materials along with the conditions for when synthetic material use is necessary are all described in the producer's OSP.

Certifying agents must also verify that the preventive mechanical and physical practices and the nonsynthetic materials to address the target problems were implemented prior to the use of the synthetic material (§ 205.206(e)).

Comments Received on the Addition of Elemental Sulfur to § 205.601 for Use as Slug and Snail Bait

AMS received nine public comments regarding the proposed addition of elemental sulfur to § 205.601 as an allowed synthetic substance for use in crop production. Five of these comments supported the proposed addition, while four of the comments opposed it.

The comments supporting the proposed use of elemental sulfur cited the substance's proven effectiveness as a molluscicide. Several commenters argued that the proposed use of elemental sulfur is essential to organic agriculture because typical organic farming practices (*e.g.*, reduced tillage and mulching) support slug and snail populations. Supporting commenters also noted that allowing elemental sulfur as slug and snail bait would be consistent with the current organic regulations, which allow its use as a soil amendment and insecticide.

Commenters opposed to the use of elemental sulfur as a molluscicide stated that the substance can be harmful to farmworkers and that overuse could lead to acidification of soil and water. Several commenters noted that most elemental sulfur production is a byproduct of oil and natural gas refining. One commenter also had concerns that using elemental sulfur to control slugs and snails could inadvertently harm beneficial organisms.

AMS Response to Comments on the Addition of Elemental Sulfur to § 205.601 for Use as Slug and Snail Bait

AMS disagrees with comments opposed to the use of elemental sulfur in organic crop production as a molluscicide. Elemental sulfur was assessed according to the OFPA criteria (7 U.S.C. 6518(m)). AMS determined that elemental sulfur used as a molluscicide meets the OFPA evaluation criteria, when used as labeled. There is a long history of review and managed allowance of elemental sulfur for a variety of uses in organic crop production. Organic producers must maintain or improve soil and water quality (§ 205.200). Further, organic producers must first use mechanical or physical methods or nonsynthetic materials to control pests and plant diseases. When these are not

sufficient, organic producers may use an allowed synthetic, such as sulfur, under the conditions described in their OSP (§ 205.206(e)). Any use of nonsynthetic or allowed synthetic materials must be as specified on the material safety data sheets (MSDS) and product labels to prevent injury to humans, animals, plants, and nontarget and beneficial insects, and detrimental impacts on soil health and air or water quality. Producers should monitor their soil pH and health with appropriate soil tests as needed, or as requested by a certifying agent. The requirements in the USDA organic regulations and the application instructions on the MSDS and product labels support the use of sulfur as a molluscicide in a manner that is safe for human health and the environment.

Comments Received on the Addition of Polyoxin D Zinc Salt to § 205.601 as Plant Disease Control

AMS received nine public comments regarding the addition of polyoxin D zinc salt to § 205.601 for plant disease control. Three of the comments supported the proposed addition of this substance, and six opposed its addition.

Comments in support of the proposed addition of polyoxin D zinc salt referenced the material's effectiveness at controlling plant pathogenic fungi, as well as the material's unique mode of action. It does not kill fungi, but instead prevents growth. Commenters argued that polyoxin D zinc salt is needed in organic agriculture as an alternative form of plant disease control and cited the material's history of safe use in foreign and domestic conventional agriculture. Additionally, two commenters noted that concerns regarding possible harmful impacts on soil-borne fungi and beneficial insects caused by or resulting from the use of polyoxin D zinc salt were adequately addressed by the technical reports and petitions reviewed by the NOSB.

Comments opposed to the use of polyoxin D zinc salt cited an EPA report that noted moderate toxicity to freshwater invertebrates. A commenter stated that there are alternative products and practices other than polyoxin D zinc salt available for plant disease control. A commenter raised concern that the broad-spectrum mode of action of polyoxin D zinc salt may harm beneficial soil-borne fungi and insects such as pollinators. The same commenter also was also concerned that the material may degrade slowly and accumulate in soil.

AMS Response to Comments on the Addition of Polyoxin D Zinc Salt to § 205.601 for Plant Disease Control

AMS disagrees with comments opposed to the use of polyoxin D zinc salt in organic crop production. As stated in the 2017 technical report, polyoxin D zinc salt prevents the growth of fungi rather than destroying them. In addition, studies on macro-invertebrates, including pollinators and earthworms, indicated no or little toxic effects. While the soil half-life from aerobic microbial metabolism could be upwards to 15.9 days, photolytic degradation from sunlight was observed as soon as 1.6 days in spring conditions, and generally within 2–3 days, especially in alkaline soil. Consequently, polyoxin D zinc salt has not been found to accumulate or persist in soil. Polyoxin D zinc salt was assessed according to the OFPA criteria (7 U.S.C. 6518(m)). AMS determined that the use of polyoxin D zinc salt for plant disease control meets the OFPA evaluation criteria.

In addition, like all synthetic materials allowed for use in organic agricultural production per § 205.601, organic crop producers must describe their management practices to prevent specific pest infestations and plant diseases, and the specific conditions under which the use of polyoxin D zinc salt may be necessary in their OSP (§§ 205.201(a)(1) and 205.206(e)). The USDA organic regulations require that the producer first use mechanical or physical methods or nonsynthetic materials to control pests and plant diseases. When these are not sufficient, organic producers may use polyoxin D salt as described in their OSP. Nonsynthetic and allowed synthetic materials must be used as specified on their material safety data sheet (MSDS) and product label to prevent injury to humans, animals, plants, and nontarget and beneficial insects, and detrimental impacts on soil health and air or water quality. Producers should monitor their soil pH and health with appropriate soil tests as needed, or as requested by a certifying agent.

Comments Received on the Addition of Magnesium Chloride to § 205.605 as an Ingredient in or on Processed Products

AMS received eight public comments regarding the proposed reclassification of magnesium chloride as a nonsynthetic allowed for use in processed organic products. Commenters broadly supported the proposed reclassification, stating that many nonsynthetic forms of magnesium chloride are commercially available.

One commenter was opposed to the reclassification of magnesium chloride; however, no substantive reason for the opposition was given.

Two commenters who supported reclassifying magnesium chloride as a nonsynthetic for use in handling also raised concerns that this reclassification would allow its use in organic crop production without restriction. They cautioned against future rulemaking allowing the use of magnesium chloride in crop production, citing concerns that chloride can accumulate in the soil and that this would allow the application of magnesium as an instantly available micronutrient, which are contrary to organic production practices. Both commenters requested that AMS ask the NOSB to consider prohibiting the use of nonsynthetic forms of magnesium chloride in organic crop production by listing it on § 205.602.

AMS Response to Comments on Magnesium Chloride

AMS disagrees with commenters that allowing nonsynthetic magnesium chloride for organic handling affects use of magnesium chloride in organic crop and livestock production. Nonsynthetic forms of magnesium chloride have always been allowed for organic crop and livestock production because magnesium chloride is not specifically prohibited at either § 205.602 or § 205.604. Furthermore, this final rule does not alter the definition of the terms “synthetic,” “nonsynthetic (natural),” or “chemical change” in the USDA organic regulations (§ 205.2). Commenters who are concerned about the allowance of nonsynthetic forms of magnesium chloride in organic crop or livestock production can petition the NOSB to consider prohibiting at § 205.602 or § 205.604.

F. General Notice of Public Rulemaking

This final rule reflects recommendations submitted by the NOSB to the Secretary to add two substances to the National List and to reclassify one substance on the National List.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Archives and records, Crops, Imports, Labeling, National List, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Amend § 205.601 by revising paragraph (h) and adding (i)(11) to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(h) As slug or snail bait.

(1) Ferric phosphate (CAS # 10045–86–0).

(2) Elemental sulfur.

(i) * * *

(11) Polyoxin D zinc salt.

* * * * *

■ 3. Amend § 205.605 as follows:

■ a. In paragraph (a), add in alphabetical order an entry for “Magnesium chloride”; and

■ b. In paragraph (b), remove “Magnesium chloride—derived from seawater”.

The addition reads as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

* * * * *

(a) * * *

Magnesium chloride.

* * * * *

Dated: October 17, 2019.

Bruce Summers,
Administrator, Agricultural Marketing Service.

[FR Doc. 2019–23035 Filed 10–22–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Parts 201, 202, and 203

[Doc. No. AMS–FGIS–18–0073 FR]

Reorganization and Transfer of Regulations; Correction

AGENCY: Agricultural Marketing Service; Farm Service Agency; Grain Inspection, Packers, and Stockyards Administration; USDA.

ACTION: Final rule; correcting amendments.

SUMMARY: The Agricultural Marketing Service is making correcting amendments pertaining to a final rule that appeared in the **Federal Register** on August 30, 2019. The final rule

transferred certain regulations under the Farm Service Agency (FSA) and the Grain Inspection, Packers and Stockyards Administration (GIPSA) to the Agricultural Marketing Service (AMS) to reflect changes in the organizational structure and delegated authorities within the United States Department of Agriculture (USDA). The final rule also made corresponding revisions to the regulations to reflect the organizational changes.

DATES: Effective October 23, 2019.

FOR FURTHER INFORMATION CONTACT:

Dawana J. Clark, Legislative and Regulatory Review Staff, Office of the Administrator, AMS, USDA; Telephone: (202) 720-7540, Fax: (202) 690-3767, or Email: Dawana.Clark@usda.gov.

SUPPLEMENTARY INFORMATION: In FR Doc. 2019-18201 appearing on page 45644 in the **Federal Register** of Friday, August 30, 2019, portions of amendatory instructions to sections in 9 CFR parts 201, 202, and 203 were either incorrect or incomplete.

In an instruction amending § 201.108-1, the section number read in error (§ 201.180-1). When amending paragraph (b) in § 202.2, we neglected to replace “GIPSA” with “AMS.” In amending § 203.7, we cited incorrect language to be changed. And finally, in the amendment to § 203.14, we incorrectly cited § 203.114.

This correcting amendment rule amends 9 CFR 201.108-1, 202.2, 203.7, and 203.14 as intended in the final rule published August 30, 2019, at 84 FR 45644.

List of Subjects

9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

9 CFR Part 202

Administrative practice and procedure, Stockyards.

9 CFR Part 203

Reporting and recordkeeping requirements, Stockyards.

Accordingly, 9 CFR parts 201, 202, and 203 are amended by making the following correcting amendments:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

§ 201.108-1 [Amended]

■ 2. Amend § 201.108-1, in the introductory text, by removing both instances of the words “Packers and Stockyards Programs” and adding in their place “Packers and Stockyards Division”.

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS AND UNDER THE PACKERS AND STOCKYARDS ACT

■ 3. The authority citation for part 202 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

§ 202.2 [Amended]

■ 4. In § 202.2, amend paragraph (b) by removing the term “GIPSA” and adding in its place “AMS”.

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

■ 5. The authority citation for part 203 continues to read as follows:

Authority: 7 U.S.C. 2.22 and 2.81.

§ 203.7 [Amended]

■ 6. Amend § 203.7:

■ a. In the third sentence of paragraph (b)(2)(iii), by removing the word “area” and adding in its place “regional”.

■ b. In the fourth sentence of paragraph (b)(2)(iii), by removing the words “the Administration” and adding in their place the term “PSD”.

§ 203.14 [Amended]

■ 7. Amend § 203.14 in the note following paragraph 1 by removing the words “Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs)” and adding in their place “PSD”.

Dated: October 18, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019-23103 Filed 10-22-19; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0524; Product Identifier 2019-NM-081-AD; Amendment 39-19738; AD 2019-19-02]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747-400 and 747-400F series airplanes. This AD was prompted by an evaluation that determined fatigue cracks could develop in the underwing longerons. This AD requires repetitive inspections of the underwing longerons and certain fuselage skins for any crack, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 27, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 27, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; phone: 562-797-1717; internet: <https://www.myboeingfleet.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0524.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0524; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3523; email: eric.lin@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747-400 and 747-400F series airplanes. The NPRM published in the **Federal Register** on July 12, 2019 (84 FR 33189). The NPRM was prompted by an evaluation that determined fatigue cracks could develop in the underwing longerons. The NPRM proposed to require repetitive inspections of the underwing longerons and certain fuselage skins for any crack, and applicable on-condition actions.

The FAA is issuing this AD to address cracks in the underwing longerons,

which could result in fuel leakage into the pressurized fuselage and increase the risk of a fire, and to address cracks in the adjacent fuselage skin, which could result in rapid decompression. Either condition could adversely affect the structural integrity of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comments received. Boeing and United Airlines indicated concurrence with the NPRM.

Conclusion

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

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

Related Service Information Under 14 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747-53A2900 RB, dated April 11, 2019. This service information describes procedures for repetitive detailed inspections and ultrasonic inspections of the underwing longerons and the adjacent fuselage skin, and ultrasonic and surface high frequency eddy current (HFEC) inspections of certain fuselage skins, on the left and right sides of the airplane, for any crack, and applicable on-condition actions. On-condition actions include repair.

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

Costs of Compliance

The FAA estimates that this AD affects 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspections of the underwing longerons.	2 work-hours × \$85 per hour = \$170 per inspection cycle.	\$0	\$170 per inspection cycle	\$3,400 per inspection cycle.
Ultrasonic and HFEC inspections of the adjacent fuselage skin.	9 work-hours × \$85 per hour = \$765 per inspection cycle.	0	\$765 per inspection cycle	\$15,300 per inspection cycle.
Ultrasonic inspections of the underwing longerons.	2 work-hours × \$85 per hour = \$170 per inspection cycle.	0	\$170 per inspection cycle	\$3,400 per inspection cycle.

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

Authority for This Rulemaking

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

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

unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

responsibilities among the various levels of government.

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–19–02 The Boeing Company: Amendment 39–19738; Docket No. FAA–2019–0524; Product Identifier 2019–NM–081–AD.

(a) Effective Date

This AD is effective November 27, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and 747–400F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–53A2900 RB, dated April 11, 2019.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation that determined fatigue cracks could develop in the underwing longerons. The FAA is issuing this AD to address cracks in the underwing longerons, which could result in fuel leakage into the pressurized fuselage and increase the risk of a fire, and to address cracks in the adjacent fuselage skin, which could result in rapid decompression. Either condition could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 747–53A2900 RB, dated April 11, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2900 RB, dated April 11, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2900, dated April 11, 2019, which is referred to in Boeing Alert Requirements Bulletin 747–53A2900 RB, dated April 11, 2019.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin

747–53A2900 RB, dated April 11, 2019, uses the phrase “the original issue date of Requirements Bulletin 747–53A2900 RB,” this AD requires using “the effective date of this AD.”

(2) Where Boeing Alert Requirements Bulletin 747–53A2900 RB, dated April 11, 2019, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: eric.lin@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–53A2900 RB, dated April 11, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: <https://www.myboeingfleet.com>.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on September 19, 2019.

Suzanne Masterson,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23074 Filed 10–22–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2019–0493; Product Identifier 2019–NM–043–AD; Amendment 39–19762; AD 2019–20–09]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2011–18–15, which applied to certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. AD 2011–18–15 required initial and repetitive torque checks of the bolt preload; detailed inspection of the barrel nuts and cradle for cracking, pitting, and corrosion if the bolt preload is correct; and replacement of certain hardware if necessary. This AD continues to require those actions. This AD also requires new inspections and replacement of certain hardware, which would terminate the repetitive torque checks and inspections; and removes airplanes from the applicability. This AD was prompted by in-service reports of cracked barrel nuts found at the front spar locations of the wing-to-fuselage attachment joints, and a loose washer in the barrel nut assembly. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 27, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 27, 2019.

ADDRESSES: For service information identified in this final rule, contact De Havilland Aircraft of Canada Ltd., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; phone: 416-375-4000; fax: 416-375-4539; email: thd@dehavilland.com; internet: <https://dehavilland.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0493.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0493; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516-228-7330; fax: 516-794-5531; email: 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF-2011-24R1, dated January 21, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC-8-400 series airplanes. You may

examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0493.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011-18-15, Amendment 39-16797 (76 FR 54093, August 31, 2011) (“AD 2011-18-15”). AD 2011-18-15 applied to certain De Havilland Aircraft of Canada Limited Model DHC-8-400 series airplanes. The NPRM published in the **Federal Register** on July 9, 2019 (84 FR 32664). The NPRM was prompted by in-service reports of cracked barrel nuts found at the front spar locations of the wing-to-fuselage attachment joints, and a loose washer in the barrel nut assembly. The NPRM proposed to continue to require initial and repetitive torque checks of the bolt preload; detailed inspection of the barrel nuts and cradle for cracking, pitting, and corrosion if the bolt preload is correct; and replacement of hardware if necessary. The NPRM also proposed to require new inspections and replacement of certain hardware, which would terminate the repetitive torque checks and inspections; and remove airplanes from the applicability. We are issuing this AD to address cracked barrel nuts and a loose washer in the barrel nut assembly, which could result in failure of the barrel nuts, compromising the structural integrity of the wing-to-fuselage attachments, and possible separation of the wing from the airplane during flight. See the MCAI for additional background information.

Comments

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

Explanation of Changes Made to This Final Rule

The FAA has revised this final rule to identify the legal name of the manufacturer as published in the most recent type certificate data sheet (TCDS) for the affected airplane models.

The FAA has revised paragraph (n) of this AD to refer to De Havilland Aircraft

of Canada Limited (the current TCDS holder) as the appropriate contact for the referenced repair drawing.

Conclusion

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

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- Service Bulletin A84-57-25, Revision A, dated July 16, 2018. This service information describes procedures for initial and repetitive torque checks of the bolt preload, detailed inspection of the barrel nuts and cradle for cracking, pitting, and corrosion if the bolt preload is correct, and replacement of hardware if necessary.
- Service Bulletin 84-57-26, Revision C, dated July 16, 2018. This service information describes procedures for a visual inspection of the saddle washer and retainer for any damage (cracks) and corrosion, and replacement of the existing wing front spar barrel nuts, bolts, and preload indicating washers.

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

Costs of Compliance

The FAA estimates that this AD affects 54 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2011-18-15	15 work-hours × \$85 per hour = \$1,275	\$10,492	\$11,767	\$635,418
New actions	15 work-hours × \$85 per hour = \$1,275	10,492	11,767	635,418

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–18–15, Amendment 39–16797 (76 FR 54093, August 31, 2011), and adding the following new AD:

2019–20–09 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–19762; Docket No. FAA–2019–0493; Product Identifier 2019–NM–043–AD.

(a) Effective Date

This AD is effective November 27, 2019.

(b) Affected ADs

This AD replaces AD 2011–18–15, Amendment 39–16797 (76 FR 54093, August 31, 2011) ("AD 2011–18–15").

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4437 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by in-service reports of cracked barrel nuts found at the front spar locations of the wing-to-fuselage attachment joints, and a loose washer in the barrel nut assembly. The FAA is issuing this AD to address cracked barrel nuts and a loose washer in the barrel nut assembly, which could result in failure of the barrel nuts, compromising the structural integrity of the wing-to-fuselage attachments, and possible separation of the wing from the airplane during flight.

(f) Compliance

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

(g) Retained Initial and Repetitive Checks and Inspections, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2011–18–15, with

revised service information. At the applicable time specified in paragraph (g)(1) or (2) of this AD: Do a torque check to determine if the bolt preload is correct, and if the preload is correct, before further flight, do a detailed inspection of each barrel nut and cradle for cracking, pitting or corrosion, in accordance with paragraph 3.B., part A, of the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–57–25, dated July 20, 2011; or Bombardier Service Bulletin A84–57–25, Revision A, dated July 16, 2018. After the effective date of this AD, only Bombardier Service Bulletin A84–57–25, Revision A, dated July 16, 2018, may be used. Repeat the torque check and, as applicable, the inspection thereafter at intervals not to exceed 2,000 flight hours or 12 months, whichever occurs first.

(1) For airplanes that have accumulated 1,900 or more total flight hours as of September 15, 2011 (the effective date of AD 2011–18–15), or for which it has been 12 months or more since the date of issuance of the original Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness as of September 15, 2011: Within 100 flight hours or 10 days after September 15, 2011, whichever occurs first.

(2) For airplanes that have accumulated less than 1,900 total flight hours as of September 15, 2011 (the effective date of AD 2011–18–15), and for which it has been less than 12 months since the date of issuance of the original Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness as of September 15, 2011: Prior to the accumulation of 2,000 total flight hours or within 12 months since the date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness, whichever occurs first.

(h) Retained Corrective Actions for Incorrect Bolt Preload, With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2011–18–15, with revised service information. If any bolt preload is found to be incorrect (*i.e.*, the ring can be rotated during any torque check required by paragraph (g) of this AD), before further flight, replace all hardware at that location (except the saddle washer and retainer) in accordance with paragraph 3.B., part B, of the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–57–25, dated July 20, 2011; or paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–26, Revision C, dated July 16, 2018. After the effective date of this AD, only Bombardier Service Bulletin 84–57–26, Revision C, dated July 16, 2018, may be used.

(i) Retained Corrective Actions for Barrel Nut/Cradle Discrepancies, With Revised Service Information

This paragraph restates the requirements of paragraph (i) of AD 2011–18–15, with revised service information. If any crack, pitting, or corrosion of the barrel nut or cradle is found

during any inspection required by paragraph (g) of this AD, before further flight, replace all hardware at that location (except the saddle washer and retainer) in accordance with paragraph 3.B., part B, of the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–57–25, dated July 20, 2011; or paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–26, Revision C, dated July 16, 2018. After the effective date of this AD, only Bombardier Service Bulletin 84–57–26, Revision C, dated July 16, 2018, may be used.

(j) New Requirement of This AD: Replacement and Visual Inspection

Within 12,000 flight hours or 72 months after the effective date of this AD, whichever occurs first: Do a visual inspection of the saddle washer and retainer for any damage (cracks) or corrosion; and replace the wing front spar barrel nuts, bolts, and preload indicating washers; in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–26, Revision C, dated July 16, 2018.

(k) New Corrective Actions for Damage (Cracks) or Corrosion

If any damage (cracks) or corrosion is found during any inspection required by paragraph (j) of this AD: Before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (p)(2) of this AD.

(l) New Provision of This AD: Terminating Actions for Repetitive Torque Checks and Detailed Inspections

Accomplishment of the applicable actions required by paragraphs (j) and (k) of this AD, at all four barrel nut locations, terminates the repetitive torque checks and detailed inspections of paragraph (g) of this AD.

(m) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a barrel nut having part number DSC228–16.

(n) Retained Special Flight Permit Provisions, With Revised Compliance Language

This paragraph restates the requirements of paragraph (k) of AD 2011–18–15, with revised compliance language. Special flight permits, as described in 14 CFR 21.197 and 21.199, may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, New York ACO Branch, FAA, is required before issuance of the special flight permit. Before using any approved special flight permits, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office (FSDO). Operators must request a repair drawing from Bombardier, Inc., or De Havilland Aircraft of Canada Limited, which provides recommendations for a one-time special flight permit. After the effective date of this AD, only De Havilland Aircraft of Canada Limited may provide the repair drawing. The repair drawing will be applicable to the

operator's aircraft serial number only. Special flight permits may be permitted provided that the conditions specified in paragraphs (n)(1) through (5) of this AD are met.

(1) Only one barrel nut out of four is cracked, one cradle is cracked, or one washer is loose; all other strut (wing front spar) bolt locations must be free of damage.

(2) The airplane must operate with reduced airspeed not to exceed 180 KIAS (knots indicated air speed). No passengers and no cargo are onboard.

(3) The airplane must not operate in known or forecast turbulence, other than light turbulence.

(4) The airplane descent rate on landing flare-out is not to exceed 5 feet per second.

(5) Heavy braking or hard turning of the airplane upon landing is to be avoided if possible.

(o) Credit for Previous Actions

(1) This paragraph restates the provisions of paragraph (j) of AD 2011–18–15, with revised formatting and updated service information. This paragraph provides credit for torque checks, initial inspections, and replacements required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (o)(1)(i) through (v) of this AD, which is not incorporated by reference in this AD. The repetitive torque checks, and as applicable, the inspections required by paragraph (g) of this AD must be continued at the time specified.

(i) Bombardier Alert Service Bulletin A84–57–19, dated February 1, 2008.

(ii) Bombardier Alert Service Bulletin A84–57–19, Revision A, dated February 6, 2008.

(iii) Bombardier Alert Service Bulletin A84–57–19, Revision B, dated March 6, 2008.

(iv) Bombardier Alert Service Bulletin A84–57–19, Revision C, dated August 20, 2008.

(v) Bombardier Alert Service Bulletin A84–57–19, Revision D, dated August 12, 2011.

(2) This paragraph provides credit for the actions required by paragraphs (h) through (k) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (o)(2)(i) through (iii) of this AD. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 84–57–26, dated March 21, 2013.

(ii) Bombardier Service Bulletin 84–57–26, Revision A, dated July 18, 2014.

(iii) Bombardier Service Bulletin 84–57–26, Revision B, dated February 26, 2015.

(3) This paragraph provides credit for the actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (o)(3)(i) and (ii) of this AD.

(i) Bombardier Alert Service Bulletin A84–57–25, dated July 20, 2011, which was incorporated by reference in AD 2011–18–15.

(ii) Bombardier Service Bulletin A84–57–25, Revision A, dated July 16, 2018, which is incorporated by reference in this AD.

(p) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(3) AMOCs approved previously for AD 2011–18–15 are approved as AMOCs for the corresponding provisions of this AD.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2011–24R1, dated January 21, 2019, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0493.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7330; fax: 516–794–5531; email: 9-avsnnyaco-cos@faa.gov.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (r)(4) and (5) of this AD.

(r) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 27, 2019.

(i) Bombardier Service Bulletin A84–57–25, Revision A, dated July 16, 2018.

(ii) Bombardier Service Bulletin 84–57–26, Revision C, dated July 16, 2018.

(4) For service information identified in this AD, contact De Havilland Aircraft of Canada Ltd., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; phone: 416–375–4000; fax:

416–375–4539; email: thd@dehavilland.com; internet: <https://dehavilland.com>.

(5) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on October 7, 2019.

Michael Kaszycki,

Acting Manager, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23076 Filed 10–22–19; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1220 and 1221

[Docket No. CPSC–2019–0025]

Revisions to Safety Standards for Non-Full-Size Baby Cribs and Play Yards

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC) previously published consumer product safety standards for non-full-size baby cribs (NFS cribs) and play yards under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standards incorporated by reference the ASTM voluntary standard for NFS cribs and play yards, with modifications. ASTM recently revised the voluntary standard for NFS cribs and play yards. The CPSIA provides a process for when a voluntary standards organization updates a standard that the Commission incorporated by reference in a section 104 rule. Consistent with that process, this direct final rule revises the mandatory standards for NFS cribs and play yards to incorporate by reference the updated version of the ASTM standard.

DATES: The rule is effective on January 20, 2020, unless CPSC receives a significant adverse comment by November 22, 2019. If CPSC receives such a comment, it will publish a notice in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 20, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2019–0025, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments provided on the website. To ensure timely processing of comments, please submit all electronic comments through www.regulations.gov, rather than by email to CPSC.

Written Submissions: Submit written comments by mail, hand delivery, or courier to: U.S. Consumer Product Safety Commission, Division of the Secretariat, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments, without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, submit such information by mail, hand delivery, or courier.

Docket: For access to the docket to read background documents or comments, go to: <http://www.regulations.gov>, and insert the docket number, CPSC–2019–0025, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; email: jjirgl@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

1. Initial Mandatory Standards for Durable Infant or Toddler Products

Section 104 of the CPSIA (Pub. L. 110–314, 122 Stat. 3016) requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products¹ and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the voluntary standard, or may be “more stringent than” the voluntary standard, if the Commission determines that more stringent requirements would

¹ The statute lists NFS cribs and play yards as durable infant or toddler products. 15 U.S.C. 2056a(f)(2).

further reduce the risk of injury associated with the product. *Id.*

Under this authority, the Commission adopted mandatory standards for NFS cribs and play yards in 16 CFR parts 1220 and 1221, respectively. The Commission defines NFS cribs and play yards in 16 CFR 1220.1(c). In general, a NFS crib is “a bed that is designed to provide sleeping accommodations for an infant” that meets specified dimensions.² A play yard is a framed enclosure that includes a floor and mesh or fabric sides in which children sleep or play.³ The Commission’s mandatory standards incorporated by reference ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards* (ASTM F406), which is the voluntary standard for NFS cribs and play yards. The Commission issued separate rules for NFS cribs and play yards, although they are covered by the same voluntary standard, because section 104(c) of the CPSIA includes unique provisions for rules regarding cribs (both full-size and NFS cribs), applying initial crib standards to more parties than are ordinarily subject to section 104 rules.⁴ 15 U.S.C. 2056a(c)(1), (2).

² 16 CFR 1220.1(c)(1) defines a NFS crib as “a bed that is: (i) Designed to provide sleeping accommodations for an infant; (ii) Intended for use in or around the home, for travel, in a child care facility, in a family child care home, in a place of public accommodation affecting commerce and other purposes; (iii) Has an interior length dimension either greater than 139.7 cm (55 in.) or smaller than 126.3 cm (49¾ in.), or, an interior width dimension either greater than 77.7 cm (30¾ in.) or smaller than 64.3 cm (25¾ in.), or both . . . (v) Does not include mesh/net/screen cribs, nonrigidly constructed baby cribs, cradles (both rocker and pendulum types), car beds, baby baskets, and bassinets (also known as junior cribs).” It further states that NFS cribs include, but are not limited to, portable cribs, crib pens, specialty cribs, undersize cribs, and oversize cribs, which the regulation also defines.

³ 16 CFR 1220.1(c)(2) defines a play yard as “a framed enclosure that includes a floor and has mesh or fabric sided panels primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.”

⁴ Section 104(c) of the CPSIA requires more parties to comply with standards for cribs than the Commission adopts under section 104(b) than other durable infant or toddler product standards. Specifically, section 104(c) prohibits the following parties from manufacturing, selling, contracting to sell or resell, leasing, subletting, offering, providing for use, or otherwise placing in the stream of commerce a crib that is not in compliance with a standard promulgated under section 104(b):

“any person that—(A) manufactures, distributes in commerce, or contracts to sell cribs; (B) based on the person’s occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes; (C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or (D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard

The Commission's standard for NFS cribs initially incorporated by reference ASTM F406–10a, with modifications. 75 FR 81766 (Dec. 28, 2010). When ASTM later updated its standard, issuing ASTM F406–17, the Commission updated the mandatory standard to incorporate by reference this revised edition, with modifications. 83 FR 26206 (June 6, 2018). The mandatory standard for NFS cribs does not apply to play yards, and excludes the provisions in ASTM F406 that only relate to play yards.

The Commission's standard for play yards initially incorporated by reference ASTM F406–12a, with modifications. 77 FR 52220 (Aug. 29, 2012). When ASTM later updated its standard, issuing ASTM F406–13, the Commission updated the mandatory standard to incorporate by reference this revised edition, with modifications. 78 FR 50328 (Aug. 19, 2013). The mandatory standard for play yards does not apply to NFS cribs, and excludes the provisions in ASTM F406 that only relate to NFS cribs.

2. Revisions to Section 104 Rules

The CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference in a section 104 rule. First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, “the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.” 15 U.S.C. 2056a(b)(4)(B).

As noted above, section 104(c) of the CPSIA includes unique provisions for

rules regarding cribs. Under sections 104(c)(1) and (2), standards the Commission adopts for cribs under section 104(b) of the CPSIA apply to more parties than are ordinarily subject to section 104 rules.⁵ 15 U.S.C. 2056a(c)(1), (2). However, this expanded application does not apply to revisions to the Commission's crib standards unless certain circumstances apply.⁶ *Id.* 2056a(c)(3). Section 104(c)(3) states that when the Commission revises a crib standard that it adopted under section 104(b), the revised mandatory standard applies to crib manufacturers and importers (rather than the expanded list of parties that are subject to initial crib standards in section 104(c)(1) and (2)). *Id.* However, the Commission may apply revised crib standards to other parties in the expanded list if it determines that it is “necessary to protect against an unreasonable risk to health or safety.” *Id.* If the Commission applies the standard to additional parties, it must provide at least 12 months for parties to comply. *Id.*

ASTM notified the Commission on July 24, 2019 that it had updated the NFS cribs and play yards standard, issuing ASTM F406–19.⁷ As this preamble discusses, the revisions regarding NFS cribs are neutral on safety and the revisions regarding play yards improve or are neutral on safety. Accordingly, the Commission is not making the determination that “the proposed revision does not improve the safety of the consumer product.” The Commission also is not specifying a later effective date than that provided in the statute. Therefore, under the CPSIA, ASTM F406–19 will become the mandatory standard for NFS cribs and play yards effective January 20, 2020, 180 days after CPSC received ASTM's notice.

In addition, the Commission is not making the determination that applying the revised standard for NFS cribs to additional parties is “necessary to protect against an unreasonable risk to health or safety.” Therefore, the revised mandatory standard for NFS cribs will apply to parties that manufacture or import cribs, and not the additional parties listed in section 104(c)(1) and (2) of the CPSIA.

B. Revised ASTM Standard

The ASTM standard for NFS cribs and play yards includes performance requirements and test methods, as well as requirements for warning labels and instructional literature, to address hazards to children associated with NFS cribs and play yards.

As described below, the revisions in ASTM F406–19 regarding NFS cribs provide additional detail and clarity, and are neutral on safety, as compared to 16 CFR part 1220. Similarly, the revisions in ASTM F406–19 regarding play yards provide revised and additional requirements that improve the safety of play yards or are neutral on safety, as compared to 16 CFR part 1221. For this reason, the Commission concludes that the revised standard for NFS cribs maintains the level of safety that the existing regulation provides, and the revised standard for play yards, overall, improves the level of safety that the existing regulation provides. Because the Commission declines to determine that the revised standard “does not improve the safety” of NFS cribs or play yards, the revised ASTM standard will become CPSC's new standards for these products.

The following sections discuss the revised portions of the ASTM standard and compare them with the existing requirements in 16 CFR parts 1220 and 1221.

1. Revisions Regarding NFS Cribs

The existing mandatory standard for NFS cribs requires compliance with ASTM F406–17, with modifications to exclude several sections of ASTM F406–17 from the mandatory standard. The excluded sections (which address scissoring, shearing, and pinching; bassinet and cradle accessories; and other requirements) are only relevant to play yards. The revised mandatory standard in 16 CFR part 1220 excludes the same requirements.⁸

The only substantive difference between the requirements for NFS cribs in ASTM F406–19 and ASTM F406–17 is that ASTM F406–19 includes a revised toehold provision in the construction and finishing requirements for NFS cribs (section 6.6.3). ASTM F406–19 also includes an editorial revision (section 6.9⁹) that does not

to the phrase “not owned by the Federal Government”).” 15 U.S.C. 2056a(c)(1), (2).

Congress effectively limited this expanded application of crib standards to only initial 104 rules for cribs when it amended the CPSIA in 2011. The amendment added section 104(c)(3), which addresses revisions to crib standards, and allows the expanded application stated in section 104(c)(1) and (2) to apply to revisions to crib standards only in certain circumstances. 15 U.S.C. 2056a(c)(3); Public Law 112–28, 125 Stat. 273 (Aug. 12, 2011).

⁵ See footnote 4, above.

⁶ Congress amended the CPSIA in 2011, adding section 104(c)(3) to address revisions to crib standards, which effectively made the expanded application of crib standards only applicable to the Commission's initial 104 rules for cribs. 15 U.S.C. 2056a(c)(3); Public Law 112–28, 125 Stat. 273 (Aug. 12, 2011).

⁷ ASTM approved ASTM F406–19 on March 15, 2019, and published it in May 2019.

⁸ Nearly all of the excluded requirements are in the same sections in ASTM F406–19 as they were in ASTM F406–17, with one exception. Specifically, the requirements that were in sections 8.28 to 8.28.4 in ASTM F406–17 are in sections 8.28 to 8.28.3.2 in ASTM F406–19. Accordingly, the Commission is updating the sections referenced in 16 CFR part 1220.

⁹ Section 6.9 states the rationale for the requirement in section 6.8 that specifies the order

alter the substantive requirements for NFS cribs or affect safety.

Section 6.6.3 prohibits the ends and sides of NFS cribs from having surfaces that can serve as toe-holds for a child inside the crib, and specifies the dimensions and location of prohibited toe-holds. This requirement aims to reduce the risk of children climbing out of NFS cribs by reducing the surfaces children can use as a foothold to boost themselves over the rail of a crib. In ASTM F406–17, this provision specified the upper height limit of prohibited toe-holds, but did not specify a lower bound; ASTM F406–19 adds a lower bound of 1 inch. CPSC staff believes that this lower bound is reasonable in light of the lower bound for toe-holds specified in the standard for full-size baby cribs, and because it will provide greater clarity for test laboratories to conduct consistent testing for this requirement. Staff believes that this revision is neutral on safety, when compared to the existing standard in 16 CFR part 1220.

2. Revisions Regarding Play Yards

The existing mandatory standard for play yards requires compliance with ASTM F406–13, with modifications. The modifications exclude from the mandatory standard the sections of ASTM F406–13 that address requirements for NFS cribs. In addition, the mandatory standard modifies section 9.4.2.10 of the voluntary standard. Section 9.4.2.10 requires a warning on products with a separate mattress that is not permanently fixed in place to state: “Use ONLY mattress/pad provided by manufacturer,” along with the minimum length, width, and thickness of the mattress. The mandatory standard specifies that play yards that meet the criteria in section 9.4.2.10 must bear only the warning statement (not the permissible mattress dimensions). The revised mandatory standard in 16 CFR part 1221 includes the same exclusions and modifications.¹⁰

The substantive differences between the requirements for play yards in ASTM F406–19 and ASTM F406–13 are as follows:

- Revised and additional requirements to ensure that provisions regarding entrapment in accessories to

play yards address cantilevered accessories;

- clarification of where to place a stability testing device;
- a modified mattress vertical displacement test, and an accompanying definition for “mattress support surface”; and
- an alternate on-product warning label for cribs intended for use in child care facilities.

These revisions are discussed below. ASTM F406–19 also includes editorial revisions that do not alter the substantive requirements for play yards or affect safety.¹¹

Cantilevered accessories. ASTM F406–19 includes a definition of cantilevered accessories (section 3.1.4), as well as revised provisions (section 5.15 and 8.26) to address these accessories. ASTM F406–13 included section 5.15 and 8.26, which address entrapment in accessories, but did not explicitly apply these requirements to cantilevered accessories, address how to assess openings in them, or define the term. CPSC staff believes that these modifications improve the safety of play yards, when compared to the existing standard in 16 CFR part 1221, by ensuring the standard assesses entrapment hazards in cantilevered accessories.

Stability testing. Section 8.17 in ASTM F406–13 provides a test for assessing the stability of products. In ASTM F406–19, this section remains the same, except with slight wording modifications to provide clarity to test technicians about where, precisely, to place the stability test device. CPSC staff believes that this modification is neutral on safety, when compared to the existing standard in 16 CFR part 1221.

Mattress vertical displacement test. Section 8.28 in ASTM F406–13 provides a mattress vertical displacement test. Section 8.28 in ASTM F406–19 includes the same test, but with slight wording modifications, and includes an additional test. In ASTM F406–19, the original mattress vertical displacement test is referred to as the “primary test,” and the wording of the test procedure replaces “record” with “measure,” and replaces “repeat this test at the other corners” with “repeat this test with the clamp relocated to the other corners.” CPSC staff believes that these wording changes more precisely describe how to conduct the test, which reduces variations in testing, and is neutral on

safety when compared to the existing standard in 16 CFR part 1221.

In addition, ASTM F406–19 includes a new “secondary test” to perform if any corner or location does not meet the standard using the primary test. The secondary test applies the same force in the same manner as the primary test, and uses the same criteria for passing (less than 5.25 inch displacement), but measures displacement from different points. While the primary test measures displacement from “the reference point on the clamp relative to the fixed reference point,” the secondary test measures displacement from “the bottom surface of the mattress just beneath the clamp attachment and the mattress support surface.” As the rationale in Note 17 in the standard explains, although the primary test works well for products with a tubular floor support structure, it does not work as well for “products that sit directly on the floor and do not have a tubular floor support structure.” The secondary test addresses these products. CPSC staff believes that the secondary test is neutral on safety, when compared to the existing standard in 16 CFR part 1221.

Related to the revisions to mattress vertical displacement testing, ASTM F406–19 also includes a new definition and note. Section 3.1.15 of ASTM F406–19 defines “mattress support surface,” which is relevant to the secondary test described above. Section 7.9.1.2, Note 7 explains the rationale for elements of the mattress vertical displacement test, including the displacement limit, which approximately corresponds with a 6-month old child’s head for purposes of assessing entrapment hazards. CPSC staff believes that these revisions are neutral on safety, when compared to the existing standard in 16 CFR part 1221.

Warning statements. Section 9.4.2.11 in ASTM F406–13 requires on-product warning statements to address the following: “Always provide the supervision necessary for the continued safety of your child. When used for playing, never leave child unattended.” ASTM F406–19 includes the same requirement, but allows products that are intended for use in child care facilities to display either the above warning statement or a warning that “child in crib must be under supervision at all times.”¹² CPSC staff

in which certain performance testing must occur. The editorial revision in section 6.9 of ASTM F406–19 simply corrects a typo, by replacing “the” with “be” in the phrase the “assembly most likely to be affected.”

¹⁰ All of the excluded and modified requirements are in the same sections in ASTM F406–19 as they were in ASTM F406–13. Accordingly, the sections referenced in 16 CFR part 1221 remain the same.

¹¹ Examples of editorial revisions in ASTM F406–19 include a precautionary caveat in section 1.5 about the safety concerns the standard addresses, as well as explanatory notes or statements to clarify or explain existing requirements.

¹² Note that although the alternative warning statement uses the word “crib,” the requirement applies to all products covered by the standard, which includes both NFS cribs and play yards. This preamble does not list this revision as a change to the NFS cribs standard because the existing NFS cribs standard incorporated by reference a newer version of ASTM F406, which already included this alternative warning statement.

believes that, although the warning statement required in ASTM F406–13 was sufficient, the alternative statement may be appropriate for child care facilities, where continued supervision is necessary and expected.

C. Direct Final Rule Process

In this notice, the Commission is updating the version of the ASTM standard incorporated by reference in 16 CFR parts 1220 and 1221 to reflect the revised standard that takes effect by operation of law under the CPSIA. The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, the APA provides an exception to this when an agency “for good cause finds” that notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b), (c).

When the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference into a rule under section 104 of the CPSIA, notice and the opportunity to comment is unnecessary. This is because, under the terms of the CPSIA, such an update automatically becomes CPSC’s mandatory standard, unless the Commission takes action to prevent it. 15 U.S.C. 2056a(b)(4)(B). With respect to ASTM F406–19, the Commission is not taking action to prevent it from becoming the new mandatory standard for NFS cribs and play yards. Therefore, the revised ASTM standard will become CPSC’s standard by operation of law. Public comments would not influence the substantive changes to the standard or the effect of the revised standard under section 104 of the CPSIA. Therefore, notice and comment are unnecessary.

The purpose of this direct final rule is to update the edition of the standard the regulations reference, so that they accurately reflect the standard in effect under the statute. The Administrative Conference of the United States (ACUS) recommends that agencies use direct final rulemaking when the “unnecessary” prong of the good cause exemption in the APA applies. 60 FR 43108, 43111 (Aug. 18, 1995). With a direct final rule, the rule takes effect on the stated effective date, unless the agency receives an adverse comment within a specified time. This allows the agency to expedite noncontroversial rules, while still allowing for public comment. *Id.* at 43111. A direct final rule is appropriate here because the Commission believes this rule is

noncontroversial and will not elicit significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notice, the rule will become effective on January 20, 2020. Consistent with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without change.” *Id.* at 43111.

If the Commission receives a significant adverse comment, it will publish a notice withdrawing this direct final rule before the effective date. Depending on the comment and other relevant considerations, the Commission may address the adverse comment in a subsequent direct final rule, or publish a notice of proposed rulemaking, providing an opportunity for public comments.

D. Incorporation by Reference

Sections 1220.2 and 1221.2 of the direct final rule incorporate by reference ASTM F406–19. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. These regulations require the preamble to a final rule to summarize the material and discuss the ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, *B. Revised ASTM Standard* of this preamble summarizes the major provisions of ASTM F406–19 that the Commission incorporates by reference into 16 CFR parts 1220 and 1221. Interested parties may obtain a copy of ASTM F406–19 from ASTM, through its website (<http://www.astm.org>), or by mail from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Alternatively, interested parties may inspect a copy of the standard at CPSC’s Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7923.

E. Certification

The Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires manufacturers of products that are subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the

Commission, to certify that the product complies with all applicable CPSC requirements. 15 U.S.C. 2063(a). For children’s products, the manufacturer must base this certification on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. *Id.* 2063(a)(2). These testing and certification requirements apply to products for which the Commission issues rules under CPSIA section 104, because they are consumer product safety standards. *See id.* 2056a(b).

Because NFS cribs and play yards are children’s products, a CPSC-accepted third party conformity assessment body must test samples of these products. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,¹³ the phthalates prohibitions in section 108 of the CPSIA,¹⁴ the tracking label requirements in section 14(a)(5) of the CPSA,¹⁵ and the consumer registration form requirements in section 104(d) of the CPSIA.¹⁶

F. Notice of Requirements

As discussed above, an accredited third party conformity assessment body must test children’s products that are subject to a children’s product safety rule for compliance with the applicable rule. 15 U.S.C. 2063(a)(2). The Commission must publish a notice of requirements (NOR) for third party conformity assessment bodies to obtain accreditation to assess conformity with a children’s product safety rule. *Id.* 2063(a)(3)(A).

As the CPSA requires, the Commission published NORs for accreditation of third party conformity assessment bodies for testing NFS cribs and play yards. 15 U.S.C. 2063(a)(3)(B)(ii), (vi); 78 FR 15836 (Mar. 12, 2013) (adopting 16 CFR 1112.15(b)(6) and (7), codifying NORs for NFS cribs and play yards, respectively). The NORs provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing NFS cribs to 16 CFR part 1220 and play yards to 16 CFR part 1221. The NORs are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies” in 16 CFR part 1112.

The revised provisions in ASTM F406–19 do not require any significant

¹³ 15 U.S.C. 1278a.

¹⁴ 15 U.S.C. 2057c.

¹⁵ 15 U.S.C. 2063(a)(5).

¹⁶ 15 U.S.C. 2056a(d).

changes in the test methods or tools that third party conformity assessment bodies use to assess NFS cribs or play yards for compliance with the mandatory standards. Accordingly, laboratories that have demonstrated competence for testing in accordance with ASTM F406–17 for NFS cribs and ASTM F406–13 for play yards would have the competence to test in accordance with the revised mandatory standards. Laboratories will begin testing to the new standards when ASTM F406–19 goes into effect for NFS cribs and play yards, and the existing accreditations that the Commission has accepted for testing to these standards will cover testing to the revised standards. Therefore, the existing NORs for these standards will remain in place, and CPSC-accepted third party conformity assessment bodies will need to update the scope of their accreditations to reflect the revised standards in the normal course of renewing their accreditations.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) requires agencies to consider the potential economic impact of a proposed and final rule on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies when an agency is required to publish notice of a rulemaking. *Id.* As discussed in *C. Direct Final Rule Process* of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule, and therefore, the Commission is not required to publish notice of this rulemaking because it falls under the good cause exception in the APA. *Id.* 553(b). Accordingly, the RFA does not apply to this rulemaking. Nevertheless, we note that this rule will have minimal economic impacts because it incorporates by reference a standard that is largely consistent with the existing mandatory requirements.

H. Paperwork Reduction Act

The current mandatory standards for NFS cribs and play yards include requirements for labeling and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). The revised mandatory standards do not substantively alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR parts 1220 and 1221, including obtaining approval and a control number. Because the

information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA designated this rule as not a “major rule,” as defined in 5 U.S.C. 804(2). In addition, to comply with the CRA, CPSC’s Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

J. Environmental Considerations

CPSC’s regulations list categories of agency actions that “normally have little or no potential for affecting the human environment.” 16 CFR 1021.5(c). Such actions qualify as “categorical exclusions” under the National Environmental Policy Act (42 U.S.C. 4321–4370m-12), which do not require an environmental assessment or environmental impact statement. One categorical exclusion listed in CPSC’s regulations is for rules or safety standards that “provide design or performance requirements for products.” 16 CFR 1021.5(c)(1). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Preemption

Under the CPSA, no state or political subdivision of a state may establish or continue in effect a requirement dealing with the same risk of injury as a Federal consumer product safety standard under the CPSA unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). However, states or political subdivisions of states may apply to CPSC for an exemption, allowing them to establish or continue such a requirement if the state requirement “provides a significantly higher degree of protection from [the] risk of injury” and “does not unduly burden interstate commerce.” *Id.* 2075(c).

Section 104 of the CPSIA refers to the rules issued under that section as

“consumer product safety standards,” and states that a revised standard “is considered a consumer product safety standard issued by the Commission under section 9” of the CPSA. 15 U.S.C. 2056a(b)(1), (b)(4)(B). Accordingly, consumer product safety standards that the Commission creates or revises under CPSIA section 104 preempt state and local requirements in accordance with the preemption provisions in the CPSA.

L. Effective Date

When a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard under section 104 of the CPSIA, the revised standard automatically becomes the new mandatory standard effective 180 days after the Commission receives notification. 15 U.S.C. 2056a(b)(4)(B). The Commission may prevent this automatic effective date by either publishing notice of a later effective date, or rejecting the revision. *Id.*

The Commission is taking neither of those actions with respect to the standards for NFS cribs and play yards. The Commission believes that the statutory effective date is reasonable because it provides sufficient time for firms to make necessary modifications within the usual timeframe provided for children’s product rules. ASTM approved ASTM F406–19 on March 15, 2019 and published it in May 2019, more than 6 months before the statutory effective date. Juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this timeframe because it is consistent with other CPSIA section 104 rules, which generally provide 6-month effective dates, and the Juvenile Products Manufacturers Association typically allows 6 months for products in its certification program to shift to a new standard. Therefore, ASTM F406–19 automatically will take effect as the new mandatory standard for NFS cribs and play yards on January 20, 2020, 180 days after the Commission received notice of the revision on July 24, 2019.

As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice and publishes a notice withdrawing this rule by the effective date, the rule will become effective on January 20, 2020.

List of Subjects

16 CFR Part 1220

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Safety, and Toys.

16 CFR Part 1221

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Safety, and Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1220—SAFETY STANDARD FOR NON-FULL-SIZE BABY CRIBS

- 1. Revise the authority citation for part 1220 to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec. 3, Pub. L. 112–28, 125 Stat. 273.

- 2. Revise § 1220.2 to read as follows:

§ 1220.2 Requirements for non-full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each non-full-size baby crib shall comply with all applicable provisions of ASTM F406–19, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved March 15, 2019. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) Comply with the ASTM F406–19 standard with the following exclusions:

- (1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F406–19.
- (2) Do not comply with section 5.16.2 of ASTM F406–19.
- (3) Do not comply with sections 5.19 through 5.19.2.2 of ASTM F406–19.
- (4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products*, of ASTM F406–19.
- (5) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F406–19.
- (6) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F406–19.
- (7) Do not comply with sections 8.14 through 8.14.2 of ASTM F406–19.
- (8) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F406–19.
- (9) Do not comply with section 8.16 through 8.16.3 of ASTM F406–19.

(10) Do not comply with sections 8.28 through 8.28.3.2 of ASTM F406–19.

(11) Do not comply with sections 8.29 through 8.29.3 of ASTM F406–19.

(12) Do not comply with sections 8.30 through 8.30.5 of ASTM F406–19.

(13) Do not comply with sections 8.31 through 8.31.9 of ASTM F406–19.

(14) Do not comply with sections 9.3.2 through 9.3.2.4 of ASTM F406–19.

PART 1221—SAFETY STANDARD FOR PLAY YARDS

- 3. The authority citation for part 1221 is revised to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a).

- 4. Revise § 1221.1 to read as follows:

§ 1221.1 Scope.

This part establishes a consumer product safety standard for play yards manufactured or imported on or after January 20, 2020.

- 5. Revise § 1221.2 to read as follows:

§ 1221.2 Requirements for play yards.

(a) Except as provided in paragraph (b) of this section, each play yard must comply with all applicable provisions of ASTM F406–19, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards*, approved on March 15, 2019. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) Comply with the ASTM F406–19 standard with the following exclusions:

- (1) Do not comply with section 5.17 of ASTM F406–19.
- (2) Do not comply with section 5.20 of ASTM F406–19.
- (3) Do not comply with section 6, *Performance Requirements for Rigid Sided Products*, of ASTM F406–19.
- (4) Do not comply with sections 8.1 through 8.10.5 of ASTM F406–19.
- (5) Instead of complying with section 9.4.2.10 of ASTM F406–19, comply only with the following:
 - (i) 9.4.2.10 For products that have a separate mattress that is not

permanently fixed in place: Use ONLY mattress/pad provided by manufacturer.

(ii) [Reserved]

(6) Do not comply with section 10.1.1.1 of ASTM F406–19.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–23088 Filed 10–22–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 926**

[SATS No. MT–035–FOR; Docket ID: OSM–2013–0009; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Montana regulatory program (the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions and additions to the Montana statute, known as the Montana Code Annotated (MCA) about permit application requirements, coal prospecting requirements, annual reporting requirements for coal permittees, and lawsuits related to damages to water supplies. Montana also proposed to revise its regulations, the Administrative Rules of Montana (ARM), to incorporate changes about a new short form coal prospecting permit process.

DATES: The effective date is November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Chief, Denver Field Division, Telephone: (307) 261–6550. Email address: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Submission of the Proposed Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
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I. Background on the Montana Program

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and

reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). Additionally, the removal of the conditions of approval of the Montana program can be found in the February 11, 1982, **Federal Register** (47 FR 6266). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.12, 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated August 20, 2013, Montana sent OSMRE a proposed amendment to its regulatory program (Administrative Record Document ID No. OSM-2013-0009-0002) under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed revisions were in response to changes made to the Montana Strip and Underground Mine Reclamation Act and the ARM that were a result of Montana Senate Bill 286 and subsequent Montana Senate Bill 92, which were approved at the 2011 and 2013 Montana legislative sessions.

We announced receipt of the proposed amendment in the October 25, 2013, **Federal Register** (78 FR 63911). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM-2013-0009-0001). We did not hold a public hearing or meeting, as neither were requested. The public comment period ended on November 25, 2013. We did not receive any public comments but did receive comments from two Federal agencies.

III. OSMRE's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to Montana's Statutes or Regulations

Montana proposed minor wording, editorial, punctuation, grammatical,

citation, and cross-reference changes to the following previously approved rules and statutes. No substantive changes to the text of these regulations were proposed. Because these changes are minor, we find that they will not make Montana's statute or regulations inconsistent with Federal statute or regulations, less stringent than SMCRA, or less effective than the corresponding Federal regulations. The specific, minor changes are as follows:

- MCA 82-4-227(8), related to the applicant violator system; minor editorial change; counterpart Federal provision found at SMCRA 515(b)(12) (30 U.S.C. 1265(b)(12);
- MCA 82-4-237(1), (1)(a), (1)(b), (1)(c), (2), and (3), related to the operator filing annual reports; minor changes to statute with no Federal counterpart;
- ARM 17.24.1002(3), related to information and monthly reports; minor citation and cross-reference modifications; no Federal counterpart;
- ARM 17.24.1003(1), related to renewal and transfer of permits; minor changes to regulation with no Federal counterpart;
- ARM 17.24.1005(2)(d), related to drill holes; minor grammatical corrections; counterpart Federal regulations are found at 30 CFR 816.13, 816.14, and 816.15; and
- ARM 17.24.1016(3), related to bond requirements for drilling operations; minor changes to regulation with no Federal counterpart.

B. Revisions to Montana's Statutes and Regulations That Are in Accordance With and No Less Effective Than the Corresponding Provisions of SMCRA and the Federal Regulations

Montana proposed revisions to the following statutes or regulations containing language that is in accordance with and no less stringent than SMCRA. In addition, Montana's proposed revisions are no less effective than the corresponding sections of the Federal regulations. We are therefore approving the following changes:

- MCA 82-4-222(1)(k), (1)(l), (2), (2)(l), (2)(m), and (8), *Permit application—application revisions*; [SMCRA Sec. 507(b)(14) (30 U.S.C. 1257(b)(14))];
- MCA 82-4-226(1), (2), (7), (7)(b)(i), (7)(b)(ii), and (8), *Prospecting permit*; [SMCRA Sec. 512 (30 U.S.C. 1262) and 30 CFR 772];
- MCA 82-4-253(3)(d), *Suit for damage to water supply*; [SMCRA Sec. 717 (30 U.S.C. 1307)];
- ARM 17.24.1001(1)(b), (1)(c), (2), (2)(h)(iii)(F), (2)(q), and (7), related to permit requirements; [30 CFR 772.12 and 772.13]; and

- ARM 17.24.1019, *Permit Requirement—Short Form*; [30 CFR 772.11].

1. MCA 82-4-222(1)(k), (1)(l), (2), (2)(l), (2)(m), and (8)

The changes to MCA 82-4-222 are associated with general requirements that must be met upon submittal of a permit application to conduct coal mining. Montana's statute contains language that corresponds to SMCRA section 507(b) (30 U.S.C. 1257(b)) and the Federal regulations at 30 CFR 773.6, 779.24, 779.25, 783.24, and 783.25. The new language does not render Montana's statute less stringent than SMCRA nor less effective than the Federal regulations.

The change at MCA 82-4-222(1)(k) concerns the number of copies of geologic cross sections that must be submitted for a permit application. Montana proposes to change the number from "two copies each of two sets" to "two sets." The counterpart SMCRA section 507(b)(14) (30 U.S.C. 1257(b)(14)) and the regulations at 30 CFR 779.25(a) and 783.25(a) do not specify the number of copies required, merely stating that the application shall include cross sections, maps, and plans showing elevations and locations of test borings and core samplings.

The change at MCA 82-4-222(1)(l) pertains to the type of newspaper that the permittee may use to give public notification of a permit application, significant permit revision, or permit renewal. Montana is changing the type of newspaper from a daily newspaper to any newspaper; however, the requirement that the notification must be published in the newspaper once a week for four consecutive weeks is unchanged. SMCRA sections 507(b)(6) and 513 (30 U.S.C. 1257(b)(6) and 30 U.S.C. 1263, respectively), and Federal regulations at 30 CFR 773.6 state that the notification must be published once per week for four weeks, but does not specify whether the newspaper must be published daily. Additionally, Montana is adding language that clarifies that the applicant must provide this public notification in a newspaper that is published in the locality of the proposed operation and that it will be published again within the State if an initial announcement was published outside of Montana. Federal requirements also mandate that publication in a local newspaper of general circulation in the locality of the proposed mining operation must occur.

The change to MCA 82-4-222(2) outlines the requirement that a prospective permit applicant must submit maps as part of the permit

application package, permit renewal, or significant permit revision. Montana proposes to simplify the requirement in this subsection from two copies of each map to an unspecified number of "maps." The counterpart Federal regulations located at 30 CFR 779.24, 779.25, 783.24, and 783.25 similarly do not specify how many copies of each map must be submitted, only that the maps must be submitted.

Montana's modification to MCA 82-4-222(2)(l) concerns the requirement for a permit application to include information on pre-mining vegetation. Montana is proposing to eliminate references to "varieties" of plants and replace these references to "species" of plants and trees. In botanical nomenclature, variety is a taxonomic rank below species. In practice, it may be difficult and unnecessary to inventory existing vegetation at this level of specificity. Providing vegetation species information, including abundance per acre and general distribution, provides the regulatory authority with sufficient information to characterize the premining vegetation community composition and structure. Montana is also deleting language indicating that the required vegetation information will include, but not be limited to, grasses, shrubs, legumes, forbs, and trees. The revised provision is interpreted as requiring descriptions of all vegetation life forms without such enumeration.

The counterpart Federal regulations at 30 CFR 779.19 and 783.19 employ the terms "vegetative types" and "plant communities" and also grant the regulatory authority discretion on whether to require information on these topics in an application. Although there is no specific statutory basis to refer to, SMCRA section 515(b)(19) (30 U.S.C. 1265(b)(19)) requires that a permanent vegetative cover of the same seasonal variety native to the area must be established on reclaimed lands with limited exceptions. Implicit in provision is a requirement to collect information on pre-mining vegetation. OSMRE finds that this minor modification to MCA 82-4-222(2)(l) should have no effect on the implementation of this law because sufficient pre-mining vegetation information will be collected and provided in the permit application. This information, along with soils, climate, and land use information, will assist the regulatory authority in assessing the appropriateness of proposed revegetation plans and in predicting the potential for reestablishing vegetation upon final reclamation.

The change to MCA 82-4-222(2)(m) pertains to the certification and

notarization of maps that are submitted as part of a permitting application. Montana is removing the language that previously stipulated the wording of professional certifications, and now simply requires certification by a professional engineer or professional land surveyor licensed as provided by Title 37, Chapter 67 of the MCA. SMCRA section 507(b)(14) (30 U.S.C. 1257(b)(14)) requires maps to be certified by a professional engineer or a professional geologist with assistance from experts in related fields, such as land surveying and landscape architecture. There are no implementing Federal regulations that specify the language to be included in certifications of these professionals.

The change to MCA 82-4-222(8) pertains to the public availability of a permit application, significant revision, or permit renewal. Specifically, Montana is adding language to the existing statute to allow this information to be made available at any accessible public office or facility approved by the regulatory authority. Previously, the public review file was required to be held by the clerk and recorder at the courthouse of the county where a major portion of the mining is to occur. Montana's change adds flexibility to the provision, while ensuring permit applications are publicly available at appropriate locations approved by the Montana Department of Environmental Quality (DEQ). SMCRA section 507(e) (30 U.S.C. 1257(e)) affords similar flexibility, providing that the application be publicly available either through the recorder at the courthouse of the county or an appropriate public office approved by the regulatory authority where the mining is to occur.

2. MCA 82-4-226(1), (2), (7), (7)(b)(i), (7)(b)(ii), and (8)

Montana is amending MCA 82-4-226 to modify coal-prospecting procedures to allow for a new type of prospecting permit when the prospecting is conducted to determine the location, quantity, and quality of coal that is outside an area designated as unsuitable, does not remove more than 250 tons of coal, and does not substantially disturb the land surface. The effect of the modifications to Montana's coal prospecting statute causes the process to have three tiers of prospecting regulation, rather than the existing two tiers.

The first tier is submittal of a notice of intent (NOI) to gather baseline data, identify access routes, locate drill hole locations and other relevant information outside an area designated as unsuitable for coal mining. Coal removal is not

authorized under an NOI in Montana. The new second tier is referred to as the short form prospecting permit, which would be used for prospecting outside of areas designated as unsuitable for mining and where prospecting is conducted to determine the location, quantity, or quality of coal, but would not be used to authorize removal of more than 250 tons. The third tier is Montana's existing prospecting permit process, which the State will continue to follow in instances when prospecting activities will substantially disturb the land surface, remove more than 250 tons of coal, or be conducted within an area designated as unsuitable for coal mining. The performance standards about coal prospecting are codified in ARM Title 17, Chapter 24, Subchapter 10, and many of these standards are also being revised under this rulemaking. All prospecting activities discussed here are to occur outside of a valid coal mining permit area. When prospecting activities occur within a valid mining permit, those activities are appropriately regulated under the mining permit and a separate NOI or prospecting permit is unnecessary.

Montana is modifying MCA 82-4-226(1) to clarify that the standard prospecting permit requirements identified therein do not apply to activities conducted under either an NOI or the new short form permit processes. These exclusions clarify the distinction between the requirements for prospecting activities that will involve more significant land disturbances and therefore require a standard long form permit process and the requirements for prospecting activities that involve less significant surface disturbances and will therefore require either a short form permit or NOI.

Changes to subsection 7(a) further clarify that coal prospecting, which is not conducted on lands designated as unsuitable for mining, is not conducted to determine the characteristics of a coal deposit, and does not remove more than 250 tons of coal, requires an NOI rather than a prospecting permit. Montana's NOI process allows access to lands to gather baseline data or for planning purposes where very little surface disturbance is anticipated. A prospector may then apply for either a short or long form prospecting permit to remove coal and characterize the coal seam. Language deleted from existing subsection (7)(a) removes the ability to conduct prospecting to determine the location, quality, or quantity of a mineral deposit under an NOI. This type of activity now requires a short form prospecting permit.

The new short form prospecting permit process is outlined in subsections 7(b) and (8). The short form permit process applies to coal prospecting that is conducted to determine the characteristics of a coal deposit, does not significantly disturb the land surface, does not remove more than 250 tons of coal, and is conducted in an area that is not designated as unsuitable for coal mining. The addition of this section causes Montana to go from a two-tiered process to a more comprehensive, three-tiered process related to coal prospecting, as discussed above. Montana's short form prospecting permit is applicable to activities that would be regulated under an NOI under the approved Montana program.

Drilling operations, associated disposal pits, and groundwater monitoring wells will not be considered "substantial surface disturbance" for the purpose of this part and may be regulated under the short form permit process. Comparison of this proposed statutory basis for a definition of "substantially disturb" to the Federal definition located in 30 CFR 701.5 does not yield any conflicts that would render the Montana revisions less effective than the Federal regulations. The Federal definition of "substantially disturb" at 30 CFR 701.5 does not explicitly include or mention disturbance caused by exploration drilling or water monitoring well installation. The Federal definition indicates that substantial disturbance involves removal of more than 250 tons of coal, the same criterion that would invoke a more involved permitting process under the Montana program. Montana's use of the term "associated disposal pits" refers to drilling mud pits that constitute a disturbance less than that of the drilling pad, generally about one quarter to one half of an acre.

New section MCA 82-4-226(8) specifies the requirements for the new short form permits, including application contents, DEQ review and decision timeframes and procedures, public notification and comment procedures, and the approval processes. Short form permits must include specific contact information, a narrative description of the proposed area or a map of the area showing drill hole locations, occupied dwellings, roads, topography, hydrologic features, and pipelines. The application must also include documentation of the legal right to prospect, a statement of the period of intended prospecting, and a description of methods for prospecting and for reclaiming disturbances.

Under new subsection (8)(b), the DEQ will notify the applicant whether the application is complete and preliminarily acceptable within 10 working days of receipt. New subsection (8)(c) provides the applicant five working days to respond to any identified deficiencies. New subsection (8)(d) provides that when DEQ notifies the applicant that the application is complete, it will also indicate the required bond amount. New subsection (8)(e) indicates that after receipt of the completeness determination, the applicant will publish an advertisement in a newspaper of general circulation in the locality of the proposed prospecting activity describing the application and identifying where the public may review its contents and how to submit comments. The public is allowed 10 days from the date of publication to submit comments. Under new subsection (8)(f), the DEQ will issue its decision to accept or reject the application within five days of the close of the public comment period if no comments were received and within 10 days if comments are received. DEQ may identify necessary changes to the bond amount at that time.

New subsection (8)(g) indicates that short form permits are subject to subsections (3) through (6). This clarifies the exemption in subsection (1), which otherwise might be interpreted as excluding both NOI and short form prospecting permits from all requirements of subsections (1) through (6). Subsections (3) through (6) include requirements, such as performance bonds, a one-year renewable permit term, filing of progress reports, and other required, relevant information, which exceed the requirements for this type of exploration under Federal statute and regulation and the Montana program.

MCA 82-4-226(8) sets out substantively more requirements for the short form permitting process than the Federal counterpart provisions, which regulate this type of exploration activity under an NOI. Montana's short form prospecting requirements are no less stringent than SMCRA and no less effective than the implementing regulations. Specifically, OSMRE finds that the changes to MCA section 82-4-226 are no less stringent than SMCRA section 512 (30 U.S.C. 1262) and no less effective than the Federal regulations governing coal exploration at 30 CFR part 772.

3. MCA 82-4-253(3)(d)

Montana is amending its statute to make clear that coal mine operators are liable for replacing water supplies that

have been diminished, interrupted, or contaminated by mining, regardless of whether surface or underground mining methods are employed. Although MCA 82-4-253 clearly applies to surface and underground mining operations, previous wording at subsection (3)(d) appeared to apply only to surface mines. This change clarifies the scope of the existing statute, which is consistent with and no less stringent than SMCRA and no less effective than the Federal regulations.

4. ARM 17.24.1001(1)(b), (2), (2)(h)(iii)(F), (2)(q), and (7)

Montana passed Senate Bill 286 to allow for a new type of coal prospecting permit, which caused Montana to have three tiers of prospecting processes depending on the specific conditions of the operation. ARM section 17.24.1001 formerly pertained to the only level of prospecting permit requirements in Montana, and is now being amended to acknowledge the addition of the short form permit process. Prospecting conducted under an NOI is not considered a permit and is not subject to ARM 17.24.1001.

Montana's change at ARM 17.24.1001(1)(b) adds language indicating that prospecting permit requirements apply where activities will be conducted to determine the location, quality, or quantity of the mineral using drilling methods. Drilling operations conducted to characterize the coal seam that remove less than 250 tons of coal and occur outside an area designated as unsuitable for mining would be subject to the short form permit requirements. This revision acknowledges that the short form is still a permit under Montana's program and that if drilling operations remove more than 250 tons of coal they would be regulated under the standard permit process. There are no Federal provisions that describe standards for prospecting or exploration operations analogous to Montana's program. SMCRA and the regulations promulgated thereunder regulate exploration operations that remove less than 250 tons of coal from lands outside those areas designated as unsuitable for mining under NOI requirements. These types of operations carry a lesser regulatory burden in terms of reporting, mapping, and bonding. Furthermore, exploration operations that remove more than 250 tons of coal or occur within lands designated unsuitable for mining under an exploration permit analogous to Montana's existing long form prospecting permit are regulated pursuant to SMCRA and the regulations promulgated thereunder. The Montana program applies prospecting permit

requirements to more types of activities than required under corresponding Federal exploration requirements as enumerated in 30 U.S.C. 1262.

The modification at ARM 17.24.1001(2) adds an exception to the listed permit requirements for drilling operations, which are subject to the short form permit requirements under MCA 82–4–226(8). This change clarifies the distinction between the standard prospecting permit and the new short form prospecting permit under MCA 82–4–226(8).

Montana's change at ARM 17.24.1001(2)(h)(iii)(F) is an editorial correction that fixes a reference to fish and wildlife habitat and species information that must be provided in maps.

The modification to ARM 17.24.1001(2)(q) corrects a reference to public notification requirements that must be satisfied upon submittal of a coal prospecting permit. This regulation now correctly refers the reader to ARM 17.24.303(1)(x), which concerns the filing of a newspaper advertisement and proof of publication.

Montana's existing ARM 17.24.1001(7) concerns the transfer of coal prospecting activities to a mining permit when such activities become part of a mining operation. Montana correctly incorporates reference to ARM 17.24.1019, which is the new short form permitting process, and also corrects a previously inaccurate cross-reference to ARM 17.24.308(1)(b) for mine permit operations plans.

5. ARM 17.24.1019

Montana is incorporating a short form permitting process for coal prospecting operations that are outside an area designated unsuitable for mining, do not remove more than 250 tons of coal, and do not substantially disturb the natural land surface. Montana's short form prospecting permit covers the types of activities that the Federal statute and regulations would capture under an NOI. Specifically, the Federal regulations at 30 CFR 772.11 dictate that the analogous requirements apply outside of a mining permit area. Although Montana's provision does not indicate that it applies only outside of a mining permit area, exploration activities within a valid mining permit would be regulated under the mining permit. The Montana DEQ does not intend to require a short form exploration permit within mining permit areas.

The content requirements for short form permits are primarily codified under Montana's statute at MCA 82–4–226(8). New regulation language at ARM

17.24.1019 reiterates the types of activities are regulated under the short form, stipulates that the short form must be filed with the DEQ on a provided form, and that the application must be reviewed and approved prior to the initiation of operations.

Montana will apply all parts of ARM 17.24 subchapter 10, except ARM 17.24.1001(1), (2), and (4) through (6), 17.24.1006(2), and (3)(b) and (c), 17.24.1007, 17.24.1009, 17.24.1014, and 17.24.1018, to short form prospecting permits. These are the standard long form permitting and NOI requirements, which appropriately do not apply to short form prospecting operations.

All the Montana proposed statute and regulation changes listed above contain language that is no less stringent than and no less effective than SMCRA and the corresponding Federal regulations. Furthermore, Montana's changes are not inconsistent with SMCRA and other provisions of the Federal regulations. Consequently, we are approving the amendments.

C. Revisions to Montana's Rules With No Corresponding Federal Regulations

Montana's proposed revisions to the following rules contain language that has no Federal counterpart, but also is no less stringent than SMCRA and is no less effective than the Federal regulations. We are therefore approving these changes.

1. ARM 17.24.1018(1)(b), (2), (4), (5)(a), (6), (7), (8), and (9)

Montana is changing ARM 17.24.1018, *Notice of Intent to Prospect*, to reflect the distinction between NOIs and the new short form prospecting permits. Language deleted from ARM 17.24.1018(1)(b) removes the ability to conduct prospecting activities for the purpose of determining the location, quality, or quantity of the coal without substantially disturbing the land surface under an NOI. These activities must now be conducted under a short form prospecting permit. Language added to ARM 17.24.1018(1)(b) indicates that activities such as locating drill holes and identifying access routes are appropriately conducted under an NOI. Although the Federal program does not make a similar distinction, this language is consistent with Montana's statutory authority under MCA 82–4–226. The Federal program allows coal extraction through drilling to occur under an NOI, while Montana's program now requires a short form permit for such activities.

Changes to ARM 17.24.1018(2) clarify that the existing regulation pertains only to NOIs and that NOIs must meet the requirements of ARM 17.24.1018(3) and

(4). The change to ARM 17.24.1018(4) replaces “permit” with “notice of intent” because this section now only applies to NOIs. Changes to ARM 17.24.1018(5) delete the reference to prospecting permit requirements at ARM 17.24.1001(2)(a) through (i), and (2)(l) through (n) and replace these references with NOI requirements for maps specifying base layers, topography, hydrologic features, surface ownership, roads and access routes, locations of proposed monitoring facilities, and locations of pipelines and occupied dwellings. The Federal program does not delineate a tier of exploration, which involves only planning and monitoring activities without authority to construct roads or remove coal to characterize the seam. It is therefore not possible to compare the two programs in this regard. However, Montana's new language is similar to the mapping requirements for Federal NOIs under 30 CFR 772.11(b)(3) with the exception that drill holes and trenches and proposed roads would not be authorized under an NOI in Montana and as such are not included within the NOI map requirements.

Changes to ARM 17.24.1018(6) specify that the requirements of that part pertain only to the extent that the requirements are applicable to the proposed prospecting operation. Coal removal is not authorized under an NOI in Montana; therefore, surface disturbances would include only activities such as access road development or installation of monitoring equipment. The existing provision includes multiple cross references, which apply to operations involving coal removal or activities on protected lands. Because such activities would not be authorized under an NOI, Montana's revisions clarify that only the referenced provisions which are applicable to the proposed prospecting operation would be applied.

Changes to ARM 17.24.1018(7) are editorial in nature and clarify that when an applicant submits an NOI, the DEQ has 30 days to review and notify the person whether the NOI meets all applicable requirements.

Changes to ARM 17.24.1018(8) clarify that the requirement to have a copy of the NOI on-site pertains to all NOIs rather than only those that substantially disturb the land surface.

Changes to ARM 17.24.1018(9) update the list of prospecting permit requirements that do not apply to activities conducted under an NOI. These changes are appropriate due to the distinction between the types of activities authorized under NOIs and

prospecting permits and the requirements specified under each.

Because there are no Federal counterpart regulations to this portion of Montana's rules and because the use of the NOI process before issuing a prospecting permit is not inconsistent with provisions of the Federal program, OSMRE finds Montana's proposed changes to ARM 17.24.1018 to be no less effective than the Federal program.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM-2013-0009-0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program. On August 28, 2013, we requested comments on Montana's amendment (Administrative Record Document ID No. OSM-2013-0009-0007).

We received one response letter dated October 25, 2013, from the Mine Safety and Health Administration (MSHA) stating that they had no comment (Administrative Record Document ID No. OSM-2013-0009-0008).

We also received an email from the National Park Service (NPS) on October 23, 2013, stating that they had no comment on the amendment (Administrative Record Document ID No. OSM-2013-0009-0009).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 28, 2013, we requested comments on Montana's

amendment from the SHPO and the ACHP (Administrative Record Document ID No. OSM-2013-0009-0007), but neither responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve Montana's August 20, 2013, amendment. To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana program. In accordance with the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253) requires that the State's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency between State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1992, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct, rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Montana drafted.

Executive Order 13132—Federalism

This rule is not a "[p]olicy that [has] Federalism implications" as defined by Section 1(a) of Executive Order 13132 because it does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Instead, this rule approves an amendment to the Montana program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind, as set forth in Sections 2 and 3 of the Executive Order and with the principles of cooperative federalism, as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). As such, pursuant to Section 503(a)(1) and (7)(30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is "in accordance with" the requirements of SMCRA and is "consistent with" the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal

sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's Tribal consultation policy is not required. The basis for this determination is that our decision is on the Montana program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13405—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with Sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the Department of the Interior Departmental Manual, part 516, Section 13.5(A), State program amendments are not major Federal actions within the meaning of Section 102(2)(C) of the National

Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A-119 at p. 14). This action is not subject to the requirements of Section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in

costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, surface mining, underground mining.

Dated: August 21, 2019.

David Berry,

Director, Western Region, Regions 5, 7, 8, 9, 10, 11.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding an entry in chronological order by “date of final publication” to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
August 20, 2013	October 23, 2019	ARM 17.24.1001(1)(b), (1)(c), (2), (2)(h)(iii)(F), (2)(q), and (7), <i>Permit Requirement</i> ; ARM 17.24.1002(3), <i>Information and Monthly Reports</i> ; ARM 17.24.1003(1), <i>Renewal and Transfer of Permits</i> ; ARM 17.24.1005(2)(d), <i>Drill holes</i> ; ARM 17.24.1016(3), <i>Bond Requirements for Drilling Operations</i> ; ARM 17.24.1018(1)(b), (2), (4), (5)(a), (6), (7), (8), and (9), <i>Notice of Intent to Prospect</i> ; ARM 17.24.1019, <i>Permit requirement—short form</i> ; MCA 82–4–222(1)(k), (1)(l), (2), (2)(l), (2)(m), and (8), <i>Permit application—application revisions</i> ; MCA 82–4–226(1), (2), (7)(a), (7)(b)(i), (7)(b)(ii), and (8), <i>Prospecting permit</i> ; MCA 82–4–227 (8), <i>Refusal of permit—applicant violator system</i> ; MCA 82–4–237(1), (1)(a), (1)(b), (1)(c), (2), and (3), <i>Operator to file annual reports</i> ; MCA 82–4–253(3)(d), <i>Suit for damage to water supply</i> .

[FR Doc. 2019–22945 Filed 10–22–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[SATS No. VA–128–FOR; Docket ID: OSM–2016–0007; S1D1S SS08011000 SX066A000 201S180110; S2D2S SS08011000 SX066A000 20XS501520]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Virginia regulatory program (the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Virginia Coal Surface Mining Reclamation Regulations (the State regulations). The changes involve adding a provision to Virginia Administrative Code (VAC) to require Virginia to enter permit information into the Federal Applicant Violator System (AVS) and add a provision to the Virginia program to specify that the final compliance review conducted prior to permit issuance must occur no more than five business days before issuance.

DATES: The effective date is November 22, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Calhoun, Field Office Director, Charleston Field Office. Telephone: (304) 347–7158. Email: rcalhoun@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Submission of the Amendment
- III. OSMRE's Findings

IV. Summary and Disposition of Comments

V. OSMRE's Decision

VI. Statutory and Executive Order Reviews

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the requirements of this Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning the Virginia program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Submission of the Amendment

By letter dated April 29, 2016 (Administrative Record No. VA 2033) Virginia sent an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

We announced receipt of the proposed amendment in the March 31, 2017, **Federal Register** (82 FR 16010). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 1, 2017. No public comments were received.

III. OSMRE's Findings

Virginia submitted this program amendment to ensure consistency of Virginia and Federal regulations with respect to the AVS. The submission included changes to Title 4 of the VAC that includes the entry of permit information into the AVS upon receipt and review of an administratively complete application and to conduct a final compliance review prior to permit issuance no more than five business days before permit issuance. (Administrative Record No. VA 2033).

We are approving the amendment. Our specific findings concerning Virginia's amendment under SMCRA and the Federal regulations at 30 CFR 773.8 and 773.12 and the substantive changes to Virginia's Review of Permit Applications are described below.

4 VAC 25–130–773.15. Review of Permit Applications: Virginia seeks to revise subsection (a)(3) of this regulation, which addresses review of the information submitted under 4 VAC 25–130–778.13 and 4 VAC 25–130–778.14 about the applicant's or operator's permit histories, business structure, and ownership and control relationships. The division must also enter permit information into AVS upon receipt and review of an administratively complete application.

Additionally, in relationship to 4 VAC 25–130–773.15. **Review of Permit Applications:** Virginia seeks to revise subsection (e) to provide that the final compliance review of a permit application, required under 4 VAC 25–130–773.15(b)(1), must be conducted no more than five business days before permit issuance under 773.19 of this part.

The amendment to subsection (a)(3) of 4 VAC–25–130–773.15 adds the requirement that all permit information that must be reviewed by the regulatory authority must also be entered into the AVS. The addition of this requirement renders the Virginia program no less effective than its Federal counterpart at

30 CFR 773.8. Therefore, we approve the amendment to subsection (a)(3).

The addition of the requirement that the final compliance review take place no more than five business days before permit issuance renders subsection (e) of 4 VAC–25–130–773.15 no less effective than its Federal counterpart at 30 CFR 773.12(c). The amendment to subsection (e) is therefore approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and did not receive any.

Federal Agency Comments

On May 9, 2016, pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record No. 2034). No Federal agency comments were received.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on May 9, 2016, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment. The EPA did not provide any comments.

V. OSMRE's Decision

Based on the above findings, we are approving Virginia's amendment that was submitted on April 29, 2016 (Administrative Record No. VA 2033). To implement this decision, we are amending the Federal regulations, at 30 CFR part 946, which codify decisions concerning the Virginia program. In accordance with the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253) requires that the State's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency between State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on the analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency writes its legislation and regulations to minimize litigation, and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did

not extend to the language of the State regulatory program or to the program amendment that the Commonwealth of Virginia drafted.

Executive Order 13132—Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by Section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Virginia program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism, as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). Specifically, pursuant to Section 503(a)(1) and (7)(30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognitions of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Virginia program, which does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the

supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13405 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d) respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5 (A), state program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act. (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon the corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This

determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 2019

Thomas D. Shope,
Regional Director, North Atlantic—Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 946 is amended as set forth below:

PART 946—VIRGINIA

■ 1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by “date of Final publication” to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *		
April 29, 2016	October 23, 2019	Amend the following sections of the Virginia Administrative Code: Section 4 VAC 25–130–773.15(a)(3). Review of Permit Applications, General; Section 4 VAC 25–130–773.15(e). Review of Permit Applications, Final compliance review.

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117****[Docket No. USCG–2018–0091]****RIN 1625–AA09****Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Northwestern Pacific (SMART) railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA. The change is necessary to help coordinate vessel passage with commuter rail traffic. The schedule change would require vessels to provide a 30-minute advance notification for drawspan openings.

DATES: This rule is effective November 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG–2018–0091 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IAW In Accordance With
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
SMART Sonoma-Marina Area Rail Transit
U.S.C. United States Code

II. Background Information and Regulatory History

On March 27, 2019, the Coast Guard published a notice of proposed rule making (NPRM) entitled “Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA” in the **Federal Register** (84 FR 10745). Further, on March 22, 2019, Commander (dpw), Eleventh Coast Guard District mailed notification of the NPRM to 33 interested parties that

regularly use the Petaluma River and published a notification of the NPRM in the Local Notice to Mariners, No. 13/19. The Coast Guard received no comments on this proposed rule.

On March 2, 2018, the Coast Guard published a temporary deviation from the operating schedule entitled “Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA” in the **Federal Register** (83 FR 8936). The March 2, 2018 proposed change to the bridge operating schedule was tested to determine whether a permanent change was warranted to allow the draw to open as follows:

The draw shall open on signal from 6 a.m. to 11 p.m. if at least 2-hours notice is given to the drawtender. At all other times, the draw shall be maintained in the fully opened position, except for the passage of trains or maintenance.

Five comments were received in response to the first test deviation. Four of the five comments submitted addressed the 2-hour advance notification. The commenters stated that the lengthy advance notification would be a burden on waterway users.

On August 13, 2018, the Coast Guard published a second temporary deviation from the operating schedule entitled “Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA” in the **Federal Register** (83 FR 39879). The August 13, 2018 proposed change to the bridge operating schedule was tested to determine whether an alternative permanent change, from the March 2, 2018 test deviation, was warranted to allow the draw to open as follows:

The draw shall open on signal from 6 a.m. to 11 p.m. if at least 30 minutes notice is given to the drawtender. At all other times, the draw shall be maintained in the fully opened position, except for the passage of trains or maintenance.

Two comments were received in response to the second test deviation. The first comment was directed at future navigation on the Petaluma River and did not address the efficiency of the 30-minute notice and the second comment was unrelated to the test deviation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Northwestern Pacific (SMART) railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA is a single leaf bascule bridge which provides 3.6 feet of vertical navigational clearance at Mean High Water in the closed-to-navigation position and

unlimited vertical clearance in the fully opened position. IAW 33 CFR 117.187(a); The draw of the Northwestern Pacific (SMART) railroad bridge, mile 12.4, at Haystack Landing (Petaluma), shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility is from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

On October 22, 2015, SMART requested the Coast Guard consider changing the operating schedule due to the commencement of commuter rail service on a previously rarely used rail line. Due to an increase in commuter rail traffic, SMART requested the drawspan remain in the closed-to-navigation position during commute hours to avoid unnecessary bridge openings and that vessels provide an advance notification to the bridge tender for an opening during these hours. Two test deviations were conducted to determine if the proposed operation regulation change would meet the reasonable needs of navigation while benefiting land traffic. It was determined that a 30-minute advance notification would meet the reasonable needs of navigation while benefiting commuter rail traffic. The Petaluma River supports commercial and recreational traffic. Currently 32 commuter trains cross the bridge each day. Commercial waterway traffic on the river has decreased in the last year due to an upstream tug and barge company moving their base of operation down river, east of the bridge.

IV. Discussion of Comments, Changes and the Final Rule

The preceding NPRM the Coast Guard issued provided a comment period of 90 days and no comments were received. The Final Rule would require the bridge to open on signal for vessels from 3 a.m. to 11 p.m. when a 30-minute notification is given to the drawtender. At all other times the bridge would be maintained in the open-to-navigation position except for the crossing of trains or for maintenance. This Final Rule would meet the reasonable needs of navigation while benefiting commuter rail transportation and would reduce wear and tear on the drawspan. In a related matter, SMART also owns the

Blackpoint railroad bridge, mile 0.8, over the Petaluma River. This Final Rule would change the names of both the Northwestern Pacific railroad bridge, mile 0.8, at Blackpoint and the Northwestern Pacific railroad bridge, mile 12.4, at Haystack Landing (Petaluma) in the regulations to reflect that ownership.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it 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 ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The Coast Guard received no comments on this section. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard received no comments on this section.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have made a 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 rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.187 to read as follows:

§ 117.187 Petaluma River.

(a) The draw of the SMART Blackpoint railroad bridge, mile 0.8 at Blackpoint, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(b) The draw of the SMART Haystack Landing railroad bridge, mile 12.4 at Petaluma, shall open on signal from 3 a.m. to 11 p.m. if at least 30 minutes notice is given to the drawtender. At all other times, the draw shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(c) The draw of the Petaluma highway bridge at "D" Street, mile 13.7, at Petaluma, shall open on signal if at least four hours notice is given for openings from 6 a.m. to 6 p.m., and if at least 24 hours notice is given for openings from 6 p.m. to 6 a.m.

Dated: October 15, 2019.

Peter W. Gautier,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2019-23046 Filed 10-22-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0714]

Drawbridge Operation Regulation; New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the Florida East Coast Railway (FECR) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida. This modified deviation extends the period the bridge may operate under the

test deviation to the drawbridge operation schedule. This modification will allow for ongoing negotiations between the railroad and maritime stakeholders as the parties discuss a final rule that reasonably meets the needs of both modes of transportation.

DATES: This deviation is effective without actual notice from October 23, 2019 through 11:59 p.m. on December 31, 2019. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on October 19, 2019, through October 23, 2019.

ADDRESSES: The docket for this deviation, USCG-2019-0714, is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this modified test deviation, call or email LT Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305-535-4307, email Samuel.Rodriguez-Gonzalez@uscg.mil.

SUPPLEMENTARY INFORMATION: The Florida East Coast Railway (FECR) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida is a single-leaf bascule railroad bridge with a 4 foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is found in 33 CFR 117.313(c). Navigation on the waterway is commercial and recreational.

On August 21, 2019, the Coast Guard published a temporary test deviation entitled "Drawbridge Operation Regulation; New River, Fort Lauderdale, FL" in the **Federal Register** (84 FR 43501). That temporary deviation, effective from 12:01 a.m. on August 20, 2019, to 11:59 p.m. on October 18, 2019, allowed for testing a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The bridge owner, FECR, has requested the currently published deviation be extended through 11:59 p.m. on December 31, 2019.

This extension of time is necessary to accommodate ongoing negotiations between interested parties to discuss a Final Rule that reasonably meets the needs of both the railroad and maritime industries.

The draw shall operate as follows from 12:01 a.m. on October 19, 2019, to 11:59 p.m. on December 31, 2019:

(1) The bridge shall be constantly tended.

(2) The bridge tender will utilize a VHF-FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305-889-5572.

(3) Signs will be posted displaying VHF radio contact information and telephone numbers for the bridge tender and dispatch. A countdown clock giving notice of time remaining before bridge closure shall remain at the bridge site and must be visible for maritime traffic.

(4) A bridge log will be maintained including, at a minimum, bridge opening and closing times.

(5) When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.

(6) When a train approaches, the lights go to flashing red then the draw lowers and locks.

(7) After the train has cleared the bridge, the draw opens and the lights return to green.

(8) The bridge shall not be closed more than 60 minutes combined in each consecutive 120-minute block of time beginning at 12:01 a.m. each day. At no time will the bridge be closed to navigation for more than 60 consecutive minutes of time.

(9) The bridge shall remain open to maritime traffic when trains are not crossing.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 17, 2019.

Barry Dragon,

Director, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 2019-23047 Filed 10-22-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[Docket Number USCG–2019–0849]****RIN 1625–AA00****Safety Zone; Kanawha River, Charleston, WV****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Kanawha River from mile marker (MM) 60.8 to MM 61.3. The safety zone is needed to protect personnel, vessels, and the marine environment from hazards created by repair work on several large power lines crossing the river. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from October 23, 2019 until through November 23, 2019. For the purposes of enforcement, actual notice will be used from October 19, 2019 until October 23, 2019. This rule will be enforced from 9 a.m. through 3 p.m. on Mondays through Saturdays, and from 7 a.m. through 11 p.m. on Sundays from October 19, 2019 through November 23, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2019–0849 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST3 Wesley Cornelius, MSU Huntington, U.S. Coast Guard; 304–733–0198, Wesley.P.Cornelius@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish the safety zone by October 19, 2019 and lack sufficient time to request public comments and respond to those comments before the zone must be established.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the power line crossing on the Kanawha River between mile marker (MM) 60.8 and MM 61.3.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the power line crossing on October 19 through November 23, 2019, will be a safety concern for anyone on the Kanawha River from mile marker (MM) 60.8 to MM 61.3. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the power line are being replaced.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 a.m. through 3 p.m. on Mondays through Saturdays, and from 7 a.m. through 11 p.m. on Sundays from October 19, 2019 through November 23, 2019. The safety zone covers all navigable waters from MM 60.8 to MM 61.3 on the Kanawha River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the power line crossing is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Persons and vessels permitted to enter the safety zone must transit at the slowest safe speed and comply with all lawful

directions issued by the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and location of the safety zone. This rule involves a safety zone lasting for less than a month and covering the limited area of less than two miles. In addition, vessel traffic will be able to reach out to the safety boat on scene to coordinate safe passage through the safety zone which will impact one-half mile stretch of the Kanawha River. The Coast Guard will publish a Local Notice to Mariners (LNMs), and issue a Broadcast Notice to Mariners (BNMs) via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting from October 19, 2019 through November 23, 2019 that will limit access of the Kanawha River from MM 60.8 to MM 61.3. It is categorically excluded from further review under paragraph L60(d) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0849 to read as follows:

§ 165.T08–0849 Safety Zone; Kanawha River, Charleston, WV.

(a) *Location.* The following area is a safety zone: all navigable waters of the Kanawha River from Mile Marker (MM) 60.8 to MM 61.3 near Charleston, WV.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to enter the safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(c) *Effective period.* This rule is effective without actual notice from October 23, 2019 until through November 23, 2019. For the purposes of enforcement, actual notice will be used from October 19, 2019 until October 23, 2019.

(d) *Enforcement periods.* This section will be enforced from 9 a.m. through 3 p.m. on Monday through Saturday, and from 7 a.m. through 11 a.m. on Sundays, from October 19, 2019, through November 23, 2019.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public when the safety zone is being enforced via a Local Notice to Mariners (LNMs) and a Broadcast Notice to Mariners (BNMs) via VHF–FM marine channel 16.

Dated: October 18, 2019.

M.A. Wike,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Ohio Valley.

[FR Doc. 2019–23116 Filed 10–22–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 64**

[Docket ID FEMA-2019-0003; Internal Agency Docket No. FEMA-8603]

Suspension of Community Eligibility**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212-3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction

from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension

date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region V				
Illinois:				
Cook County, Unincorporated Areas.	170054	March 9, 1973, Emerg; April 15, 1981, Reg; November 1, 2019, Susp.	November 1, 2019	November 1, 2019.
Midlothian, Village of, Cook County	170127	July 30, 1973, Emerg; August 1, 1979, Reg; November 1, 2019, Susp.	do *	Do.
Oak Forest, City of, Cook County ..	170136	February 2, 1973, Emerg; December 4, 1979, Reg; November 1, 2019, Susp.	do	Do.
Oak Lawn, Village of, Cook County	170137	April 9, 1973, Emerg; January 2, 1981, Reg; November 1, 2019, Susp.	do	Do.
Orland Hills, Village of, Cook County.	170172	February 18, 1975, Emerg; March 15, 1982, Reg; November 1, 2019, Susp.	do	Do.
Orland Park, Village of, Cook and Will Counties.	170140	April 15, 1974, Emerg; February 4, 1981, Reg; November 1, 2019, Susp.	do	Do.
Palos Heights, City of, Cook County.	170142	July 27, 1973, Emerg; July 16, 1980, Reg; November 1, 2019, Susp.	do	Do.
Palos Hills, City of, Cook County ...	170143	September 4, 1974, Emerg; January 16, 1981, Reg; November 1, 2019, Susp.	do	Do.
Tinley Park, Village of, Cook and Will Counties..	170169	July 25, 1974, Emerg; December 4, 1979, Reg; November 1, 2019, Susp.	do	Do.
Region VI				
Texas:				
Granite Shoals, City of, Burnet County.	481149	September 22, 1976, Emerg; November 16, 1990, Reg; November 1, 2019, Susp.	do	Do.
Horseshoe Bay, City of, Burnet and Llano Counties.	480149	N/A, Emerg; November 15, 2006, Reg; November 1, 2019, Susp.	do	Do.
Marble Falls, City of, Burnet County	480093	April 16, 1975, Emerg; November 16, 1990, Reg; November 1, 2019, Susp.	do	Do.

*.....do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 17, 2019.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019–23123 Filed 10–22–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02]

RIN 0648–XY027

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2019 Pacific cod total allowable catch apportioned to vessels using pot gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 20, 2019, through 2400 hours, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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. Regulations governing sideboard protections for GOA groundfish

fisheries appear at subpart B of 50 CFR part 680.

The 2019 Pacific cod total allowable catch (TAC) apportioned to vessels using pot gear in the Western Regulatory Area of the GOA is 1,980 metric tons (mt), as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2019 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,970 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA. While this closure is effective the maximum

retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is

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 directed fishing closure of Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C.

553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 17, 2019.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019-23086 Filed 10-18-19; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 84, No. 205

Wednesday, October 23, 2019

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0664; Product Identifier 2018-NE-03-AD]

RIN 2120-AA64

Airworthiness Directives; Austro Engine GmbH Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede airworthiness directive (AD) 2018-07-16 which applies to all Austro Engine GmbH model E4 and E4P diesel piston engines. AD 2018-07-16 requires initial and repetitive replacement of the waste gate controller and the control rod circlip. Since the FAA issued AD 2018-07-16, Austro Engine GmbH developed a modification of the waste gate control-rod fail-safe bridge and spring-loaded circlip that terminates the need for repetitive replacement of the waste gate controller and the control rod circlip. This proposed AD would retain the requirements of AD 2018-07-16 and requires engine modification by installing a waste gate control-rod fail-safe bridge and new spring-loaded circlip that terminates the initial and repetitive replacement requirements of AD 2018-07-16. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 9, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A-2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000-2711; internet: www.austroengine.at. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0664; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7146; fax: 781-238-7199; email: barbara.caufield@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2019-0664; Product Identifier 2018-NE-03-AD" at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to <http://www.regulations.gov>, including any

personal information you provide. The FAA will also post a report summarizing each substantive verbal contact it receives about this proposed AD.

Discussion

The FAA issued AD 2018-07-16, Amendment 39-19247 (83 FR 15733, April 12, 2018), ("AD 2018-07-16"), for all Austro Engine GmbH model E4 and E4P diesel piston engines. AD 2018-07-16 requires initial and repetitive replacement of the waste gate controller and the control rod circlip. AD 2018-07-16 resulted from reports of broken or disconnected turbocharger waste gate control rods on some engines. The FAA issued AD 2018-07-16 to prevent failure of the turbocharger waste gate control rod.

Actions Since AD 2018-07-16 Was Issued

Since the FAA issued AD 2018-07-16, Austro Engine GmbH developed a modification of the waste gate control-rod by adding a fail-safe bridge and spring-loaded circlip. Also since the FAA issued AD 2018-07-16, the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD 2018-0125, dated June 6, 2018, (referred to after this as "the MCAI"), to address the unsafe condition on these products. The MCAI states:

Occurrences were reported where, on some engines, turbocharger waste gate control rods were found broken and/or disconnected. Investigation results indicate that these failures were due to insufficient fatigue life or improper handling of the waste gate control rod and improper installation of the non-spring-loaded circlip.

These conditions, if not corrected, could lead to improper operation of the waste gate with consequent engine power loss, possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Austro Engine designed a new spring loaded circlip and published MSB-E4-022 (later revised), introducing a life limit for the affected waste gate controllers and circlips. Consequently, EASA issued AD 2017-0250, requiring implementation of those life limits, and prohibiting reinstallation of non-spring-loaded circlips.

Since that AD was issued, Austro Engine developed a modification, which allows replacing the waste gate controller and the circlip on condition, and issued the MSB accordingly.

For the reason stated above, this AD retains the requirements of EASA AD 2017–0250, which is superseded, and requires an engine modification by installing a waste-gate control-rod fail-safe bridge and a new circlip, which cancels the life limitations.

You may obtain further information by examining the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0664.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Austro Engine Mandatory Service Bulletin (MSB) No. MSB–E4–022, Rev. No. 3, April 16, 2018. The MSB describes procedures for initial and repetitive replacement of the

waste gate controller and the control rod circlip. The MSB also describes procedures for the installation of the waste gate control-rod fail-safe bridge and new spring-loaded circlip as terminating action for the initial and repetitive replacement procedures of the MSB. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination

The FAA is proposing this AD because it evaluated all the relevant information and determined the unsafe condition described previously is likely

to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all the requirements of AD 2018–07–16. This proposed AD would also require engine modification by installing the waste gate control rod fail-safe bridge and new spring-loaded circlip as terminating action for the initial and repetitive replacement requirements of this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 211 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace waste gate controller and control rod circlip.	0.5 work-hours × \$85 per hour = \$42.50	\$235	\$277.50	\$58,552.50
Install waste gate control rod fail-safe bridge and new spring-loaded circlip.	0.5 work-hours × \$85 per hour = \$42.50	227	269.50	56,864.50

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager,

Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2018–07–16, Amendment 39–19247 (83 FR 15733, April 12, 2018), and adding the following new AD:

Austro Engine GmbH Engines: Docket No. FAA–2019–0664; Product Identifier 2018–NE–03–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 9, 2019.

(b) Affected ADs

This AD replaces AD 2018–07–16, Amendment 39–19247 (83 FR 15733, April 12, 2018).

(c) Applicability

This AD applies to all Austro Engine GmbH model E4 and E4P diesel piston engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 8560, Reciprocating Engine Supercharger.

(e) Unsafe Condition

This AD was prompted by reports of broken or disconnected turbocharger waste gate control rods on some engines. The FAA

is issuing this AD to prevent failure of the turbocharger waste gate control rod. The unsafe condition, if not addressed, could result in loss of engine thrust control and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within the compliance times identified in Table 1 to paragraph (g)(1) of this AD, and

thereafter at intervals not to exceed 250 flight hours (FHs), replace the waste gate controller and control rod circlip in accordance with the Accomplishment/Instructions, Paragraph 2.1, Initial Action or Repetitive Action, of Austro Engine Mandatory Service Bulletin (MSB) No. MSB-E4-022, Rev. No. 3, dated April 16, 2018.

Table 1 to Paragraph (g)(1) – Initial Replacement Compliance Time

Group	Compliance Time (A, B, or C, whichever occurs later)	
1	A	Within 50 FHs after April 27, 2018 (the effective date of AD 2018-07-16)
	B	Within 250 FHs since the first installation on an engine
	C	Before further flight
2	A	Within 100 FHs after April 27, 2018 (the effective date of AD 2018-07-16)
	B	Within 250 FHs since the first installation on an engine
	C	Before further flight

(2) Within 200 FH or six months, whichever occurs first after the effective date of this AD, modify the engine by installing a waste gate control rod fail-safe bridge and a new spring-loaded circlip in accordance with the Accomplishment/Instructions, Paragraph 2.1, Terminating Action, of Austro Engine GmbH MSB No. MSB-E4-022, Rev. No. 3, dated April 16, 2018.

(h) Terminating Action

Modification of an engine by installing a waste gate control rod fail-safe bridge and a new spring-loaded circlip, in accordance with the Accomplishment/Instructions, Paragraph 2.1, Terminating Action, of Austro Engine MSB No. MSB-E4-022, Rev. No. 3, dated April 16, 2018, is terminating action for the initial and repetitive replacement requirements of paragraph (g)(1) of this AD for that engine.

(i) Definitions

For the purpose of this AD, a Group 1 engine is an Austro Engine GmbH model E4-A engine, or an Austro Engine GmbH model E4-B or E4-C engine installed on a DA 42 M-NG airplane with external containers. A Group 2 engine is any other Austro Engine GmbH model E4 and E4P engine.

(j) Credit for Previous Actions

You may take credit for initial and repetitive replacements of the waste gate controller and control rod circlip required by paragraph (g)(1) of this AD if you performed this action before the effective date of this AD using Austro Engine MSB No. MSB-E4-022, Rev. No. 2, dated November 27, 2017, or earlier versions.

(k) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7146; fax: 781-238-7199; email: barbara.caufield@faa.gov.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018-0125, dated June 6, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2019-0664.

(3) For service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A-2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000-2711; internet: www.austroengine.at. You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For

information on the availability of this material at the FAA, call 781-238-7759.

Issued in Burlington, Massachusetts, on October 18, 2019.

Robert J. Ganley,

Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019-23104 Filed 10-22-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0597; Product Identifier 2019-NE-05-AD]

RIN 2120-AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019-12-05, which applies to certain CFM International S.A. (CFM) CFM56-5B, CFM56-5C, and CFM56-7B model turbofan engines with a certain rotating air high-pressure turbine (HPT) front seal. AD 2019-12-05 requires replacement of the affected rotating air HPT front seal with a part eligible for

installation. The actions required by AD 2019-12-05 are interim and only address the highest risk engines with an affected rotating air HPT front seal that have a specified number of cycles since being reconfigured. This proposed AD would require removal and replacement of the rotating air HPT front seals installed on all CFM CFM56-5B, CFM56-5C, and CFM56-7B model turbofan engines, including engines that have fewer cycles since being reconfigured. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 9, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH, 45125; phone: 877-432-3272; fax: 877-432-3329; email: aviation.fleetsupport@ge.com. You may view this referenced service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781-238-7759.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0597; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the

regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7120; fax: 781-238-7199; email: chris.mcguire@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2019-0597; Product Identifier 2019-NE-05-AD” at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to <http://www.regulations.gov>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

Discussion

The FAA issued AD 2019-12-05, Amendment 39-19660 (84 FR 28717, June 20, 2019), (“AD 2019-12-05”), for all CFM CFM56-5B, CFM56-5C, and CFM56-7B model turbofan engines with a certain rotating air HPT front seal. AD 2019-12-05 requires replacement of the affected rotating air HPT front seal with a part eligible for installation. AD 2019-12-05 resulted from cracks found in the rotating air HPT front seal. The FAA issued AD 2019-12-05 to prevent failure of the rotating air HPT front seal.

Actions Since AD 2019-12-05 Was Issued

The actions required by AD 2019-12-05 are interim and only address the

highest risk engines with an affected rotating air HPT front seal that have a specified number of cycles since being reconfigured. The FAA now proposes to supersede AD 2019-12-05 to require removal and replacement of the rotating air HPT front seals installed on all CFM CFM56-5B, CFM56-5C, and CFM56-7B model turbofan engines, including engines that have fewer cycles since being reconfigured.

Related Service Information

The FAA reviewed CFM Service Bulletin (SB) CFM56-5B S/B 72-1074, Revision 01, dated December 5, 2018; CFM SB CFM56-5C S/B 72-0794, Revision 01, dated January 2, 2019; and CFM SB CFM56-7B S/B 72-1042, Revision 01, dated January 2, 2019. CFM SB CFM56-5B S/B 72-1074, Revision 01, describes procedures for replacement of the affected rotating air HPT front seal on CFM CFM56-5B model turbofan engines. CFM SB CFM56-5C S/B 72-0794, Revision 01, describes procedures for replacement of the affected rotating air HPT front seal on CFM CFM56-5C model turbofan engines. CFM SB CFM56-7B S/B 72-1042, Revision 01, describes procedures for replacement of the affected rotating air HPT front seal on CFM CFM56-7B model turbofan engines.

FAA’s Determination

The FAA is proposing this AD because it evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2019-12-05. This proposed AD would add CFM CFM56-5B, CFM56-5C, and CFM56-7B model turbofan engines to the applicability.

Costs of Compliance

The FAA estimates that this proposed AD affects four engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the rotating air HPT front seal	1 work-hour × \$85 per hour = \$85	\$344,600	\$344,685	\$1,378,740

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2019–12–05, Amendment 39–19660 (84 FR 28717, June 20, 2019), and adding the following new AD:

CFM International S.A.: Docket No. FAA–2019–0597; Product Identifier 2019–NE–05–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 9, 2019.

(b) Affected ADs

This AD replaces AD 2019–12–05, Amendment 39–19660 (84 FR 28717, June 20, 2019).

(c) Applicability

This AD applies to:

(1) CFM International S.A. (CFM) CFM56–5B1, –5B2, –5B4, –5B5, –5B6, –5B7, –5B1/P, –5B2/P, –5B3/P, –5B4/P, –5B5/P, –5B6/P, –5B7/P, –5B8/P, –5B9/P, –5B3/P1, –5B4/P1, –5B1/2P, –5B2/2P, –5B3/2P, –5B4/2P, –5B6/2P, –5B9/2P, –5B3/2P1, –5B4/2P1, –7B20, –7B22, –7B24, –7B26, –7B27, –7B22/B1, –7B24/B1, –7B26/B1, –7B26/B2, –7B27/B1, –7B27/B3, –7B20/2, –7B22/2, –7B24/2, –7B26/2, –7B27/2, –7B27A model turbofan engines with a:

(i) Rotating air high-pressure turbine (HPT) front seal:

(A) With part number (P/N) 1795M36P01 or P/N 1795M36P02 and serial numbers (S/Ns) GWNNDN949 through GWNSE969 or S/Ns GWN000CE through GWN0990L, not including S/Ns GWN08ND7, GWN0923A, GWN0971E, GWN098A1, GWN098W6, GWN098W8, GWN098WA, and GWN0990G, installed;

(B) that has been removed from the original HPT disk and re-assembled to a different HPT disk.

(ii) [Reserved]

(2) CFM CFM56–5C2, –5C2/4, –5C2/F, –5C2/F4, –5C2/G, –5C2/G4, –5C2/P, –5C3/F, –5C3/F4, –5C3/G, –5C3/G4, –5C3/P, –5C4, –5C4/1, –5C4/P, –5C4/1P model turbofan engines with a:

(i) Rotating air HPT front seal:

(A) With P/N 1795M36P01 or P/N 1795M36P02 and S/Ns GWNNDN949 through GWNSE969 or S/Ns GWN000CE through GWN0990L, not including S/Ns GWN08ND7, GWN0923A, GWN0971E, GWN098A1, GWN098W6, GWN098W8, GWN098WA, and GWN0990G, installed;

(B) that has been removed from the original HPT disk and re-assembled to a different HPT disk.

(ii) [Reserved]

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by cracks found in the rotating air HPT front seal. The FAA is issuing this AD to prevent failure of the rotating air HPT front seal. The unsafe condition, if not addressed, could result in the uncontained release of the rotating air HPT front seal, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all affected CFM CFM56–5B and CFM56–7B model turbofan engines:

(i) If, on July 5, 2019 (the effective date of AD 2019–12–05), the rotating air HPT front seal has 7,000 cycles or greater since being reconfigured, remove the part from service within 50 cycles after July 5, 2019 (the effective date of AD 2019–12–05), or before further flight, whichever occurs later, and replace with a part eligible for installation.

(ii) If, on July 5, 2019 (the effective date of 2019–12–05), the rotating air HPT front seal has between 6,001 and 6,999 cycles, inclusive, since being reconfigured, remove the part from service within 500 cycles after July 5, 2019 (the effective date of AD 2019–12–05), but not to exceed 7,050 cycles since being reconfigured, or before further flight, whichever occurs later, and replace with a part eligible for installation.

(iii) For all remaining CFM56–5B and CFM56–7B model turbofan engines, remove the rotating air HPT front seal from service before accumulating 6,500 cycles since being reconfigured, or within 50 cycles after the effective date of this AD, whichever occurs later.

(2) For all affected CFM CFM56–5C model turbofan engines:

(i) If, on July 5, 2019 (the effective date of AD 2019–12–05), the rotating air HPT front seal has 4,250 cycles or greater since being reconfigured, remove the part from service within 25 cycles after July 5, 2019 (the effective date of AD 2019–12–05), within 1,500 cycles since the last fluorescent penetrant inspection (FPI) of the rotating air HPT front seal, or before further flight after the effective date of this AD, whichever occurs later, and replace with a part eligible for installation.

(ii) If, on July 5, 2019 (the effective date of AD 2019–12–05), the rotating air HPT front seal has between 3,751 and 4,249 cycles, inclusive, since being reconfigured, remove the part from service within 250 cycles after July 5, 2019 (the effective date of AD 2019–12–05), before accumulating 4,275 cycles since being reconfigured, within 1,500 cycles since the last FPI of the rotating air HPT front seal, or before further flight after the effective date of this AD, whichever occurs later, and replace with a part eligible for installation.

(iii) For all remaining CFM CFM56–5C model turbofan engines, remove the rotating

air HPT front seal from service before accumulating 4,000 cycles since being reconfigured, or within 50 cycles after the effective date of this AD, whichever occurs later.

(h) Definition

For the purpose of this AD, “reconfigured” occurs when a rotating air HPT front seal has been removed from the original HPT disk and re-assembled to a different HPT disk.

(i) Installation Prohibition

After the effective date of this AD, do not assemble any rotating air HPT front seal with greater than 0 cycles since new onto a HPT disk unless it is the same S/N HPT disk on which it has previously been assembled.

(j) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7120; fax: 781-238-7199; email: chris.mcguire@faa.gov.

(2) For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877-432-3272; fax: 877-432-3329; email: aviation.fleetsupport@ge.com. You may view this referenced service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759.

Issued in Burlington, Massachusetts, on October 18, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1303 and 1315

[Docket No. DEA-455]

RIN 1117-AB49

Management of Quotas for Controlled Substances and List I Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to revise existing regulations that manage the quotas for controlled substances and the list I chemicals, ephedrine, pseudoephedrine, and phenylpropanolamine, held by DEA-registered manufacturers. This rule is being proposed to: Define the types of quotas, update the method to abandon quota, clarify the current language to ensure that both manufacturers and distributors are required to obtain certification of a buyer's quota, reduce overall inventories, formalize the existing practice of use-specific subcategories for individual manufacturing and procurement quotas, and modify existing deadlines to fix/issue quotas. The DEA is also amending certain regulations to implement updates to the Controlled Substances Act made by the Substance Use-Disorder Prevention that Promotes Opioid Recovery Treatment for Patients and Communities Act. The DEA emphasizes that all of these revisions and amendments would apply to both bulk and dosage-form manufacturers, as well as importers of the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The changes are necessary to reduce the potential for diversion, and would align regulations with current manufacturing business practices.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before December 23, 2019.

All comments concerning collection of information under the Paperwork Reduction Act must be submitted to the Office of Management and Budget (OMB) on or before December 23, 2019.

ADDRESSES: To ensure proper handling of comments, please reference “RIN-1117-AB49/Docket No. DEA-455” on all correspondence, including any attachments.

• **Electronic comments:** The Drug Enforcement Administration encourages that all comments be submitted

electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on [Regulations.gov](http://www.regulations.gov). If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• **Paper comments:** Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you, however, wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to RIN 1117-AB49/Docket No. DEA-455.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting & Policy Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by DEA for public inspection online at <http://www.regulations.gov> and in DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also place

all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the DEA’s public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

I. Executive Summary

A. Summary of the Purposes and Provisions of Rule

1. Types of Quota

Through this Notice of Proposed Rulemaking (NPRM), the DEA is proposing to add new sections to the regulations that would introduce and define the types of quotas for controlled substances in schedules I and II and the list I chemicals¹ ephedrine, pseudoephedrine, and phenylpropanolamine. The types of quotas are as follows:

- Aggregate production quota (APQ) (for controlled substances);
- Assessment of Annual Needs (AAN) (for listed chemicals);
- Individual Manufacturing Quota (for controlled substances and listed chemicals);
- Procurement Quota (for controlled substances and listed chemicals); and
- Import Quota (for listed chemicals).

Also, the DEA is proposing a change in the regulations to stay up to date with modern technology. The proposed

change would involve formalizing the current practice of filing to abandon quota with the United Nations (UN) Reporting and Quota Section in the online Quota Management System.

2. Conforming Changes From the Substance Use-Disorder Prevention That Promotes Opioid Recovery Treatment for Patients and Communities Act

In accordance with the Substance Use-Disorder Prevention that Promotes Opioid Recovery Treatment for Patients and Communities Act (hereinafter “the SUPPORT Act”),² the DEA is performing an update to the current regulations to comply with the new law. The SUPPORT Act now gives the Administrator, by way of delegation from the Attorney General, the authority to establish APQs, individual manufacturing quotas, and procurement quotas in terms of pharmaceutical dosage-form prepared from or containing a controlled substance. This Act also changed the deadline by which the DEA is to fix the individual manufacturing quota for schedules I and II controlled substances. The SUPPORT Act defines the phrase “covered controlled substance” and mandates that the amount of diversion of a covered controlled substance be estimated when establishing any quota. When estimating diversion, the DEA must consult with the Department of Health and Human Services (HHS) on rates of overdose deaths and abuse and overall public health impact related to the covered controlled substances and may take into consideration other sources of information the DEA deems reliable. The SUPPORT Act requires that “appropriate quota reductions” be made after estimating diversion. The Act does not require quota increases.

3. Procurement Quota Certification

The DEA is proposing to change the regulations to provide that both manufacturers and distributors selling to a manufacturer would be required to obtain certification of the buyer’s quota when an order is placed. This change would be implemented by changing the words “importer,” “manufacturer,” and “bulk manufacturer” to “registrant.”

4. Reduction of Inventory Allowances

The DEA proposes to revise the regulations to reduce the allowable individual inventory held by both bulk and dosage-form manufacturers of controlled substances in schedules I and II and list I chemicals, which would decrease the risk of diversion while

ensuring the needs of the United States are met. The proposed amendments are:

- Decrease the inventory allowance issued by the DEA for individual manufacturing quotas to 30 percent;
- Decrease the inventory allowance issued by the DEA for procurement quotas to 30 percent;
- Suspend quota issued by the DEA if a registrant’s inventory exceeds 45 percent of the registrant’s estimated net disposal; and
- Grant request of additional quota by registrant if inventory is less than 20 percent of the registrant’s estimated net disposal.

5. Subcategories for Quotas

The DEA is proposing the addition of use-specific subcategories for individual manufacturing and procurement quotas to formalize the current, on-going practice of the use of these subcategories by registrants. The use-specific subcategories are:

- Quota for Commercial Sales;
- Quota for Transfer;
- Quota for Product Development;
- Quota for Replacement; and
- Quota for Packaging/Repackaging and Labeling/Relabeling.

6. New Deadlines To Establish Quotas

With this NPRM, the DEA proposes to change the deadlines for fixing or establishing the different types of quotas to allow more time for processing and communicating with applicants and to make the regulations consistent with the SUPPORT Act. The proposed changes are as follows:

- Deadline to establish the APQ and the AAN: Change to September 1.
- Deadline to issue procurement quota, import quota, and individual manufacturing quota: Change to December 1.
- Deadline to adjust individual manufacturing quota: Change to July 1.

B. Legal Authority

The Controlled Substances Act (CSA) authorizes the Administrator of the DEA (by delegation from the Attorney General) to promulgate rules and regulations that he deems necessary and appropriate for the efficient execution of his functions under subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the Act, 21 U.S.C. 871(b) and 958(f). Subchapter I includes provisions which require the Administrator to establish the APQ for each basic class of controlled substance listed in schedules I and II and the AAN for the list I chemicals to be manufactured in the United States each calendar year to provide for the estimated medical,

¹ For the purposes of this document only, “list I chemicals” refers to ephedrine, pseudoephedrine, and phenylpropanolamine for legitimate medical, scientific, research, and industrial needs. The phrase “list I chemical(s)” will be used going forward.

² The SUPPORT for Patients and Communities Act, Public Law 115–271.

scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. 21 U.S.C. 826. The Administrator shall take the following quota actions for a basic class of controlled substance or list I chemical pursuant to stipulated conditions: Limit or reduce individual production quotas for each registered manufacturer,³ and fix individual manufacturing quotas for registrants.⁴

On October 24, 2018, Congress made revisions to the CSA through the SUPPORT Act. These revisions will be noted and included in these proposed regulations, where applicable. Through this Act, the Administrator, by way of delegation from the Attorney General, may now set quota in terms of the pharmaceutical dosage-form.

C. Summary of the Benefits and Costs of the Proposed Rule

There are six key provisions in this proposed rule, five of which are anticipated to have benefits and costs. As explained below, some of these provisions are mandated by Congress under recent legislation, and some others are being proposed pursuant to the DEA's general rulemaking authority under the CSA. The anticipated effect of each provision is summarized in this section. The following discussion is only a summary; for a complete analysis of the benefits and costs of each provision, see the Regulatory Analysis section.

1. Defining Types of Quota and Filing To Abandon Quota

These provisions of the proposed rule will codify two existing DEA practices. It will formally define the different types of quota issued by the DEA for schedules I and II controlled substances and list I chemicals. It will also formalize the current reporting practice for a registrant to abandon quota in the DEA's online Quota Management System. The formal definition of quota types will have no practical impact on registrants, and formalizing the procedure to abandon quota is simply a codification of existing DEA practice. While these proposed provisions will have no economic costs or benefits, the DEA believes there are benefits to accurately codifying existing practices. These proposed provisions are expected to enhance clarity, certainty, and efficiency.

2. Conforming Revisions Related to the SUPPORT Act

The SUPPORT Act gives the DEA discretionary authority to establish quotas in terms of pharmaceutical dosage-form. The DEA's current practice is to establish quotas necessary for the manufacture of finished dosage-forms in terms of kilograms, and manufacturers then determine how to allocate those kilograms to different Food and Drug Administration (FDA) approved dosage-forms. While the SUPPORT Act gives the DEA the authority to establish quotas in terms of pharmaceutical dosage-form, the DEA will continue to use its current process of establishing quota in terms of kilograms, for the time being. While it is impossible to know all the circumstances in which this authority would be used, it is the DEA's current intention that any implementation of dosage-form quotas will be rare occurrences in response to specific events, and will coexist alongside kilogram quotas. The DEA recognizes that dosage-form manufacturers are in the best position to understand the demand for their products, in dosage-form. However, if the DEA were to reallocate a manufacturer's quota to prevent diversion or alleviate shortages based on specific dosage-form, or to prevent an overproduction, the DEA would make this adjustment for a manufacturer that is producing those specific FDA-approved dosage-forms, and who therefore is able to shift production with minimal disruption or delay. Therefore, this provision of the proposed rule will have minimal impact.

The SUPPORT Act also requires the DEA to estimate the amount of diversion when establishing quota for a "covered controlled substance" (fentanyl, oxycodone, hydrocodone, oxycodone, or hydromorphone) using all reliable information, including information from HHS. This requirement will expand upon the DEA's current practice, as it has considered the amount of diversion when establishing quotas for covered controlled substances when data has been made available. Therefore, considering additional reliable information gathered from outside the agency to estimate the amount of diversion will result in minimal additional cost. Also included in these SUPPORT Act updates are extending the DEA's deadline to fix individual manufacturing quotas for schedules I and II controlled substances from October to December, which will also have minimal impact on registrants or the DEA.

3. Procurement Quota Certification

This provision requires that manufacturers purchasing their active pharmaceutical ingredients (API) from distributors, as well as other manufacturers, first certify in writing that quantities ordered do not exceed the requesting manufacturer's quota for the year. Current regulations stipulate that only entities registered as "importer," "manufacturer," or "bulk manufacturer" must certify quota before a purchase.⁵ This provision is expected to result in more accountability for affected distributors and manufacturers and bring them into compliance with the CSA and regulations as intended.

This new requirement that manufacturers produce and submit certification of quota to be reviewed by the distributor will impose costs on both manufacturers and distributors. The DEA estimates the cost of this provision to be \$35,241 per year (\$23,494 of which is incurred by manufacturers while the remaining \$11,747 is incurred by distributors).

4. Reduction of Inventory Allowances

This provision has one key benefit: It is expected to reduce the potential for the diversion of schedules I and II controlled substances and list I chemicals by lowering the inventory allowance from one year to the next year from 50% to 30%. Practically speaking, this equates to a reduction from half of a year's sales supply allowed to be held as inventory to nearly four months. Since regulations governing inventory allowances were first implemented, the number of firms manufacturing controlled substances and list I chemicals has grown. For example, the DEA records show that the number of registered manufacturers grew by 17.3 percent from 330 to 387 during the period of 2008 to 2018. Because of this expansion of suppliers, the lower inventory allowance authorized per firm is not expected to increase the likelihood of drug shortages. Generally, there are now more manufacturers that can increase production to meet demand if one or more manufacturers were to have production issues.

Regarding costs, the DEA believes a reduction of inventory allowance to 30%, with flexibility to produce up to 45% at any given point in a year, would have minimal impact on registrants while continuing to provide adequate inventory for registrants to respond to fluctuations in demand in pharmaceutical markets. Over a ten year period from 2008 to 2017, as reported to

³ 21 U.S.C. 826(b).

⁴ 21 U.S.C. 826(d).

⁵ 21 CFR 1303.12(f) and 1315.32(h).

the U.N., year-end inventories for manufacturers averaged 39%, well within the 30% to 45% range allowed by this rule. For this reason DEA believes this provision will have a minimal impact on registrants.

See the Regulatory Analysis section for a complete discussion of the impact of this provision.

5. Subcategories for Quotas

The benefit of the formalization of subcategories is in the alignment of regulatory language with current DEA practice, which removes any ambiguity that may be perceived by regulated entities. Because these subcategories are already in use, through voluntary and cooperative efforts between registrants and DEA, the DEA believes this provision will have no economic impact on registrants or the DEA.

6. New Deadlines To Establish Quota

By updating the deadlines for establishing and publishing the APQ, AAN, procurement, import, individual manufacturing, and adjusted individual manufacturing quotas, registrants are expected to benefit from having the regulations accurately reflect realistic deadlines. This will allow registrants to plan their production year appropriately and remove any uncertainty related to these publication dates. The DEA estimates there would be no cost associated with this provision.

II. Background

A. Types of Quota

1. APQ and AAN

Section 306 of the CSA⁶ requires the Attorney General to establish APQ and AAN each year for each basic class of controlled substance listed in schedules I and II and the list I chemicals, respectively.⁷ The APQ and AAN represent the total quantity of each basic class of controlled substance listed in schedules I and II and list I chemicals necessary to be manufactured during the calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. The APQs are issued as individual manufacturing and procurement quotas to DEA-registered manufacturers. The AANs are issued as individual

manufacturing, procurement and import quotas. The quota system is meant to ensure an adequate and uninterrupted supply of schedules I and II controlled substances and list I chemicals for legitimate medical and scientific needs, while preventing the production of excess quantities, which present an increased risk of diversion.

DEA-registered manufacturers apply for individual manufacturing, import, or procurement quotas based on their manufacturing activities and projected needs. Manufacturing activities authorized under a manufacturer registration include dosage-form manufacturing (both commercial and product development), manufacturing of other substances, as well as packaging, labeling, repackaging, or relabeling efforts. Projected needs may include product development for new suppliers or new process requirements, increased commercial sales, estimated improved market share based on new customers, purchase orders in hand, or the launch of new FDA-approved drug products. Registrants can include any other factor they want DEA to consider when evaluating their applications for quota.

2. Individual Manufacturing Quota

An individual manufacturing quota represents the maximum quantity of a schedule I or II controlled substance or list I chemical a manufacturer is authorized to manufacture in a calendar year.⁸ The sum total of all individual manufacturing quotas issued to bulk manufacturers for a particular basic class of controlled substance in schedule I or II or list I chemical must be equal to or lower than the established APQ for that basic class or AAN for that chemical as determined in accordance with 21 CFR 1303.11 and 1315.11. A bulk manufacturer may request an increase in any of the quotas for a schedule I or II controlled substance or list I chemical at any time during the calendar year for which it applies.⁹ Procurement and import quotas inform the amount of individual manufacturing quotas. Only DEA-registered bulk manufacturers may apply for, and subsequently be issued, individual manufacturing quotas and/or procurement quotas.

Any manufacturer assigned an individual manufacturing quota for a schedule I or II controlled substance or list I chemical may at any time abandon their right to manufacture all or any part of such quota pursuant to 21 CFR 1303.27 and 1315.27. Currently, to

abandon all or part of an individual manufacturing quota for a schedule I or II controlled substance, a manufacturer files a written notice with the Drug & Chemical Evaluation Section. To abandon any part of an individual manufacturing quota for a list I chemical, a manufacturer would file a written notice with the UN Reporting & Quota Section of DEA.

3. Procurement Quota

A DEA-registered manufacturer who procures a schedule I or II controlled substance or list I chemical for the purpose of conducting non-bulk manufacturing activities such as dosage-form manufacturing, product development, packaging, labeling, repackaging or relabeling, or transfer, must apply¹⁰ for and receive a procurement quota. A procurement quota represents the maximum quantity of a schedule I or II controlled substance or list I chemical a registrant is authorized to acquire in a calendar year for the purpose of manufacturing controlled substances into dosage-forms or to acquire to convert into another schedule I or II controlled substance (with corresponding individual manufacturing quota for that new drug code) and also for packaging, repackaging, labeling, and relabeling.¹¹ Finished dosage-form manufacturers and packagers may apply for procurement quota only.

Under the current regulations, when a person with a procurement quota orders a quantity of a basic class of a schedule I or II controlled substance or a list I chemical, they have to certify that the quantity ordered does not exceed their unused and available procurement quota for that current calendar year. This certification is required only if purchasing from a manufacturer. Because of the wording of the regulations, many registrants do not have to certify their purchases. Outsourcing facilities are an example of this. An "outsourcing facility" is defined as a facility at one geographic location or address that is engaged in compounding sterile drugs, either with or without prescriptions for identified individual patients, that elects to register with the FDA and complies with the statutory requirements in section 503B of the Federal Food, Drug, and Cosmetic Act.¹² Because outsourcing facilities compounding controlled substances meet the CSA

⁶ 21 U.S.C. 826.

⁷ The responsibility for the establishment of the APQs and individual manufacturing and procurement quotas for DEA-registered manufacturers of schedules I and II controlled substances and list I chemicals has been delegated to the Administrator of DEA, 28 CFR 0.100.

⁸ 21 CFR 1303.21 and 1315.21.

⁹ 21 CFR 1303.12(d), 1303.25(a), 1315.32(g), and 1315.36(b).

¹⁰ 21 CFR 1303.12 and 1315.32(a).

¹¹ 21 CFR 1303.12 and 1315.32.

¹² 21 U.S.C. 353b(d)(4).

definition of “manufacturer,”¹³ the DEA has registered these newly designated facilities as manufacturers. Currently, outsourcing facilities registered with DEA as manufacturers are not required to follow the procurement quota regulations, because they buy their API from distributors rather than another manufacturer. DEA has discussed the issue with manufacturers. Several manufacturers have stated that 21 CFR 1303.12(f) does not apply to them because they are not purchasing material from another manufacturer. This proposed rule would make these changes.

4. Import Quota

DEA-registered importers that import list I chemicals must apply for and receive an import quota. 21 CFR 1315.34(a). An import quota represents the maximum amount of a list I chemical an importer may bring into the United States during the calendar year. Importers of list I chemicals may apply for import quota only.

B. Conforming Changes From the SUPPORT Act

While the Administrator of DEA, as delegated by the Attorney General, has always been required¹⁴ annually to establish APQs and individual manufacturing quotas by the CSA and procurement quotas by DEA’s regulations,¹⁵ there was no authorization given or a requirement to establish APQs, individual manufacturing quotas or procurement quotas in terms of pharmaceutical dosage-forms prior to the SUPPORT Act. Before the signing of the SUPPORT Act, the CSA¹⁶ stated that quotas for controlled substances should only be established in terms of quantities and not in terms of individual pharmaceutical dosage-forms. The DEA had no authority to issue the APQ based on separate forms of drugs. The DEA could not demand that quota be used for a specific dosage-form. Also, prior to the SUPPORT Act, the individual manufacturing quota had to be fixed on or before October 1. Furthermore, the CSA did not expressly require the estimation of diversion for any controlled substance.

C. Reduction of Inventory Allowances

The DEA’s mandate by the CSA is to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export

requirements, and for the establishment and maintenance of reserve stocks, while preventing the diversion of controlled substances and list I chemicals. The current regulations¹⁷ contribute to increased inventories at multiple manufacturing processes/steps which can lead to an increased risk of diversion.

The 2017 National Survey on Drug Use and Health from the Substance Abuse and Mental Health Services Administration (SAMHSA) reported that about 6.6% (18 million) of people ages 12 or older misused prescription psychotherapeutic drugs (pain relievers, tranquilizers, stimulants and sedatives) in the past year and 4.1% (11 million) misused pain relievers (*i.e.*, hydrocodone, oxycodone, and morphine).¹⁸

According to the 2014 National Drug Threat Assessment Summary from the DEA, between 2009 and 2013 there was a 222% increase in the total U.S. drug seizures for oxycodone, hydrocodone and hydromorphone.¹⁹ According to the Healthcare Cost and Utilization Project from the Agency for Healthcare Research and Quality (AHRQ) between the year 2008 and 2015, the rate of opioid-related Emergency Department visits increased by 120.7% (*i.e.*, from 94.6 per 100,000 population in 2008 to 208.8 per 100,000 population in 2015).²⁰ Data from the SAMHSA Treatment Episode Data Set revealed that between 2005 and 2015, there was a 75% increase (from 71,499 to 124,943) in the number of hospital admissions (ages 12 and older) due to or caused by primary non-heroin opiates/synthetics.²¹

The purpose of the inventory allowance is to provide for efficiency and flexibility in managing the sale and distribution of schedule I and II controlled substances and list I chemicals so that the manufacturer can meet the actual or reasonably estimated demand for the schedule I and II controlled substances and list I chemicals. Under the current inventory

allowance issued with the quota is intended to: 1. Provide saleable material for approximately four months of sales (net disposal) into the next calendar year while the manufacturer begins new production in the next calendar year; 2. Manage an unexpected uptick in sales during the calendar year; and 3. Address incidents limiting manufacturing or supply such as natural disasters or labor strikes. Manufacturers are encouraged to apply for adjustments to their quota at any time during the calendar year with appropriate documented supporting justification.²²

The mission of the DEA is to prevent diversion of controlled substances and list I chemicals while still providing sufficient availability for the legitimate medical, scientific, research, and industrial needs of the United States. The DEA is committed to ensuring the availability of controlled substances in schedules I and II and list I chemicals to manufacturers to meet the legitimate medical, scientific, research, and industrial needs of the United States. However, the DEA must strike an appropriate balance between ensuring the availability of drug products containing controlled substances in schedules I and II and list I chemicals to meet these needs, and the risk to the public health and safety. The DEA has observed an increase in the production of many controlled substances over the years, including those substances requiring quotas. The changes in the industry, including the increase in the number of manufacturers, has led to accumulations of inventory.

When the current regulations were promulgated, there were only one or two bulk-manufacturing suppliers and finished dosage-form manufacturers for each controlled substance. Each manufacturer needed enough material to ensure the safe and continuous coverage of the market place for legitimate patient needs and a significant amount of inventory (50%) to handle potential market fluctuations in case the other manufacturer had an emergency or other disruptive situation. However, the number of generic dosage-form manufacturers entering the marketplace has grown significantly, especially since the enactment of the Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman Amendments). When the DEA considers each manufacturer’s portion of the market, the amount of inventory each manufacturer needs to hold in reserve to ensure legitimate medical needs are met, due to other manufacturers’ potential production disruptions, is

¹⁷ 21 CFR 1303.24 and 1315.24.

¹⁸ SAMHSA, Center for Behavioral Health Statistics and Quality, 2017 National Survey on Drug Use and Health, available at <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2017/NSDUHDetailedTabs2017.pdf>.

¹⁹ National Drug Threat Assessment 2014, (p. 45) available at <https://www.dea.gov/resource-center/dir-ndta-unclass.pdf>.

²⁰ Agency for Healthcare Research and Quality (2017). Opioid-Related Inpatient Stays and Emergency Department Visits by State, 2008–2015. <http://www.hcup-us.ahrq.gov/faststats/landing.jsp>.

²¹ Department of Health and Human Services (Feb 2017). Treatment Episode Data Set (TEDS) 2005–2015 State Admissions to Substance Abuse Treatment Services.

²² 21 CFR 1303.25.

¹³ 21 U.S.C. 802(15).

¹⁴ 21 U.S.C. 826.

¹⁵ 21 CFR 1303.12(a).

¹⁶ 21 U.S.C. 826(a).

much smaller than when the CSA was originally written. There are currently so many brand and generic manufacturers for each controlled substance with an FDA-approved drug product, that if one or two manufacturers ceased production, the overall market would not be affected. For instance, in 2007, the DEA registered nine bulk manufacturers who could provide oxycodone to 88 dosage-form (non-bulk) manufacturers. By contrast, as of 2015, the DEA registered 11 bulk manufacturers of oxycodone who could provide bulk oxycodone to 166 dosage-form (non-bulk) manufacturers. As of March 2017, these non-bulk manufacturers were responsible for producing FDA-approved dosage-forms including 10 branded and 30 generic products, each of which has multiple strengths and various immediate and extended release formulations. These manufacturers are all competing for the U.S. market and an increasing export market.

D. Formalization of Subcategories

Administering the quota provisions of the CSA is becoming more complex as registrants increasingly engage in product development efforts and subcontract various aspects of the manufacturing process to other DEA-registered manufacturers, thus moving away from single source production of pharmaceutical drug products. A key objective of the quota system is to track how much of a controlled substance or list I chemical is available so the DEA can fulfill its mandate of ensuring that there is sufficient material to meet the estimated medical, scientific, research, and industrial needs of the United States, for lawful exports, and for the establishment and maintenance of reserve stocks. The large number of manufacturing registrants that move material from one manufacturer to another presents a growing challenge in that multiple quotas have to be issued for the various stages of manufacturing, while at the same time, avoiding “double counting” the legitimate needs as the material moves from registrant to registrant which would artificially increase the APQ.

E. New Deadlines To Establish Quotas

Under current regulations (established nearly 50 years ago), the DEA is unduly burdened by unreasonable deadlines for establishing and granting quotas. Since the establishment of the original deadlines, the number of manufacturers has more than tripled and the number of requests for quota has increased 560 percent, yet the deadlines have remained the same. Because there have

been no accommodations made for the substantial increases in both manufacturers and quota requests, the DEA is required to work within challenging parameters in order to meet the current deadlines. Under current regulations, the DEA is required to publish the APQ and the AAN by May 1.²³ This deadline constitutes an undue burden given the applications for import and procurement quota are due April 1²⁴ and manufacturing quota are due May 1.²⁵ The DEA cannot provide a thorough and careful assessment of the quota needs and the assessment of annual needs for the following year in 30 days or less, particularly given the substantial increase in the number of applications the DEA must consider at the time it proposes the APQ and AAN.

In 2016, the DEA issued 548 initial individual manufacturing quotas, 1,083 initial procurement quotas, 33 import quotas, and adjusted 250 individual manufacturing quotas. Under the current regulations, the DEA is required to issue individual manufacturing, procurement, and import quotas by July 1²⁶ of the calendar year preceding the year in which the quota is to be used. The individual manufacturing quota is to be adjusted by March 1²⁷ of the calendar year in which the quota is to be used. The DEA needs sufficient time to compile and consider all requests for quota in order to ensure that each manufacturer is provided with an adequate amount of quota for their legitimate production requests, in light of legitimate medical, scientific, research, and industrial needs, while also ensuring that quotas are not unwarranted, causing an increase in the risk of diversion. It is imperative that the DEA not be forced to make a choice between staying within the deadlines established in the regulations and providing a thorough and accurate review of each application for quota.

III. Provisions of the Proposed Rule

A. Types of Quota

The DEA proposes adding sections 21 CFR 1303.03 and 1315.06 to introduce and define the types of quotas in the current quota system. The DEA proposes creating 21 CFR 1303.03 to define the three types of quota for schedule I and II controlled substances: APQ, individual manufacturing quotas, and procurement quotas. The DEA would use the creation of 21 CFR

1315.06 to define the four types of quotas available for list I chemicals: AAN, individual manufacturing quotas, procurement quotas and import quotas.

As previously stated, the regulations were written many years ago before DEA had the advanced, modern technology that we know today. As the years have passed, DEA has turned to managing many aspects of the quota system online. To abandon any or all parts of the individual manufacturing quota for schedule I and II controlled substances, the DEA is proposing that 21 CFR 1303.27 be updated to require that the manufacturer must now submit a quota application with the UN Reporting and Quota Section in the online Quota Management System, instead of a written notice submitted to the Drug and Chemical Evaluation Section. For list I chemicals, 21 CFR 1315.27 would be updated to mandate that a manufacturer also file in the online Quota Management System, as the regulations were previously updated²⁸ to change the name of the Section.

B. Conforming Changes From the SUPPORT for Communities and Patients Act

Pursuant to the SUPPORT Act, the Administrator of the DEA (by delegation from the Attorney General) now has the authority to establish APQ, individual manufacturing quotas and procurement quotas in terms of pharmaceutical dosage-forms, if he determines it will assist in avoiding the overproduction, shortages, or diversion of a controlled substance. The SUPPORT Act does not require the DEA to grant quotas in terms of dosage-form, it just grants the authority to do so, if it will be helpful. This authorization will be added to DEA's regulations using 21 CFR 1303.11(a), 1303.12(a) and 1303.21(a). The SUPPORT Act also revised the CSA by changing the dates to fix the individual manufacturing quota from “on or before October 1” to “on or before December 1.” DEA will be revising 21 CFR 1303.21(a) and 1315.21 to keep the dates for fixing individual manufacturing quotas in accordance with the statute.

As a result of the SUPPORT Act, the CSA has also been amended to require the Administrator to estimate the amount of diversion of a “covered controlled substance” in the United States when establishing quotas for that covered controlled substance and make appropriate reductions. Furthermore, when estimating diversion, information deemed reliable by the Administrator, in consultation with the Secretary of

²³ 21 CFR 1303.11(c) and 1315.11(c).

²⁴ 21 CFR 1303.12(b), 1315.32(e), and 1315.22.

²⁵ 21 CFR 1303.22.

²⁶ 21 CFR 1303.21(a), 1315.21, 1303.12(c), 1315.32(f) and 21 CFR 1315.34(f).

²⁷ 21 CFR 1303.23(c) and 1315.23(c).

²⁸ 81 FR 96992, December 30, 2016.

HHS, about rates of overdose deaths and abuse and public health impact must be considered. The Administrator may also consider any other sources of information that he determines to be reliable. Moving forward, any year where the approved APQ for a covered controlled substance is higher than that of the previous year, the Administrator must consult with the Secretary of HHS and explain in the final order “why the public health benefits of increasing the quota clearly outweigh the consequences of having an increased volume of the covered controlled substance available for sale, and potential diversion, in the United States.” Congress defines a “covered controlled substance” as fentanyl, oxycodone, hydrocodone, oxymorphone, or hydromorphone.

C. Procurement Quota Certification

Regarding certification of procurement quota, this proposed rule would clarify the current language in 21 CFR 1303.12(f) and 1315.32(h) and ensure that both manufacturers and distributors are required to obtain certification of a buyer's quota for the requested schedule I and II controlled substances, as well as list I chemicals when the buyer is a manufacturer.

In the 2000s, DEA began to notice a subset of manufacturers reporting purchases and distributions of schedule II controlled substances, even though they were not granted procurement quota. The DEA determined that this subset of manufacturers was conducting packaging/repackaging and labeling/relabeling activities. These activities constitute manufacturing as the term is defined in the CSA,²⁹ and as such, require quota when the product falls within schedules I or II or is a list I chemical. These manufacturers appear to fill a niche market of providing their customers with drug products in packaged count sizes that regular manufacturers do not market. While DEA is not averse to manufacturers fulfilling legitimate medical needs, DEA is required to ensure that enough quota is granted to meet legitimate medical, scientific, and research needs, while preventing diversion. To prevent diversion, the DEA maintains a closed distribution system for schedule I and II controlled substances and list I chemicals when manufacturers follow the laws and regulations of the CSA and CFR. One method of doing this is to hold manufacturers to the requirement of providing proof of quota through certification, which ensures that purchases and distributions do not

exceed the procurement quota set by DEA.

In order to ensure the system is closed, the DEA manages the quota process by providing each manufacturer a letter stating the quantity of controlled substance(s) and/or list I chemical(s) the manufacturer may obtain during a calendar year. This letter provides legal documentation that the manufacturer is authorized to obtain a specified quantity of the controlled substance(s) and/or list I chemical(s). The CSA and the DEA's implementing regulations require proof of quota when transferring controlled substances and list I chemicals between manufacturers. When the CSA and DEA's regulations were first drafted, neither contemplated that distributors would be used to move controlled substances and list I chemicals between manufacturers.

When distributors provided schedule II controlled substances to this subset of manufacturers without verification of the manufacturers' quota authorization, it circumvented the quota process of verifying quota to the supplier. This prevents the DEA from performing its oversight responsibilities and leads to unauthorized distribution of drug products. These unauthorized distributions are only noted as sales, which artificially inflates the estimation of legitimate medical need, a heavily weighted factor in the setting and revising of the APQ. By requiring that all manufacturers provide a certification of quota before receiving any quantity of controlled substance or list I chemical, DEA is better able to maintain the closed distribution system.

D. Reduction of Inventory Allowances

The DEA proposes to revise 21 CFR 1303.24 and 1315.24 to reduce the overall inventory held by DEA-registered bulk and dosage-form manufacturers. These revisions are necessary, in light of the increasingly complex controlled substances manufacturing business practices, to reduce the potential for the diversion of schedule I and II controlled substances and list I chemicals.

The DEA has noticed inventory fluctuation changes at various stages of the manufacturing process for certain schedule II controlled substances and changes in market conditions. The market conditions have changed from being a vertically integrated manufacturing practice to a horizontal manufacturing structure, which includes an increased number of manufacturers and demand for lower cost generic drug products containing controlled substances. This proposed rule would address the need to reduce

the overall inventory allowance for each individual manufacturer.

The proposed revisions are as follows:

- 21 CFR 1303.24(a)—decreases the inventory allowance issued by DEA for individual manufacturing quotas from 50 to 30 percent for schedules I and II controlled substances;
- 21 CFR 1303.24(b)—establishes an inventory allowance issued by DEA for procurement quotas of 30 percent for schedules I and II controlled substances;
- 21 CFR 1303.24(c)—suspends quota issued by DEA if inventory exceeds 45 percent of the registrant's estimated net disposal for schedules I and II controlled substances;
- 21 CFR 1303.24(d)—grants request of additional quota by registrant if inventory is less than 20 percent of the registrant's estimated net disposal for schedules I and II controlled substances;
- 21 CFR 1315.24(a)—decreases the inventory allowance issued by DEA for individual manufacturing quotas from 50 to 30 percent for the list I chemicals;
- 21 CFR 1315.24(b)—decreases the inventory allowance issued by DEA for procurement quotas from 50 to 30 percent for the list I chemicals;
- 21 CFR 1315.24(c)—suspends quota issued by DEA if inventory exceeds 45 percent of the registrant's estimated net disposal for the list I chemicals; and
- 21 CFR 1315.24(d)—grants request of additional quota by registrant if inventory is less than 20 percent of the registrant's estimated net disposal for the list I chemicals.

Lowering all manufacturers to a 30 percent inventory allowance will allow the DEA to better manage individual quotas based on fluctuations in market shares from the entrance of the new manufacturers. The decrease in inventory will prevent excess accumulation of drug product or bulk API by the manufacturers who lose market share, lowering the risk of diversion. By reducing the percentage of the inventory allowance from 50 percent to 30 percent, the DEA will be able to prevent the manufacture of unnecessary quantities of controlled substances and list I chemicals, while still ensuring adequate availability for the legitimate medical, scientific, research, and industrial needs of the United States, thereby decreasing the overall risk of diversion to illicit purposes.

The DEA understands that manufacturers of controlled substances and list I chemicals need to maintain an additional inventory in case of market fluctuations while balancing the risks of public health and safety, but believes that a 50 percent inventory allowance is too large. An inventory allowance of 50 percent is half of a year's sales supply

²⁹ 21 U.S.C. 802(15).

(net disposal) for each manufacturer, which the DEA believes increases the risk of potential diversion and abuse. For example, the increase in oxycodone dosage-form manufacturers from 2007 to 2017 shows multiple firms vying for an existing market. Their contract and purchase order negotiations frequently require the DEA to reallocate quotas during the same calendar year to maintain a balance between manufacturer production and patient needs. During the calendar year, if the inventory of a basic class held by a manufacturer exceeds 45 percent of estimated net disposal, the quota for that class would be automatically suspended and would remain suspended until inventory is less than 40 percent of the estimated net disposal. The current inventory allowance of 50 percent for each individual manufacturer is too high when compared to individual manufacturer market share necessary to support legitimate medical, scientific, research, and industrial needs for a specific controlled substance or list I chemical.

The DEA believes that a decrease to a 30 percent inventory allowance is necessary because it reflects nearly four months of sales supply (net disposal) for each manufacturer, which allows for market fluctuations among all manufacturers of that class without disruption to patients. Under this proposed rule, manufacturers would continue to receive manufacturing and procurement quotas sufficient to meet their manufacturing and inventory requirements to sustain the domestic demand for controlled substances and list I chemicals within the United States. DEA invites comment on whether the proposed reductions will lead to shortages or delays in drug supply.

The complexity of current business practices is multifactorial and includes increased specialization in the manufacturing process itself, the development of niche markets for specifically formulated drug products, a change from vertically integrated manufacturing practices to a much more horizontal manufacturing structure, and the increasing numbers of manufacturers receiving FDA approval to market generic products. Due to this evolution of complexity in the pharmaceutical industry and the inflexible nature of the regulations by which the DEA must calculate inventory allowances for manufacturers of controlled substances and list I chemicals, the current inventory allowances provide an opportunity for the disproportionate accumulation of controlled substance for United States

needs. These proposed revisions would rectify a situation where the DEA's ability under the statute and regulations to strike an appropriate balance between ensuring the availability of controlled substances and list I chemicals to patients and reducing the risk to public health and safety is compromised. DEA invites comment, including studies, data, or other evidence, as to whether the reductions will result in less diversion.

E. Subcategories for Quotas

The DEA proposes formalizing the addition of use-specific subcategories by adding 21 CFR 1303.04 and 1315.07. As a practical matter, the DEA acknowledges that the subcategories proposed within this rule are already in use through voluntary and cooperative efforts of the DEA registrants.

This proposed rule would codify DEA's current utilization of subcategories while facilitating the issuance of individual manufacturing quotas. The formalization of subcategories also provides benefits to the registrant, by allowing for a more detailed level of communication with the DEA as to why a registrant requires specific controlled substances and list I chemicals and how those substances will be utilized.

Additionally, as the number of manufacturers continues to increase and industry practices and specializations change, the ability to methodically track movements of material between registrants at all stages of manufacturing becomes more critical. The specification of quota subcategories improves the efficiency of the application and reporting process for DEA-registered manufacturers.

Use-specific quota subcategories reflect the manufacturing activity of the applying DEA registrant and have facilitated the issuance of manufacturing and procurement quotas and provided a more accurate calculation of the APQs for the United States. These subcategories are: (1) Quota for Commercial Sales; (2) Quota for Transfer; (3) Quota for Product Development; (4) Quota for Replacement; and (5) Quota for Packaging/Repackaging and Labeling/Relabeling. The specification of subcategories for manufacturing and procurement quotas enhances the DEA's ability to administer and manage the APQs and individual manufacturing, importation, and procurement quotas consistent with Congress' intent that the DEA monitor and track controlled substances and list I chemicals as they move through a closed system of distribution. Additionally, as the

number of manufacturers continues to increase and industry practices and specializations continue to evolve, the DEA's ability to track movement of material between registrants at all stages of manufacturing is critical.

By amending sections 21 CFR 1303.12(b), 1303.22, 1315.22, and 1315.32(a), the DEA proposes to revise the procedure for applying for both manufacturing and procurement quotas. Through adding new sections 21 CFR 1303.04(d) and 1315.07(d), the DEA proposes to revise the application process for a request of replacement quota for schedules I and II controlled substances to include either a completed DEA Order Form, or Form for Inventory Surrendered, (Form DEA-222 and DEA-41, respectively) to justify a replacement quota application.

The new subcategories for quota are as follows:

1. *Quota for Commercial Sale:* This subcategory applies to both bulk manufacturers and dosage-form manufacturers. This subcategory identifies the amount of bulk API manufactured and acquired by a DEA registrant for the dosage-form manufacture of FDA-approved controlled substance and list I chemical drug products, the amount of API acquired by FDA-registered 503B outsourcing facilities, as well as amounts needed for research, scientific, and industrial purposes. Any bulk manufacturer that produces API for sale to a manufacturer for the purpose of finished dosage-form development receives individual manufacturing quota for commercial sale. Any manufacturer that receives material and conducts blending into dosage-form for sale receives procurement quota for commercial sale. By keeping this item as a separate category, DEA calculates how much bulk API needs to be manufactured for a particular calendar year, which assists DEA in setting the APQs and AANs. An appropriate inventory allowance is established for this type of quota, as specified in 21 CFR 1303.24 and 1315.24. Manufacturing and procurement quotas for commercial sale are not able to be used to support product development efforts.

2. *Quota for Transfer:* This subcategory captures material moved from one manufacturing registrant back to the preceding registrant through the closed distribution system during the manufacturing process. The intent of this category is to track quota used to support the transfer of schedules I and II controlled substances, as well as the list I chemicals, whether it is bulk API, in-process material, or finished dosage-

forms, from one DEA-registered manufacturer to another. This quota is not to be used to assist the DEA in setting APQs and AANs because the material was previously captured and applied against the APQ and AAN when it was originally manufactured; therefore, the transfer of the material cannot be counted against the APQ and AAN again. This subcategory of procurement quota is ideal to track the return of finished material to the manufacturer to complete the manufacturing process and disposition after the occurrence of any of the aforementioned manufacturing activities or return of rejected material to the upstream manufacturer for destruction or additional processing.

3. *Quota for Product Development:* In recent years, the DEA has observed a sizeable increase in requests for quota to conduct product development and FDA validation batches. These activities obscure how much material is commercially available to patients for legitimate medical purposes because a registrant's individual quota currently represents both commercial manufacturing efforts, as well as product development and validation efforts. It is critical to accurately capture the amount of material being utilized specifically for product development versus commercial manufacturing. This subcategory of individual manufacturing quota and procurement quota specifically grants the quota for development of new drug product(s), reformulation work, validation, and development manufacturing efforts. The product development quota is limited only to the development efforts noted in the application; it cannot be used or substituted for commercial production or the development of a different product. All products manufactured under this subcategory are non-saleable, with the exception of validation batches post-FDA approval. This subcategory is used to assist the DEA in setting the APQs and AANs. No inventory allowance is provided for this type of procurement quota.

4. *Quota for Replacement:* Replacement quota is intended to replace material from the current quota year and not a means to replace disposed samples, analytical samples of product development material or inventory acquired or manufactured under previous quota years. This subcategory of individual manufacturing quota and procurement quota includes quota granted to a registrant after the registrant obtained material that was initially intended for commercial sale, but is unable to be marketed. Examples include failed

batches due to a contaminant, material that is out of specification and can no longer be used, lots that reached their expiration date, or unusable material from a dosage-form manufacturer.

Replacement quota is granted on a case-by-case basis. The merit of the request is determined by the specifics of the registrant's justification and situation. The DEA reviews the submitted DEA Form 41 or DEA Form 222 documenting the destruction of the controlled substance and evaluates the justification for the destruction to determine if replacement quota is the appropriate course of action and whether or not the destroyed material is required to meet the legitimate demand of the market. Replacement quota is also considered in setting the APQ and the AAN.

5. *Quota for Packaging/Repackaging and Labeling/Relabeling:* In recent years, the DEA has a rise in specialty manufacturers that only conduct packaging of controlled substances. This results in frequent movement of materials from one facility to another facility for the performance of packaging/repackaging and labeling/relabeling activities. The performance of packaging/repackaging and labeling/relabeling activities can occur within a company with multiple manufacturing locations and thus multiple DEA registration numbers, between a contract packager performing the activity for a manufacturer or a third party, or a packaging/repackaging and labeling/relabeling company who will bring the product to market. The formalization of a subcategory for packaging quota allows the DEA to be more efficient in accounting for these types of manufacturing activities. This subcategory is used to assist the DEA in setting the AAN, but not the APQ. This subcategory of quota is considered in determining the AAN because most of the finished dosage-forms and bulk API required to meet US legitimate need are imported rather than manufactured domestically. The accounting is necessary to prevent circumvention of the quota system as it applies to the list I chemicals specifically mentioned by Congress in the Combat Methamphetamine Epidemic Act (2005).

Assigning quota to specific subcategories allows the DEA to indicate how much of a registrant's quota may be used to receive bulk material, in-process, or finished dosage units, as well as how much may be used for product development, commercial production, or the launching of new products. Additionally, registrants are prevented from using their quota for a

purpose other than that originally intended and justified to DEA.³⁰

F. New Deadlines for the Establishment of Quotas

The DEA is proposing to revise 21 CFR 1303.11(c), and 1315.11(c) to change the deadlines for the establishment of the APQ and the AAN. This modification will allow a more reasonable amount of time for processing and responding to applications for quota. The DEA also proposes to revise 21 CFR 1303.23(c) and 1315.23(c) to modify the existing deadlines for adjusting the individual manufacturing quotas, allowing more time for reviewing applications for adjustment of individual manufacturing quotas and responding to each applicant. Along with the deadline change for individual manufacturing quotas, the DEA proposes to revise 21 CFR 1303.12(c), 1315.32(f), and 1315.34(f), which would change the deadlines for the establishment of procurement quotas for both schedules I and II controlled substances and list I chemicals, as well as the deadline for import quota of list I chemicals. The proposed changes to the import quota and the procurement quotas are necessary to stay in accordance with the deadline for individual manufacturing quota, as they are all published at the same time when the DEA establishes the APQ and AAN.

The DEA continues to collect various data to administer the United States quota system. Moving the deadlines previously established would allow the DEA to obtain additional relevant data from multiple Federal and state agencies, which would enable better analysis of legitimate demand, strengthening the DEA's ability to allocate quota to the appropriate manufacturers of these substances. These revisions would allow DEA sufficient time to compile and consider all requests for quota in order to ensure that each manufacturer is provided with an adequate amount of quota for their legitimate production needs, while also ensuring that quotas are not unwarranted, which increases the risk of diversion.

The proposed changes are as follows:

- Establishment of the APQ and the AAN: Change from May 1 to September 1.
- Deadline to issue procurement quota: Change from July 1 to December 1.
- Deadline to issue import quota: Change from July 1 to December 1.

³⁰ 21 U.S.C. 842(b).

- **Deadline to adjust individual manufacturing quota:** Change from March 1 to July 1.

Establishment and Publication of the APQ and AAN: The DEA is seeking to move the publication date for the APQ and the AAN to September 1. Allowing additional time to review applications for import, procurement, and individual manufacturing quota would provide the DEA enough time to assess the needs of industry within the new established timeline for publication of the APQ and AAN, while still maintaining the statutory deadline of December 1³¹ for issuing individual manufacturing quotas.

Issuing Procurement Quotas: Under the proposed rule, this deadline would be moved to December 1 to allow DEA an adequate amount of time to review each application for procurement quota, identify the corresponding bulk manufacturing quota, and then respond to each application. In addition, as stated previously, moving the deadline would allow the continuation of the current practice of issuing the quota at the same time as the individual manufacturing quota.

Issuing Import Quotas: Here, the DEA proposes to move the deadline for issuing import quotas to December 1 (three months after publication of the AAN) to allow the DEA an adequate time to identify the corresponding procurement quotas and then respond to each application. Moving the deadline also allows the import quota to be issued in the same document.

Adjusting Individual Manufacturing Quotas: The DEA proposes to move this deadline to July 1 to allow the DEA an adequate time to review each application for adjusting individual manufacturing quota, revise the APQ, and respond to each application.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule has been developed in accordance with the principles of Executive Orders 12866 and 13563. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, public health and safety, and environmental advantages, distributive

impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. The Executive Order classifies a “significant regulatory action” requiring review by the Office of Management and Budget (OMB) as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

While this proposed rule is not economically significant, it is a significant regulatory action under Executive Order 12866, section 3(f) subjecting it to review by OMB. The DEA analyzed the economic impact of each provision of this proposed rule and estimated the annual cost to be \$35,241. Certain provisions are estimated to also have benefits; however, the DEA does not have a basis to estimate those benefits due to many unknowns. Because of this, the benefits of this proposed rule are discussed qualitatively. The rule contains clarification of regulatory language and the codification of existing DEA and registrant practices regarding subcategories for quotas, certification of procurement quota, and additional considerations for revisions to APQs. The results of the analysis of each provision are as follows:

Defining Types of Quota and Filing To Abandon Quota

These provisions simply codify existing DEA practices, and will result in no economic impact on registrants or the DEA. The formal definition of quota types will have no practical impact on registrants, and formalizing the procedure to abandon quota is simply a codification of DEA’s current procedure. While these proposed provisions will have no economic costs or benefits, DEA believes there are benefits to accurately codifying existing practices. These proposed provisions are expected to enhance clarity, certainty, and efficiency.

Conforming Revisions Related to the SUPPORT Act

As indicated above, the SUPPORT Act gives the DEA discretionary authority to establish quotas in terms of pharmaceutical dosage-form. At the present time, the DEA is not deviating from its current practice of establishing quotas necessary for the manufacture of finished dosage-forms in terms of kilograms, and allowing manufacturers to determine how to best allocate those kilograms to different FDA-approved dosage-forms. While the SUPPORT Act gives DEA the authority to establish quotas in terms of pharmaceutical dosage-form, the DEA will continue to use its current process of establishing quota in terms of kilograms, for the time being. While it is impossible to know all the circumstances in which this authority would be used, it is the DEA’s current intention that any implementation of dosage-form quotas will be the exception rather than the rule, and will coexist alongside kilogram quotas. The DEA recognizes that dosage-form manufacturers are in the best position to understand the demand for their products, in dosage-form. Because, at the present time, the DEA is likely to use this authority sparingly, and only adjust quotas for manufacturers producing the dosage-form, the DEA anticipates that this provision of the proposed rule will have minimal impact.

The SUPPORT Act also requires the DEA to estimate the amount of diversion when establishing quota for a covered controlled substance using all reliable information, including information from HHS and other agencies. The DEA has considered information and data regarding the amount of diversion for covered controlled substances when applicable during the process of determining the APQ. This function is a regular part of DEA’s operations. Therefore, considering additional reliable information gathered from outside the agency to estimate the amount of diversion will result in minimal additional cost.

The SUPPORT Act updates also extend the DEA’s deadline to fix individual manufacturing quotas for schedules I and II controlled substances from October to December, and formally define the phrase “covered controlled substance” to include fentanyl, oxycodone, hydrocodone, oxymorphone, or hydromorphone. The deadline extension will have minimal impact on registrants, as the DEA currently does not meet the October deadline. This extension will align the regulations with reality for registrants

³¹ 21 U.S.C. 826(c).

and the DEA. Defining “covered controlled substance” will not change how those substances or the registrants that are authorized to handle those substances are regulated. Therefore, these provisions will have minimal impact on registrants or the DEA.

While the benefits of the SUPPORT Act updates were not quantified due to many unknowns, it is possible to discuss some of these benefits in qualitative terms. With these conforming revisions related to the SUPPORT Act, DEA has the ability to respond to adverse market conditions with increased speed and flexibility in order to minimize public harm. Dosage-form quotas would be used by the DEA to alleviate the rare occurrence of a drug shortage in the market by targeting the specific dosage-forms that are in short supply instead of simply increasing the total amount of kilograms of a drug to be produced, resulting in a benefit to the public. Another benefit is that updating the deadlines for setting individual manufacturing quotas so they reflect DEA’s current practice removes regulatory uncertainty for manufacturers. Regulations that realistically reflect current DEA and industry practice will benefit the planning processes of current and future market participants. Therefore, the DEA believes the benefits of these conforming revisions related to the SUPPORT Act outweigh their minimal costs.

Procurement Quota Certification

The proposed rule would require that all DEA registrants supplying schedules I and II controlled substances and list I chemicals to DEA manufacturers obtain certification of the manufacturer’s quota before completing the transaction. In practice, this certification may be any written declaration issued by manufacturers to distributors. This provision prevents manufacturers from purchasing their API or finished dosage-forms from distributors without quota verification as currently required when manufacturers request API or finished dosage-forms from other manufacturers. Current regulations stipulate that only entities registered as “importer,” “manufacturer,” or “bulk manufacturer” must certify³² quota before a sale.

In order to estimate the cost of this provision, the DEA utilized internal data tracking the sale of schedules I and II controlled substances and list I chemicals from distributors to manufacturers during the three year period of January 1, 2015 to December 31, 2017. DEA’s analysis revealed that

over this three year period, distributors filled an average of 3,000 orders to manufacturers per year. Using Bureau of Labor Statistics (BLS) wage data for Compliance Officers, the type of registrant employee that would be tasked with certifying quota, the DEA estimated the labor cost of quota certification to distributors and manufacturers. Based on its knowledge of registrant business operations, DEA estimates a manufacturer compliance officer requires 10 minutes to draft a quota certification letter after placing a purchase request to a distributor, while the distributor compliance officer requires five minutes to review and verify the manufacturer’s certification letter. This results in a combined labor burden of 15 minutes (0.25 hours). Multiplying the loaded median hourly wage rate for compliance officers by 0.25 and applying that to the estimated 3,000 certification letters per year yields a total yearly labor cost of \$35,241 (\$23,494 of which is incurred by manufacturers while the remaining \$11,747 is incurred by distributors).

Reduction of Inventory Allowances

The proposed rule would reduce the inventory allowance for manufacturers of controlled substances and list I chemicals from 50 percent to 30 percent of the registrant’s estimated net disposal. The 30 percent inventory allowance would be for the purposes of determining the quota for the coming year and to allow inventory at the beginning of a manufacturer’s new quota year. Manufacturers may exceed the 30 percent inventory allowance during the year. If at any time during the year, the inventory of a basic class held by a manufacturer exceeds 45 percent of estimated net disposal, the quota for that class is automatically suspended and would remain suspended until inventory is less than 40 percent of the estimated net disposal. Practically speaking, the inventory allowance equates to a reduction from half of a year’s sales supply (50 percent) allowed to be held as inventory to nearly four months (30 percent). Additionally, the 45 percent maximum inventory during the year would give manufacturers the flexibility to have inventory equal to nearly six months of sales supply in order to account for any unplanned fluctuations in demand or timing in orders for their product throughout the year.

DEA expects this reduction in allowance will result in minimal to no economic impact on affected registrants as the following data show. From 2008 to 2017, as reported to the U.N., end-of-year combined average inventory

balances for holders of both manufacturing and procurement quotas of internationally controlled narcotics ranged from 32 percent to 46 percent, for a 10-year average of 39 percent. This average is a result of the bulk manufacturing quotas, which by regulation have a 50 percent inventory allowance, and procurement quota inventories, which are not explicitly stated in the regulations, but are held to a range of 30–50 percent based on specific risk factors, including increased documentation of misuse and abuse discovered by various components within HHS and the Department of Justice (DOJ). The reduction of inventory allowance to 30 percent, with flexibility to produce up to 45 percent at any given point in a year, is not anticipated to impact the current operations of registrants, given that over a 10-year period, the average year-end inventories for manufacturers was 39 percent.

Registrants also routinely request adjustments to their quota throughout the year due to fluctuations in market conditions. This is a normal part of a manufacturer’s business operations. The DEA quickly responds to these requests within six to eight weeks, ensuring legitimate business is not disrupted, and will continue to do so once this rule is promulgated. For example, in 2017 (the last year in which data are available), the DEA processed 1,752 initial quota applications and 2,299 requests for adjustment to quota.

For these reasons, the DEA believes a reduction of inventory allowance to 30 percent would have minimal impact on registrants while continuing to provide adequate inventory for registrants to respond to fluctuations in demand in pharmaceutical markets. However, DEA invites public comment on its assumption that the market supply of controlled substances and list I chemicals will not be impacted by the reduction in inventory allowance.

Formalization of Subcategories for Manufacturing Quotas and Procurement Quotas

This provision of the proposed rule is a codification of existing voluntary and cooperative efforts between registrants and the DEA that have been in place since 2001 and allows a more accurate calculation of APQs for the United States. The establishment of subcategories of (1) Quota for Commercial Sales; (2) Quota for Transfer; (3) Quota for Product Development; (4) Quota for Replacement; and (5) Quota for Packaging/Repackaging and Labeling/Relabeling are already being utilized by

³² 21 CFR 1303.12(f) and 1315.32(h).

the DEA with full cooperation from all registrants. Therefore, this provision simply updates 21 CFR 1303.03, 1303.04, 1315.06, and 1315.07 to reflect current DEA procedure for the establishment of quota. Therefore, this provision of the proposed rule will have no economic impact on registrants or the DEA.

New Deadlines for Establishing Quotas

The proposed rule would modify the deadlines for establishing and publishing the APQ, AAN, procurement quota, and manufacturing quotas and any adjustments to manufacturing quotas. The current publishing deadlines for the establishment of the APQ and the AAN of May 1, and the issuing of individual procurement, manufacturing and import quotas of July 1 are frequently missed by the DEA due to the expansion of the market and the increase in the number of manufacturers and importers since that deadline was implemented almost 50 years ago. Applications for import and procurement quota are due April 1, giving the DEA only 30 days before the May 1 deadline for publication of the APQ and AAN. Given that the DEA has historically missed these deadlines, since it must take adequate time to provide a thorough and careful assessment of each application, both the DEA and industry have already become accustomed to a delayed publishing schedule. Therefore, this provision is expected to have minimal economic impact as it simply aligns the regulatory deadlines with the current business practices of the DEA and industry.

DEA invites public comment on the preceding discussion of the potential impact of this proposed rule.

Executive Order 13771 was issued on January 30, 2017, and published in the **Federal Register** on February 3, 2017. 82 FR 9339. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, Section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Guidance from OMB, issued on April 5, 2017, explains that the above requirements only apply to each new “significant regulatory action that . . . imposes costs.” The same OMB guidance also clarifies that: “*de minimis* costs may qualify for an exemption . . .

[if, for example] the agency estimates the action would have present value costs of \$50,000 spread over a large number of persons and/or entities.” The DEA expects the costs of this proposed rule to be *de minimis*. Therefore, this proposed rule is not expected to be an Executive Order 13771 regulatory action.

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), the DEA evaluated the impact of this rule on small entities. The DEA's evaluation of economic impact by size category indicates that the rule will not, if promulgated, have a significant economic impact on a substantial number of these small entities.

The RFA requires agencies to analyze options for regulatory relief of small entities unless it can certify that the rule will not have a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. The DEA evaluated the impact of this rule on small entities and discussions of its findings are below.

As discussed in the “Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)” section above, this

proposed rule has six key components as described below.

Defining Types of Quota and Filing To Abandon Quota

This provision simply codifies existing DEA practices, and will result in no economic impact on registrants or the DEA. The formal definition of quota types will have no practical impact on registrants, and formalizing the procedure to abandon quota is simply a codification of DEA's current procedure. Therefore, this proposed provision will have no costs.

Conforming Revisions Related to the SUPPORT Act

While the SUPPORT Act gives the DEA the authority to establish quotas in terms of pharmaceutical dosage-form, the DEA will continue to use its current process of establishing quota in terms of kilograms. Therefore, this provision of the proposed rule will have no impact.

Additionally, the SUPPORT Act defines the phrase “covered controlled substance” to include fentanyl, oxycodone, hydrocodone, oxymorphone, and hydromorphone and requires the DEA to estimate the amount of diversion when establishing quota for covered controlled substances by consulting with the Secretary of HHS and considering reliable information on the rates of overdose deaths and abuse and overall public health impact in the U.S. that is determined to be reliable. The DEA has considered the amount of diversion when establishing quotas when data has been available, and this is a regular part of DEA's operations. Therefore, considering additional reliable information gathered from outside the agency to estimate the amount of diversion will result in minimal additional cost.

The SUPPORT Act updates also extend the DEA's deadline to fix individual manufacturing quotas for schedules I and II controlled substances from October to December. The deadline extension will have minimal impact on registrants, as the DEA currently does not meet the October deadline. This extension will align the regulations with reality for registrants. Therefore, these provisions will have minimal impact on registrants or the DEA.

Procurement Quota Certification

The proposed rule would require that all DEA registrants supplying schedules I and II controlled substances and list I chemicals to DEA manufacturers to obtain certification of the manufacturer's quota before completing the transaction. In practice, this certification must be a written

declaration issued by manufacturers to distributors containing the information as required in the regulations.³³ This provision prevents manufacturers from purchasing their API or finished dosage-forms from distributors without quota verification as currently required when manufacturers request API or finished dosage-forms from other manufacturers. Current regulations stipulate that only entities registered as “importer,” “manufacturer,” or “bulk manufacturer” must certify³⁴ quota before a sale.

In order to estimate the cost of this provision, the DEA utilized internal data tracking the sale of schedules I and II controlled substances and list I chemicals from distributors to manufacturers during the three year period of January 1, 2015 to December 31, 2017. DEA’s analysis revealed that over this three year period, distributors filled an average of 3,000 orders to manufacturers per year. Using BLS wage data for Compliance Officers, the type of registrant employee that would be tasked with certifying quota, the DEA estimated the labor cost of quota certification to distributors and manufacturers. Based on its knowledge of registrant business operations, DEA estimates a manufacturer compliance officer requires 10 minutes to draft a quota certification letter after placing a purchase request to a distributor, while the distributor compliance officer requires five minutes to review and verify the manufacturer’s certification letter. This results in a combined labor burden of 15 minutes (0.25 hours). Multiplying the loaded median hourly wage rate for compliance officers by 0.25 and applying that to the estimated 3,000 certification letters per year yields a total yearly labor cost of \$35,241 (\$23,494 of which is incurred by manufacturers while the remaining \$11,747 is incurred by distributors).

Reduction of Inventory Allowances

The proposed rule would reduce the inventory allowance for manufacturers of controlled substances and list I chemicals from 50 percent to 30 percent of the registrant’s estimated net disposal. The 30 percent inventory allowance would be for the purposes of determining the quota for the coming year and to allow inventory at the beginning of a manufacturer’s new quota year. Manufacturers may exceed the 30 percent inventory allowance during the year. If at any time during the year, the inventory of a basic class held by a manufacturer exceeds 45 percent of estimated net disposal, the quota for

that class is automatically suspended and would remain suspended until inventory is less than 40 percent of the estimated net disposal. Practically speaking, the inventory allowance equates to a reduction from half of a year’s sales supply (50 percent) allowed to be held as inventory to nearly four months (30 percent). Additionally, the 45 percent maximum inventory during the year would give manufacturers the flexibility to have inventory equal to nearly six months of sales supply in order to account for any unplanned fluctuations in demand or timing in orders for their product throughout the year.

DEA expects this reduction in allowance will result in minimal to no economic impact on affected registrants as the following data show. From 2008 to 2017, as reported to the U.N., end-of-year combined average inventory balances for holders of both manufacturing and procurement quotas of internationally controlled narcotics ranged from 32 percent to 46 percent, for a 10-year average of 39 percent. This average is a result of the bulk manufacturing quotas, which by regulation have a 50 percent inventory allowance, and procurement quota inventories, which are not explicitly stated in the regulations, but are held to a range of 30–50 percent based on specific risk factors, including increased documentation of misuse and abuse discovered by various components within HHS and DOJ. For example, the DEA currently sets the inventory allowance for fentanyl, hydrocodone, hydromorphone, and oxycodone procurement quotas at 30 percent for FDA-approved dosage-forms. The reduction of inventory allowance to 30 percent, with flexibility to produce up to 45 percent at any given point in a year, is not anticipated to impact the current operations of registrants, given that over a 10-year period, the very upper range of year-end inventories for manufacturers was 46 percent.

Registrants also routinely request adjustments to their quota throughout the year due to fluctuations in market conditions. This is a normal part of a manufacturer’s business operations. The DEA quickly responds to these requests within six to eight weeks, ensuring legitimate business is not disrupted, and will continue to do so once this rule is promulgated. For example, in 2017 (the last year for which data are available), the DEA processed 1,752 initial quota applications and 2,299 requests for adjustment to quota.

For these reasons, the DEA believes a reduction of inventory allowance to 30 percent would have minimal impact on

registrants while continuing to provide adequate inventory for registrants to respond to fluctuations in demand in pharmaceutical markets. However, DEA invites public comment on its assumption that the market supply of controlled substances and list I chemicals will not be impacted by the reduction in inventory allowance.

Formalization of Subcategories for Manufacturing Quotas and Procurement Quotas

This provision of the proposed rule is a codification of existing voluntary and cooperative efforts between registrants and the DEA that have been in place since 2001 and allows a more accurate calculation of APQs for the United States. The establishment of subcategories of (1) Quota for Commercial Sales; (2) Quota for Transfer; (3) Quota for Product Development; (4) Quota for Replacement; and (5) Quota for Packaging/Repackaging and Labeling/Relabeling are already being utilized by the DEA with full cooperation from all registrants, therefore this provision simply updates 21 CFR 1303.03, 1303.04, 1315.06, and 1315.07 to reflect current DEA procedure for the establishment of quota. Therefore, this provision of the proposed rule will have no economic impact on registrants or the DEA.

New Deadlines for Establishing Quotas

The proposed rule would modify the deadlines for establishing and publishing the APQ, AAN and procurement and manufacturing quotas and any adjustments to manufacturing quotas. The current publishing deadlines for the establishment of the APQ and the AAN of May 1, and the issuing of individual procurement, manufacturing and import quotas of July 1 are frequently missed by the DEA due to the expansion of the market and the increase in the number of manufacturers and importers since that deadline was implemented almost 50 years ago. Applications for import and procurement quota are due April 1, giving the DEA only 30 days before the May 1 deadline for publication of the APQ and AAN. Given that the DEA has historically missed these deadlines since it must take adequate time to provide a thorough and careful assessment of each application, both the DEA and industry have already become accustomed to a delayed publishing schedule. Therefore, this provision is expected to have minimal economic impact as it simply aligns the regulatory deadlines with the current business practices of the DEA and industry.

³³ 21 CFR 1303.12(f) and 1315.32(h).

³⁴ *Id.*

Summary

In summary, only the Procurement Quota Certification requirement imposes a cost, \$23,494 to all manufacturers combined and \$11,747 to all distributors combined for a grand total cost of \$35,241.

Description and Estimate of the Number of Small Entities

This proposed rule has the potential to affect entities registered with the DEA as manufacturers, distributors and importers of controlled substances and list I chemicals. Based on a review of respective representative North American Industry Classification System (NAICS) codes for manufacturers,³⁵ distributors and

importers³⁶ there are the following number of firms:³⁷

- 935 'Pharmaceutical Preparation Manufacturing' (325412)
- 6,666 'Drugs and Druggists' Sundries Merchant Wholesalers' (424210)

The U.S. Small Business Administration (SBA) considers a size standard as the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm. The SBA Size Standards for the two industries are 1,250 employees for Pharmaceutical Preparation Manufacturing and 250 employees for

Drugs and Druggists' Sundries Merchant Wholesalers.³⁸

Comparing the SBA size standards to the U.S. Census Bureau, Statistics of U.S. Businesses (SUSB) detailed data on establishment size by NAICS code for each affected industry, the DEA estimates the following number of small entities (and percent of establishments that are small entities) by industry:

- 866 (92.6% of total) 'Pharmaceutical Preparation Manufacturing' (325412)
- 6,394 (95.9% of total) 'Drugs and Druggists' Sundries Merchant Wholesalers' (424210)

The table below summarizes the calculation for the estimated number of small entities (establishments) above.

DETAILED ANALYSIS OF PERCENTAGE OF ENTITIES THAT ARE SMALL ENTITIES BY INDUSTRY

NAICS description	Firm size by average employees	Firms	Establishments	SBA size standard	Small entities	Small entities (%)
325412—Pharmaceutical Preparation Manufacturing.	Total	935	1170	1,250	866	92.6
	<500	833	856	1,250	833	100
	500–749	19	32	1,250	19	100
	750–999	10	16	1,250	10	100
	1,000–1,499 ...	7	14	1,250	4	50
	1,500–1,999 ...	5	9	1,250	0	0
	2,000–2,499 ...	7	12	1,250	0	0
	2,500–4,999 ...	19	67	1,250	0	0
	5,000+	35	164	1,250	0	0
	Total	6,666	9,915	250	6,394	95.9
424210—Drugs and Druggists' Sundries Merchant Wholesalers.	<100	6,369	6,380	250	6,225	100
	100–149	102	137	250	102	100
	150–199	42	59	250	42	100
	200–299	50	73	250	25	50
	300–399	29	58	250	0	0
	400–499	18	90	250	0	0
	500–749	35	55	250	0	0
	750–999	17	31	250	0	0
	1,000–1,499 ...	21	109	250	0	0
	1,500–1,999 ...	12	23	250	0	0
	2,000–2,499 ...	12	24	250	0	0
	2,500–4,999 ...	34	114	250	0	0
	5,000+	69	2,762	250	0	0
	Total	6,666	9,915	250	6,394	95.9

Because DEA registrants frequently hold more than one registration for separate locations, many registrations may be held by one entity. The DEA estimates the number of affected entities by multiplying the number of DEA registrations in each business activity by its "firm-to-establishment" ratio in

order to find the total amount of entities. The firm-to-establishment ratio is calculated by dividing the number of firms in each industry NAICS code by the total number of establishments found in the third and fourth columns of the previous table.³⁹ The DEA analyzed how each provision of the

proposed rule will affect DEA registrants, including how many entities will be affected by each provision, and found that 550 DEA registered entities will be affected by at least one provision of this proposed rule. A summary of this analysis is detailed in the table below:

³⁵ The DEA believes 'Pharmaceutical Preparation Manufacturing' (325412) includes 503B outsourcing facilities.

³⁶ The DEA believes 'Drugs and Druggists' Sundries Merchant Wholesalers' (424210) includes both distributors and importers of controlled substances and (human form) list I chemicals.

³⁷ For the purposes of this analysis, the term "firm" is synonymous with "entities."

³⁸ SBA "Table of Small Business Size Standards Matched to North American Industry Classification System Codes, Effective October 1, 2017."

³⁹ For example, the firm-to-establishment ratio for NAICS 325412 is obtained by dividing the 935 total firms in the industry by the 1170 total establishments in the industry, yielding a ratio of .80. The exact same calculation for NAICS code 424210 yields a ratio of .67.

SUMMARY OF DEA REGISTERED ENTITIES AFFECTED BY PROVISION OF PROPOSED RULE

Activity	DEA registrants	Provisions						Affected entities *
		Inventory allowance	APQ and AAN dates	Subcategories	SUPPORT Act	Definitions	Quota cert	
Manufacturer CS, Bulk	34	Yes	Yes	Yes	Yes	Yes	No	27
Manufacturer List I, Bulk		Yes	Yes	Yes	Yes	Yes	No	
Manufacturer CS, Dosage	417	Yes	Yes	Yes	Yes	Yes	Yes	334
Manufacturer List I, Dosage		Yes	Yes	Yes	Yes	Yes	Yes	
Importer List I	35	No	Yes	No	No	Yes	No	23
Distributor CS	143	No	No	No	No	Yes	Yes	96
Distributor List I	104	No	No	No	No	Yes	Yes	70
Total								550

* Firm-to-establishment ratios of .80 for manufacturers and .67 for distributors and importers were used to calculate the number of affected entities.

After accounting for how many DEA registered entities are affected by each provision, DEA applied the estimated percentage of establishments that are small entities to each respective business activity in order to estimate the number of affected small entities. The

DEA estimates that of the 550 affected entities 515 are small entities: 159 distributors, 334 manufacturers and 22 importers. In summary, the percentages of small entities affected are as follows:

- 38.6% 'Pharmaceutical Preparation Manufacturing' (325412)

- 2.8% 'Drugs and Druggists' Sundries Merchant Wholesalers' (424210)

The table below summarizes the estimated number of small entities, number of affected small entities, and the percentage of small entities affected.

SUMMARY OF INDUSTRY, SBA SIZE STANDARD, AND AFFECTED SMALL ENTITIES

NAICS code	NAICS description	Small entity threshold/ SBA size standard	Estimated number of small entities (establishments)	Estimated number of affected small entities	Percentage of small entities affected
325412	Pharmaceutical Preparation Manufacturing	1,250	866	334	38.6
424210	Drugs and Druggists' Sundries Merchant Wholesalers	250	6,394	* 181	2.8
Total .....	.....	.....	7,260	515	N/A

* 159 distributors and 22 importers.

As described above, if promulgated this proposed rule is estimated to cost \$23,494 to all manufacturers combined and \$11,747 to all distributors or an average cost of \$70 (\$23,494/334) per affected manufacturer and \$71 (\$11,747/166) per distributor. The DEA generally uses 30 percent as a "substantial" number of affected small entities. The analysis reveals that a non-substantial

amount (2.8 percent) of small distributor entities will be affected, while a substantial amount (38.6 percent) of small manufacturing entities will be affected by this proposed rule. The DEA generally considers impacts that are greater than 3 percent of yearly revenue to be a "significant economic impact" on an entity. The DEA compared the compliance cost of \$70 and \$71 to the

average annual receipts of manufacturers and distributors/imports, respectively, for each size range.⁴⁰ For even the smallest of entities, the costs calculated above are much less than 3 percent of yearly revenue and are insignificant.

The table below summarizes the analysis.

SUMMARY OF ANALYSIS

NAICS code	NAICS description	Small entity threshold/ SBA size standard	Estimated number of small entities (establishments)	Estimated number of affected small entities	Percentage of small entities affected	Economic impact of compliance
325412	Pharmaceutical Preparation Manufacturing	1,250	866	334	38.6% (Substantial)	Not significant.
424210	Drugs and Druggists' Sundries Merchant Wholesalers	250	6,394	* 181	2.8% (Not Substantial) ...	Not Significant.

* 159 distributors and 22 importers.

⁴⁰ Small Business Administration, Office of Advocacy "Table 2—Number of firms,

establishments, receipts, employment, and payroll by firm size (in receipts) and industry, 2012."

<https://www.sba.gov/advocacy/firm-size-data>, accessed 5/24/2018.

The DEA examined the economic impact of the proposed rule for each affected industry for various size ranges. Based on the analysis above, and because of these facts, the DEA believes this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed subject to the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), this action would revise existing information collections 1117–0006, 1117–0008, and 1117–0047, and create one new information collection. The DEA is proposing to amend its regulations for establishing quotas for United States companies manufacturing schedules I and II controlled substances and ephedrine, pseudoephedrine, and phenylpropanolamine, and for procurement quota certification and recordkeeping requirements. The DEA has submitted these collection requests to the Office of Management and Budget (OMB) for review and approval.

A. Collections of Information Associated With the Proposed Rule

1. *Title:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

OMB Control Number: 1117–0006.
DEA Form Number: DEA–189.

The DEA is proposing to formally implement the use of subcategories to facilitate the issuance of manufacturing quotas and provide a more accurate calculation of the aggregate production quotas for the United States. The DEA proposes the addition of the following five subcategories for quota: (1) Quota for Commercial Sales; (2) Quota for Transfer; (3) Quota for Product Development; (4) Quota for Replacement; and (5) Quota for Packaging/Repackaging and Labeling/Relabeling. All types of quota could be requested using the same application and format registrants are accustomed to using, in an online form. Manufacturers of schedules I and II controlled substances and list I chemicals would

continue to receive manufacturing and procurement quotas appropriate to their manufacturing and inventory requirements, and the DEA would retain greater control over the amount of these controlled substances and listed chemicals produced, thereby reducing the amount of inventories at risk of diversion.

The DEA estimates the following number of respondents and burden associated with reporting:

- *Number of respondents:* 33.
- *Frequency of response:* Annually/As-needed (26.0303 average).
- *Number of responses:* 859.
- *Burden per response:* 0.5 hour.
- *Total annual hour burden:* 430.

2. *Title:* Application for Procurement Quota for Controlled Substances and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

OMB Control Number: 1117–0008.
DEA Form Number: DEA–250.

The DEA is proposing to formally implement the use of subcategories to facilitate the issuance of procurement quotas and provide a more accurate calculation of the aggregate production quotas for the United States. The DEA proposes the addition of the following five subcategories for quota: (1) Quota for Commercial Sales; (2) Quota for Transfer; (3) Quota for Product Development; (4) Quota for Replacement; and (5) Quota for Packaging/Repackaging and Labeling/Relabeling. All types of quota could be requested using the same application and format registrants are accustomed to using, in an online form. Manufacturers of schedules I and II controlled substances and list I chemicals would continue to receive manufacturing and procurement quotas appropriate to their manufacturing and inventory requirements, and the DEA would retain greater control over the amount of these controlled substances and listed chemicals produced, thereby reducing the amount of inventories at risk of diversion.

The DEA estimates the following number of respondents and burden associated with reporting:

- *Number of respondents:* 344.
- *Frequency of response:* Annually/As-needed (8.9128 average).
- *Number of responses:* 3,066.
- *Burden per response:* 0.5 hour.
- *Total annual hour burden:* 1,533.

3. *Title:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

OMB Control Number: 1117–0047.
DEA Form Number: DEA–488.

The DEA is proposing to formally implement the use of subcategories to facilitate the issuance of import quotas

and provide a more accurate calculation of the assessment of annual needs for the United States. The DEA proposes the addition of the following five subcategories for quota: (1) Quota for Commercial Sales; (2) Quota for Transfer; (3) Quota for Product Development; (4) Quota for Replacement; and (5) Quota for Packaging/Repackaging and Labeling/Relabeling. All types of quota could be requested using the same application and format registrants are accustomed to using, in an online form. Importers of list I chemicals would continue to receive import quotas appropriate to their manufacturing and inventory requirements, and the DEA would retain greater control over the amount of these listed chemicals produced, thereby reducing the amount of inventories at risk of diversion.

The DEA estimates the following number of respondents and burden associated with reporting:

- *Number of respondents:* 49.
- *Frequency of response:* Annually/As-needed (2.5714 average).
- *Number of responses:* 126.
- *Burden per response:* 0.5 hour.
- *Total annual hour burden:* 63.

4. *Title:* Procurement Quota Certification and Recordkeeping Requirements.

OMB Control Number: 1117–New.
DEA Form Number: N/A.

This proposed rule would require all DEA registrants supplying schedules I and II controlled substances or list I chemicals to DEA manufacturers to obtain certification of the manufacturer's procurement quota before completing the transaction. This provision would prevent manufacturers from purchasing active pharmaceutical ingredients from distributors, rather than other manufacturers, without including a quota certification. Current DEA regulations stipulate only that orders to entities registered as importers, manufacturers, or bulk manufacturers must include quota certifications.⁴¹ Manufacturers procuring schedules I and II controlled substances or list I chemicals must maintain a copy of the certification they provide with their order for a period of two years from the date of the certification. Under the proposed rule, this recordkeeping requirement would apply to certifications included with orders for schedules I and II controlled substances or list I chemicals to all registrants, including distributors.

The DEA estimates that distributors fill an average of 3,000 orders to manufacturers per year, which under

⁴¹ 21 CFR 1303.12(f), 1315.32(h).

this proposed rule, will require 3,000 certification letters to be drafted and retained by manufacturers, and reviewed by distributors. The estimated yearly cost of this activity is \$35,241. The DEA will update the below figures based on public comments received. For the purposes of this proposed rule, the DEA estimates the following number of respondents and burden associated with the proposed requirement that procuring manufacturers create and retain copies of schedules I and II controlled substance and list I chemical quota certifications for two years:

- *Number of respondents:* 500 (334 manufacturers and 166 distributors).
- *Frequency of response:* 9 per year.
- *Number of responses:* 3,000.
- *Burden per response:* .25 (minimal).
- *Total annual hour burden:* 750 (minimal).

B. Request for Comments Regarding the Proposed Information Collections

The DEA is soliciting comment on the following issues related to these information collections:

- The need for the information collection and its usefulness in carrying out the proper functions of the DEA.
- The accuracy of the DEA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Written comments and suggestions from the public and affected entities concerning the proposed collections of information are encouraged. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comments refer to RIN 1117-AB49/Docket No. DEA-455. All comments must be submitted to OMB on or before December 23, 2019. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Congressional Review Act

This proposed rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

21 CFR Part 1303

Administrative practice and procedure, Drug traffic control.

21 CFR Part 1315

Administrative practice and procedure, Chemicals, Drug traffic control, Imports, Reporting and recordkeeping requirements.

For the reasons set forth above, the DEA proposes to amend 21 CFR parts 1303 and 1315 as follows:

PART 1303—QUOTAS

- 1. The authority citation for 21 CFR part 1303 continues to read as follows:

Authority: 21 U.S.C. 821, 826, 871(b).

- 2. Add §§ 1303.03, 1303.04, and 1303.05 immediately following the undesignated center heading "Aggregate Production and Procurement Quotas" to read as follows:

§ 1303.03 Types of quotas.

The three types of quotas are:

- (a) Aggregate production quotas, which establish the total quantity of each basic class of schedules I and II controlled substances that may be produced by all manufacturers in a calendar year.
- (b) Individual manufacturing quotas, which establish the maximum quantity of each basic class of schedules I and II controlled substances that a registered manufacturer may manufacture during a calendar year. This type of quota is only issued to DEA-registered bulk manufacturers.
- (c) Procurement quotas, which establish the maximum quantity of each basic class of schedules I and II controlled substances that a registered manufacturer may procure during a calendar year for the purpose of manufacturing into dosage-forms or other substances.

§ 1303.04 Subcategories of manufacturing and procurement quotas.

The five subcategories of manufacturing and procurement quotas are:

- (a) *Quota for Commercial Sale.* This is a quota for the amount of bulk active pharmaceutical ingredients (API) initially acquired by a registrant for the manufacture of approved schedule I or II controlled substance drug products by the Food and Drug Administration, and bulk API acquired by outsourcing

facilities, manufacturers, etc. This quota category is used to capture bulk API moving from a bulk manufacturer to other registered manufacturers for their commercial manufacturing efforts. This type of quota may only be used to support commercial manufacturing efforts and may not be used to support other manufacturing efforts.

(b) *Quota for Transfer.* This is a quota for the amount of material moved upstream from one registrant to another and does not include material captured under procurement quota for commercial sale. Examples include: 1. Bulk API being transferred back to the original registrant after milling; 2. Transfer of in-process material or finished dosage-forms for additional manufacturing efforts (coating, beading, encapsulation, and so forth) back to the preceding registrant; and 3. Return of material after the specified manufacturing activity has been completed or return of rejected material to the upstream manufacturer for destruction or additional processing.

(c) *Quota for Product Development.* This is a quota for the amount of material needed for product development and validation of manufacturing efforts. This quota is limited to that activity *only* and only for the development efforts noted in the application; it shall not be used or substituted for commercial production or the development of a different product. This quota is issued with the understanding that this material is not intended for commercial use, with the exception of post-FDA approved validation batches. Validation batches shall be noted specifically in an application and shall be considered product development material that will be taken into account for net disposal once a product is FDA-approved for commercial sale. No inventory will be granted for these efforts, nor will replacement quota be considered for destroyed material issued under this quota subcategory.

(d) *Quota for Replacement.* This is a type of individual manufacturing quota or procurement quota that is granted to a registrant after the registrant disposes of material that was initially intended for commercial sale, but for some reason was unable to be marketed. This quota is separate and shall not count against a registrant's other issued quota. Replacement quota will be granted on a case-by-case basis. The merits of the request will be determined by the specifics of the registrant's justification and situation. The DEA will review the submitted DEA Form 41 or DEA Form 222 documenting the destruction of the controlled substance and evaluate the

justification for the destruction to determine if replacement quota is warranted and whether or not the destroyed material is required to meet the legitimate demand of the market. Replacement quota is intended to replace material from the current quota year and not a means to replace disposed samples, analytical samples, product development material, or inventory acquired under previous quota years.

(e) *Quota for Packaging/Repackaging and Labeling/Relabeling.* This is a quota for the amount of material moved to a registrant to undergo packaging and labeling activities. This quota is limited to that activity *only* and only for the packaging/repackaging and labeling/relabeling noted in the application; it may not be used or substituted for commercial production. Packaging/Repackaging and Labeling/Relabeling quota is intended for tracking of schedules I and II controlled substances as they undergo packaging/labeling activities; however, packaging/repackaging and labeling/relabeling quotas shall not be counted against the aggregate production quotas.

§ 1303.05 Estimation of diversion.

(a) In establishing any quota under the sections in this part for a covered controlled substance, the Administrator shall estimate the amount of diversion of the covered controlled substance that occurs in the United States.

(b) In estimating diversion under the sections in this part, the Administrator—

(1) Shall consider information the Administrator, in consultation with the Secretary of Health and Human Services, determines reliable on rates of overdose deaths and abuse and overall public health impact related to the covered controlled substance in the United States; and

(2) May take into consideration whatever other sources of information the Administrator determines reliable.

(c) After estimating the amount of diversion of a covered controlled substance, the Administrator shall make appropriate quota reductions, as determined by the Administrator, from the quota the Administrator would have otherwise established had such diversion not been considered.

(d) For purposes of this part, the term “covered controlled substances” refers to fentanyl, oxycodone, hydrocodone, oxymorphone, and hydromorphone.

■ 3. Amend § 1303.11 by:

■ a. Adding a sentence to the end of paragraph (a);

■ b. Removing “May” and adding in its place “September” in the first sentence of paragraph (c); and

■ c. Adding paragraph (d).

The additions read as follows:

§ 1303.11 Aggregate production quotas.

(a) * * * The Administrator may establish an aggregate production quota in terms of pharmaceutical dosage-forms prepared from or containing the schedule I or II controlled substance, if he determines it will assist in avoiding the overproduction, shortages, or diversion of a controlled substance.

(d) For any year for which the approved aggregate production quota for a covered controlled substance, as defined in § 1303.05(d), is higher than the approved aggregate production quota for the covered controlled substance for the previous year, the Administrator, in consultation with the Secretary of Health and Human Services, shall include in the final order an explanation of why the public health benefits of increasing the quota clearly outweigh the consequences of having an increased volume of the covered controlled substance available for sale, and potential diversion, in the United States.

■ 4. Amend § 1303.12 by:

■ a. Adding a sentence to the end of paragraph (a);

■ b. Revising the first sentence in paragraph (b);

■ c. Removing “July” and adding in its place “December” in the introductory text of paragraph (c); and

■ d. Removing “manufacturer” and “bulk manufacturer” and adding in their place “registrant”, and removing “Manufacturers” and adding in its place “A registrant” in paragraph (f).

The addition and revision read as follows:

§ 1303.12 Procurement quotas.

(a) * * * The Administrator may establish a procurement quota in terms of pharmaceutical dosage-forms prepared from or containing the schedule I or II controlled substance, if he determines it will assist in avoiding the overproduction, shortages, or diversion of a controlled substance.

(b) Any person who is registered to manufacture controlled substances listed in any schedule and who desires to use during the next calendar year any basic class of controlled substances listed in schedule I or II (except raw opium being imported by the registrant pursuant to an import permit) for purposes of manufacturing, shall apply on DEA Form 250 for procurement quota and shall state separately for each

subcategory, as defined in 21 CFR 1303.04, each quantity of such basic class. * * *

* * * * *

■ 5. Amend § 1303.21 by removing “July” and adding in its place “December” and adding a sentence after the first sentence in paragraph (a).

The addition reads as follows:

§ 1303.21 Individual manufacturing quotas.

(a) * * * The Administrator may establish an individual manufacturing quota in terms of pharmaceutical dosage-forms prepared from or containing the schedule I or II controlled substance, if he determines it will assist in avoiding the overproduction, shortages, or diversion of a controlled substance. * * *

* * * * *

■ 6. Amend § 1303.22 by revising the first sentence of the introductory text to read as follows:

§ 1303.22 Procedure for applying for individual manufacturing quotas.

Any person who is registered to manufacture any basic class of controlled substance listed in schedule I or II and who desires to manufacture a quantity of such class shall apply on DEA Form 189 for a manufacturing quota and shall state separately for each subcategory, as defined in 21 CFR 1303.04, each quantity of such class. * * *

* * * * *

§ 1303.23 [Amended]

■ 7. In § 1303.23, remove “March” and add in its place “July” in the first sentence of paragraph (c).

■ 8. Revise § 1303.24 to read as follows:

§ 1303.24 Inventory allowance.

(a) For the purpose of determining individual manufacturing quotas pursuant to § 1303.23, each registered manufacturer shall be allowed as part of such quota an amount sufficient to maintain an inventory equal to:

(1) For current manufacturers, 30 percent of his average estimated net disposal for the current calendar year and the last preceding calendar year; or

(2) For new manufacturers, 30 percent of his reasonably estimated net disposal for the next calendar year as determined by the Administrator.

(b) For the purpose of determining procurement quotas pursuant to § 1303.12, each registered manufacturer shall be allowed as part of such quota an amount sufficient to maintain an inventory:

(1) For current manufacturers, 30 percent of his average estimated net

disposal for the current calendar year and the last preceding calendar year; or

(2) For new manufacturers, 30 percent of his reasonably estimated net disposal for the next calendar year as determined by the Administrator.

(c) During each calendar year, each registered manufacturer shall be allowed to maintain an inventory of a basic class not exceeding 45 percent of his estimated net disposal of that class for that year, as determined at the time his quota for that year was determined. At any time the inventory of a basic class held by a manufacturer exceeds 45 percent of his estimated net disposal, his quota for that class is automatically suspended and shall remain suspended until his inventory is less than 40 percent of his estimated net disposal. The Administrator may, upon application and for good cause shown, permit a manufacturer whose quota is, or is likely to be, suspended pursuant to this paragraph (c) to continue manufacturing and to accumulate an inventory in excess of 45 percent of his estimated net disposal, upon such conditions and within such limitations as the Administrator may find necessary or desirable.

(d) If, during a calendar year, a registrant has manufactured the entire quantity of a basic class allocated to him under an individual manufacturing quota, and his inventory of that class is less than 20 percent of his estimated net disposal of that class for that year, the Administrator may, upon application pursuant to § 1303.25, increase the quota of such registrant sufficiently to allow restoration of the inventory to 30 percent of the estimated net disposal for that year.

■ 9. Amend § 1303.27 by revising the first sentence to read as follows:

§ 1303.27 Abandonment of quota.

Any manufacturer assigned an individual manufacturing quota for any basic class of controlled substance listed in schedule I or II pursuant to § 1303.23 may at any time abandon his right to manufacture all or any part of such quota by filing a notice of such abandonment with the UN Reporting and Quota Section, Diversion Control Division, Drug Enforcement Administration in the online Quota Management System. * * *

PART 1315—IMPORTATION AND PRODUCTION QUOTAS FOR EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE

■ 10. The authority citation for 21 CFR part 1315 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 826, 871(b), 952.

■ 11. Add § 1315.06 to read as follows:

§ 1315.06 Assessment of annual needs; types of quotas.

The four types of quotas are:

(a) Assessment of annual needs, which establishes the total quantity of ephedrine, pseudoephedrine, and phenylpropanolamine necessary to be manufactured and imported by all manufacturers and importers in a calendar year.

(b) Individual manufacturing quotas, which establish the maximum quantity of ephedrine, pseudoephedrine, and phenylpropanolamine that a registered manufacturer may manufacture during a calendar year. This type of quota is only issued to DEA-registered bulk manufacturers.

(c) Procurement quotas, which establish the maximum quantity of ephedrine, pseudoephedrine, and phenylpropanolamine that a registered manufacturer may procure during a calendar year for the purpose of manufacturing into dosage-forms or other substances.

(d) Import quotas, which establish the maximum quantity of ephedrine, pseudoephedrine, and phenylpropanolamine that a registered importer may import during the calendar year for distribution to their DEA-registered customers.

■ 12. Add § 1315.07 to read as follows:

§ 1315.07 Subcategories of manufacturing and procurement quota.

The five subcategories are:

(a) Quota for Commercial Sale is a quota for the amount of bulk active pharmaceutical ingredients (API) initially acquired by a registrant for the manufacture of ephedrine, pseudoephedrine, and phenylpropanolamine products and bulk API acquired by outsourcing facilities, manufacturers, etc. This type of quota shall only be used to support commercial manufacturing efforts and shall not be used to support other manufacturing efforts.

(b) Quota for Transfer is a quota for the amount of material moved from one registrant to another and does not include material captured under procurement quota for commercial sale. Examples include:

(1) Bulk API being transferred back to the original registrant after milling;

(2) Transfer of in-process material or finished dosage-forms for additional manufacturing efforts (coating, beading, encapsulation, and so forth) back to the preceding registrant; and

(3) Return of material after the specified manufacturing activity has been completed.

(c) Quota for Product Development is a quota for the amount of material needed for product development and validation manufacturing efforts. This quota is limited to that activity *only* and only for the development efforts noted in the application; it shall not be used or substituted for commercial production or the development of a different product. This quota is issued with the understanding that this material is not intended for commercial use, with the exception of FDA-approved or OTC Monograph validation batches. Validation batches shall be noted specifically in an application and shall be considered product development material that will be taken into account once a product is FDA-approved for commercial sale. No inventory shall be granted for these efforts, nor shall replacement quota be considered for destroyed material issued under this quota subcategory.

(d) Quota for Replacement is a type of individual manufacturing quota or procurement quota that is granted to a registrant after the registrant disposes of material that was initially intended for commercial sale, but for some reason was unable to be marketed. This quota is separate and shall not count against a registrant's other issued quota. Replacement quota will be granted on a case by case basis. The merits of the request shall be determined by the registrant's justification. Replacement quota is intended to replace material from the current quota year and shall not be used to replace disposed samples, analytical samples, product development material or inventory acquired under previous quota years.

(e) Quota for Packaging/Repackaging and Labeling/Relabeling is quota for the amount of material moved to a registrant to undergo packaging and labeling activities. This quota is limited to that activity *only* and only for the packaging/repackaging and labeling/relabeling noted in the application; it shall not be used or substituted for commercial production or the packaging of a different product.

§ 1315.11 [Amended]

■ 13. Amend § 1315.11 by removing "May" and adding in its place "September" in the first sentence of paragraph (c).

§ 1315.21 [Amended]

■ 14. Amend § 1315.21 by removing "July" and adding in its place "December" in the first sentence.

■ 15. Amend § 1315.22 by revising the first sentence of the introductory text to read as follows:

§ 1315.22 Procedure for applying for individual manufacturing quotas.

Any person who is registered to manufacture ephedrine, pseudoephedrine, or phenylpropanolamine and who desires to manufacture a quantity of the chemical must apply on DEA Form 189 for a manufacturing quota for the quantity of the chemical and shall state separately for each subcategory, as defined in 21 CFR 1315.07, each quantity of such chemical. * * *

* * * * *

§ 1315.23 [Amended]

■ 16. Amend § 1315.23 by removing “March” and adding in its place “July” in the first sentence of paragraph (c).

■ 17. Revise § 1315.24 to read as follows:

§ 1315.24 Inventory allowance.

(a) For the purpose of determining individual manufacturing quotas pursuant to § 1315.23, each registered manufacturer shall be allowed as part of such quota an amount sufficient to maintain an inventory:

(1) For current manufacturers, 30 percent of his average estimated net disposal for the current calendar year and the last preceding calendar year; or

(2) For new manufacturers, 30 percent of his reasonably estimated net disposal for the next calendar year as determined by the Administrator.

(b) For the purpose of determining procurement quotas pursuant to § 1315.32, each registered manufacturer shall be allowed as part of such quota an amount sufficient to maintain an inventory:

(1) For current manufacturers, 30 percent of his average estimated net disposal for the current calendar year and the last preceding calendar year; or

(2) For new manufacturers, 30 percent of his reasonably estimated net disposal for the next calendar year as determined by the Administrator.

(c) During each calendar year, each registered manufacturer shall be allowed to maintain an inventory of a chemical not exceeding 45 percent of his estimated net disposal of that chemical for that year, as determined at the time his quota for that year was determined. At any time the inventory of a chemical held by a manufacturer exceeds 45 percent of his estimated net disposal, his quota for that chemical is automatically suspended and shall remain suspended until his inventory is less than 40 percent of his estimated net

disposal. The Administrator may, upon application and for good cause shown, permit a manufacturer whose quota is, or is likely to be, suspended pursuant to this paragraph (c) to continue manufacturing and to accumulate an inventory in excess of 45 percent of his estimated net disposal, upon such conditions and within such limitations as the Administrator may find necessary or desirable.

(d) If, during a calendar year, a registrant has manufactured the entire quantity of a chemical allocated to him under an individual manufacturing quota, and his inventory of that chemical is less than 20 percent of his estimated net disposal of that class for that year, the Administrator may, upon application pursuant to § 1315.25, increase the quota of such registrant sufficiently to allow restoration of the inventory to 30 percent of the estimated net disposal for that year.

■ 18. Amend § 1315.27 by revising the first sentence to read as follows:

§ 1315.27 Abandonment of quota.

Any manufacturer assigned an individual manufacturing quota for a chemical pursuant to § 1315.23 may at any time abandon his right to manufacture all or any part of such quota by filing a notice of such abandonment with the UN Reporting and Quota Section, Diversion Control Division, Drug Enforcement Administration in the online Quota Management System. * * *

■ 19. Amend § 1315.32 by:

■ a. Revising the first sentence in paragraph (a);

■ b. Removing “July” and adding in its place “December” in the introductory text of paragraph (f);

■ c. Removing “manufacturer or importer” and adding in its place “registrant” in paragraph (h).

The revision reads as follows:

§ 1315.32 Obtaining a procurement quota.

(a) Any person who is registered to manufacture ephedrine, pseudoephedrine, or phenylpropanolamine, or whose requirement of registration is waived pursuant to § 1309.24 of this chapter, and who desires to use during the next calendar year any ephedrine, pseudoephedrine, or phenylpropanolamine for purposes of manufacturing (including repackaging or relabeling), must apply on DEA Form 250 for a procurement quota for the chemical and shall state separately for each subcategory, as defined in 21 CFR 1315.07, each quantity of such chemical. * * *

* * * * *

§ 1315.34 [Amended]

■ 20. Amend § 1315.34 by removing “July” and adding in its place “December” in paragraph (f).

Dated: September 28, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019-21989 Filed 10-22-19; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0846]

RIN 1625-AA00

Safety Zone for Fireworks Display; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of Spa Creek. This action is necessary to provide for the safety of life on these navigable waters of Spa Creek in Annapolis, MD, on December 31, 2019, during a fireworks display. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region 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 22, 2019.

ADDRESSES: You may submit comments identified by docket number USCG-2019-0846 using the Federal eRulemaking Portal at <http://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 Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port Maryland-
National Capital Region
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Pyrotecnico, Inc., of New Castle, PA notified the Coast Guard that it will be conducting a public fireworks display from 11:59 p.m. on December 31, 2019, to 12:11 a.m. on January 1, 2020, sponsored by the City of Annapolis, MD. The fireworks are to be launched from a barge located in Spa Creek, approximately 600 feet southeast of Dock Street in Annapolis, MD. Hazards from the fireworks display includes accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 400 feet of the fireworks barge.

The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters within 400 feet of the fireworks barge on Spa Creek before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone in Spa Creek from 11:00 p.m. on December 31, 2019, through 1:00 a.m. on January 1, 2020. The safety zone would cover all navigable waters within 400 feet of the fireworks barge in Spa Creek in approximate position latitude 38°58'32.48" N, longitude 076°28'57.55" W, located at Annapolis, MD. A "FIREWORKS—DANGER—STAY AWAY" sign would be posted on the port and starboard sides of the barge on-scene near the location. The duration and enforcement of the safety zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled 11:59 p.m. fireworks display.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

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, duration, time-of-day and time-of-year of the safety zone. Although this safety zone would restrict the entire width of the waterway, it would impact a small designated area of Spa Creek for a total of two hours during the evening when vessel traffic is normally low. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 zone 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 contact 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 contact 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 Management Directive 023-01 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 safety zone lasting a total of two hours that would prohibit entry within a small designated area of Spa Creek in Annapolis, MD. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. 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 contact 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 <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact 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 <http://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 Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://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.T05-0846 to read as follows:

§ 165.T05-0846 Safety Zone for Fireworks Display; Spa Creek, Annapolis, MD.

(a) *Location*. The following area is a safety zone. All navigable waters of Spa Creek within 400 feet of the fireworks barge in approximate position latitude 38°58'32.48" N, longitude 076°28'57.55" W, located at Annapolis, MD. All coordinates refer to datum NAD 1983.

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

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

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

(c) *Regulations*. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

All vessels underway within this safety zone at the time it is activated are to depart the zone.

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

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

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

(e) *Enforcement*. This safety zone will be enforced during the periods described in paragraph (f) of this section. A "FIREWORKS—DANGER—STAY AWAY" sign will be posted on the port and starboard sides of the barge on-scene near the location described in paragraph (a) of this section.

(f) *Enforcement period*. This section will be enforced from 11:00 p.m. on December 31, 2019 to 1:00 a.m. on January 1, 2020.

Dated: October 17, 2019.

Joseph B. Loring,

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

[FR Doc. 2019-23030 Filed 10-22-19; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2017-0357; FRL-10001-42-OAR]

RIN 2060-AT02

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public hearing and extension of comment period.

SUMMARY: On October 9, 2019, the U.S. Environmental Protection Agency (EPA) published a document in the **Federal Register** to announce its National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

Standards Residual Risk and Technology Review for Ethylene Production proposed rulemaking. The document also requested public comment on the proposed action. The EPA is announcing that it will hold a public hearing. The hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. In addition, the EPA is extending the comment period by 11 days to allow for a public comment period of 30 days following the public hearing.

DATES: *Public hearing:* The EPA will hold a public hearing on November 6, 2019, from 9:00 a.m. (local time) until 1:00 p.m. in Washington, DC. The EPA will begin pre-registering speakers for the hearing on October 23, 2019 and end pre-registration on November 4, 2019. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

Comments: The comment period for the proposed rule published October 9, 2019 (84 FR 54278), is extended. The EPA must receive comments on this proposed action no later than December 6, 2019.

ADDRESSES: The hearing will be held at the EPA WJC East Building, 1201 Constitution Avenue NW, Room 1153, Washington, DC 20004. The EPA's website for this rulemaking, which includes the proposal and information about the hearing, can be found at: <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen>. Written comments on the proposed rule may be submitted to the EPA electronically, by mail, facsimile, or through hand delivery/courier. Please refer to the proposal (84 FR 54278) for the addresses and detailed instructions.

FOR FURTHER INFORMATION CONTACT: To register to speak at the hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen> or contact Virginia Hunt at (919) 541-0832 or at hunt.virginia@epa.gov.

SUPPLEMENTARY INFORMATION: Because this hearing is being held at a U.S. Government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering Federal facilities. For purposes of the REAL ID Act, the EPA will accept government-issued IDs, including driver's licenses,

from the District of Columbia and all states and territories except from American Samoa. If your identification is issued by American Samoa, you must present an additional form of identification to enter the Federal building where the public hearing will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information on the status of your state regarding REAL ID, go to: <https://www.dhs.gov/real-id>.

Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on Federal property for security reasons.

On November 5, 2019, the EPA will post at <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen> a general agenda for the hearing that will list pre-registered speakers in approximate order. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Virginia Hunt if they will need specific equipment or if there are other special needs related to providing comments at the hearings. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/acetel-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen>. While the EPA expects the hearing to go forward as set forth

above, please monitor our website or contact Virginia Hunt at (919) 541-0832 or hunt.virginia@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

The EPA will not provide audiovisual equipment. Commenters should notify Virginia Hunt when they pre-register to speak that they will require the service of a translator or special accommodations such as audio description. The EPA may not be able to arrange accommodations without advanced notice.

Dated: October 16, 2019.

Panagiotis Tsirigotis,
Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019-22967 Filed 10-22-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 19-105; FCC 19-83]

Assessment and Collection of Regulatory Fees for Fiscal Year 2019

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopted a notice of proposed rulemaking that seeks comment on several proposals that will impact FY 2020 regulatory fees.

DATES: Submit comments on or before November 22, 2019; and reply comments on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by MD Docket No. 19-105, by any of the following methods:

- *Federal Communications Commission's Website:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418-0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), FCC 19–83; MD Docket No. 19–105, adopted on August 15, 2019 and released on August 27, 2019. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Portals II, Washington, DC 20554. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

I. Introduction

1. In this *FNPRM*, we seek additional comment on several issues to continue reforming our assessment of regulatory fees.

II. Further Notice of Proposed Rulemaking

A. Assessing International Bureau Regulatees

2. The Commission's goal in assessing International Bureau regulatory fees is to recover all of the costs associated with International Bureau regulatory activities and to distribute these costs fairly among fee payers. But not all beneficiaries of the International Bureau's regulatory activities currently pay regulatory fees, and some commenters argue that we should reexamine the allocations of FTEs within the bureau. We take this opportunity to seek comment on reforming our assessment of regulatory fees for International Bureau regulatees.

3. *First*, we seek comment on whether we should assess regulatory fees on all space stations granted approval by the Commission to communicate with earth stations in the United States. In the past, the Commission has assessed regulatory fees on space stations (both geostationary and non-geostationary orbit) licensed by the Commission, but not on foreign-licensed space stations that have been granted market access by the Commission.¹ The Commission's policy, regulatory, international, user information, and enforcement activities all benefit non-U.S. licensed space stations that access the U.S. market. Rulemaking proceedings establishing processing procedures or service rules for satellite services apply both to U.S. licensed space stations and non-U.S. licensed space stations providing

service in the United States,² and operators of non-U.S. licensed space stations actively participate in FCC regulatory proceedings.³ Non-U.S. licensed space stations are also monitored to ensure that their operators satisfy all conditions placed on their grant of U.S. market access, including space station implementation milestones and operational requirements, and are subject to enforcement action if the conditions are not met. Despite the regulatory benefits provided by the Commission to non-U.S. licensed space stations serving the United States they do not incur the regulatory fees paid by operators of U.S.-licensed space stations.

4. We seek comment on whether we should or must assess regulatory fees on non-U.S. licensed space stations serving the United States under section 9, given that non-U.S. licensed space stations appear to benefit from the Commission's regulatory activities in much the same

² See, e.g., *Mitigation of Orbital Debris in the New Space Age*, IB Docket No. 18–313, Notice of Proposed Rulemaking and Order on Reconsideration, 84 FR 4742 (Feb. 19, 2019), 33 FCC Rcd 11352 (2018); *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Non-Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed-Satellite Service*, IB Docket No. 18–315, Notice of Proposed Rulemaking, 83 FR 67180 (Dec. 28, 2018), 33 FCC Rcd 11416 (2018); *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, IB Docket No. 06–160, Second Notice of Proposed Rulemaking, 84 FR 2126 (Feb. 6, 2019), 33 FCC Rcd 11303 (2018); *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service*, IB Docket No. 17–95, Report and Order and Further Notice of Proposed Rulemaking, 84 FR 53630 (Oct. 8, 2019) and 84 FR 5654 (Feb. 22, 2019), 32 FCC Rcd 9327 (2018); *Further Streamlining Part 25 Rules Governing Satellite Services*, IB Docket No. 18–314, Notice of Proposed Rulemaking, 84 FR 638 (Jan. 31, 2019), 33 FCC Rcd 11502 (2018); *Streamlining Licensing Procedures for Small Satellites*, IB Docket No. 18–86, Notice of Proposed Rulemaking, 83 FR 24064 (May 24, 2018), 33 FCC Rcd 4152 (2018); *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, IB Docket No. 16–408, Report and Order and Further Notice of Proposed Rulemaking, 82 FR 59972 (Dec. 18, 2017) and 82 FR 52869 (Nov. 15, 2017), 32 FCC Rcd 7809 (2017); *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed-Satellite Service*, IB Docket No. 17–95, Notice of Proposed Rulemaking, 82 FR 27652 (June 16, 2017), 32 FCC Rcd 4239 (2017).

³ Operators of non-U.S. licensed space stations have actively participated in nearly all of the satellite rulemaking proceedings over the course of the last several years. In addition, operators of non-U.S. space stations participate in FCC proceedings through their membership in the Satellite Industry Association, including roles as executive members. See <https://www.sia.org/join-sia/>.

manner as U.S. licensed space stations.⁴ The Commission has previously declined to assess regulatory fees on non-U.S. licensed space stations. In 1999, the Commission observed that the Act at the time only authorized the Commission to assess space stations "licensees," *i.e.*, those licensed under Title III—which does not include non-U.S.-licensed space stations.⁵ And the Commission sought comment on assessing such fees in 2013 and 2014 but ultimately, did not do so.⁶ We observe that the change made to section 9 by the RAY BAUM'S Act requires the Commission to consider increases and decreases in the "number of units" subject to payment of regulatory fees, but does not state "licensees."⁷ In this respect, the "unit" used for assessing satellite space station regulatory fees is "per operational station in geostationary orbit" or "per operational system in non-geostationary orbit."⁸ This broader language appears equally applicable to U.S. licensed and non-U.S. licensed space stations. We seek comment on whether we may or must assess such fees.

5. We seek comment on whether assessing non-U.S. licensed space stations would promote regulatory parity among space station operators. Do any space station operators choose to seek licensing elsewhere as a means of arbitraging our current regulatory fee assessments? Is it fair or equitable to grant one class of space station operators a non-statutory exemption from fees that another class of similarly situated operators must pay? Commenters that advocate assessing regulatory fees on non-U.S. licensed space stations providing service in the United States should propose how the fees should be calculated and applied. Are there any corner cases, such as where the non-U.S. licensed space station operator accesses the U.S. market solely through one or more U.S.-

⁴ See EchoStar August 8 *Ex Parte* Letter, Attachment, at 1.

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 74 FR 400089 (Aug. 11, 2009), 14 FCC Rcd 9896, 9882, para. 39 (1999) (*FY 1999 Report and Order*).

⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 79 FR 37982 (July 3, 2014), 29 FCC Rcd 6417, 6433–34, paras. 47–50 (2014) (*FY 2014 NPRM*); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 78 FR 34612 (June 10, 2013) and 79 FR 63883 (Oct. 27, 2014), 28 FCC Rcd 7790, 7809–810, paras. 47–49 (2013) (*FY 2013 NPRM*).

⁷ 47 U.S.C. 159(c)(1)(A).

⁸ See Appendix D: *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, 84 FR 26234 (June 5, 2019).

¹ 47 CFR 1.1156.

licensed earth stations that identify a non-U.S. licensed space station as a point of communication? If the regulatory fee per earth station license is significantly less than the regulatory fee assessed per space station, would such a discrepancy provide an incentive for space station operators to see U.S. market access solely through earth station licenses as a method of regulatory fee arbitrage? How should we assess regulatory fees to avoid such arbitrage? Commenters should also discuss any other policy implications that may arise from taking such action, such as the likelihood that other countries will choose to assess fees on U.S.-licensed space stations, and whether this policy implication is still relevant in light of the number of U.S.-licensed versus non-U.S. licensed space stations.⁹

6. We note that the Commission previously reallocated four International Bureau FTEs as indirect for regulatory fee purposes to address the work that International Bureau FTEs conduct on market access requests by non-U.S. licensed space stations.¹⁰ The effect of that decision was to require domestic broadcasters, wireless providers, ITSPs, and others to pay for the regulatory work done on behalf of foreign-licensed satellite operators. We seek comment on whether any changes to our direct International Bureau FTE allocations would be necessary if regulatory fees are adopted for non-U.S. licensed space stations.

7. *Second*, several commenters have argued that we should adjust the apportionment among fee categories within the International Bureau. For example, NASCA claims that the Commission has continued to over-recover regulatory fees from submarine cable operators because the combined submarine cable and IBC revenue requirement is relatively high compared to the satellite and earth station categories.¹¹ NASCA argues that the

other fee categories account for a much higher proportion of the FTEs' activities in the International Bureau.¹² And EchoStar asserts that the Commission should examine the allocation of FTEs among geostationary orbit (GSO) and non-geostationary orbit (NGSO) space and earth station operators.¹³ We seek comment on whether the Commission should reallocate FTEs within the International Bureau. If so, should the Commission reassess the number of FTEs working on the issues of various regulatees or reallocate fees based on relative capacity of various services? Or should the Commission use some other metric to engage in the reallocation? We also seek comment on whether the Commission should change its current allocation of regulatory fees between submarine cable and satellite and terrestrial IBCs based on a plan developed by the IBC industry, with 87.6% of IBC fees paid by submarine cable and 12.4% by satellite/terrestrial facilities. Commenters should discuss whether certain apportionments within the International Bureau could be more appropriately adjusted to better reflect the amount of oversight and regulation for these industries.

B. Adjusting TV and Radio Broadcaster Regulatory Fees

8. We seek comment on two suggestions by commenters to further adjust our assessment of broadcaster regulatory fees. *First*, we seek comment on adjusting the regulatory fees paid by VHF broadcasters. The VHF television band occupies frequencies between 54 and 216 MHz and in general, VHF channels are numbered 2 to 13. Commenters on the *FY 2019 NPRM* argue that the predicted contour distance does not adequately account for all of the possible effects on the VHF station signal, such as terrain blockage, which may limit the signal, thereby reducing the population number that is actually reached.¹⁴ Commenters contend that the population count is therefore overstated for VHF stations and should be adjusted downward accordingly.¹⁵ Should we adjust population counts in our contour modeling to address such concerns, and if so, how?

9. *Second*, we seek comment on whether we should adopt a lower regulatory fee for full-service AM and FM broadcast radio station incubator licensees. The Commission's broadcast

incubator program is intended to create ownership opportunities for new entrants that are small businesses and promote competition and diversity in the radio broadcast industry.¹⁶ MMTC asserts that regulatory fees may make it more difficult for the incubator stations to thrive, and the Commission should exempt them from regulatory fees for the term of the license.¹⁷ Commenters should discuss an appropriate reduction from the regulatory fee for broadcasters, such as 50%.

III. Procedural Matters

A. Ex Parte Information

10. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.¹⁸ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc,

⁹ In 2014, the Commission observed that the majority of the space station applications and notifications during the preceding three-year period pertained to non-U.S.-licensed space stations. *FY 2014 NPRM*, 29 FCC Rcd at 6434, para. 50. In the period of 2014 through 2018, 48 approvals were given for geostationary space stations and 14 were given for non-geostationary systems, according to the International Bureau's electronic filing system, IBFS. Of these, 23 of the 48 approvals were for non-U.S. licensed geostationary space stations, and 7 of the 14 were for non-U.S. licensed non-geostationary space station systems.

¹⁰ *FY 2015 Report and Order*, 80 FR 55775 (Sept. 17, 2015), 30 FCC Rcd at 10278, para. 24.

¹¹ NASCA Comments at 12; *see also* SEA-US May 1 *Ex Parte* Letter at 2 (contending that the submarine cable operators pay a disproportionate share of the regulatory fees allocated to International Bureau regulatees compared to terrestrial and satellite IBCs).

¹² NASCA Reply Comments at 4.

¹³ EchoStar August 8 *Ex Parte* Letter, Attachment, at 1.

¹⁴ TZS Comments at 2; NAB Reply Comments at 8–9.

¹⁵ TZS Comments at 2; PMCM Comments at 2–3.

¹⁶ MMTC Comments at 1.

¹⁷ MMTC Comments at 2.

¹⁸ 47 CFR 1.1200 through 1.1216.

.xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Filing Instructions

11. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to FCC, 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

12. *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Initial Regulatory Flexibility Analysis

13. An initial regulatory flexibility analysis (IRFA) is contained in this

summary. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice of Proposed Rulemaking* (84 FR 26234 (June 5, 2019)). The Commission will send a copy of the *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Initial Paperwork Reduction Act of 1995 Analysis

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

IV. Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁹ the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *FNPRM*. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *Further Notice*. The Commission will send a copy of the *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²⁰ In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.²¹

A. Need for, and Objectives of, the *Further Notice*

16. The *FNPRM* seeks comment on (i) adding a new fee category for non-U.S. licensed satellite operators who have been granted access to the U.S. market; (ii) adjusting the apportionment among fee categories within the International Bureau; (iii) adjusting TV broadcaster regulatory fees for VHF licenses; and (iv) adopting a lower regulatory fee for broadcast incubator licensees. These issues may be further addressed in the annual regulatory fee Notice of Proposed Rulemaking for next year. The

¹⁹ 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, Title II, 110 Stat. 847 (1996).

²⁰ 5 U.S.C. 603(a).

²¹ *Id.*

Commission is required by Congress to adopt regulatory fees each year "to recover the costs of carrying out the activities described in section 6(a) only to the extent, and in the total amounts, provided for in Appropriation Acts."²²

B. Legal Basis

17. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended.²³

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

18. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.²⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁶ A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁷

19. *Small Entities*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.²⁸ As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.²⁹ In addition, a "small organization is generally any not-for-profit enterprise which is independently owned and operated and

²² 47 U.S.C. 159(a).

²³ 47 U.S.C. 154(i) and (j), 159, 159A, and 303(r).

²⁴ 5 U.S.C. 603(b)(3).

²⁵ 5 U.S.C. 601(6).

²⁶ 5 U.S.C. 601(3) (adopting by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

²⁷ 15 U.S.C. 632.

²⁸ See 5 U.S.C. 601(3)-(6).

²⁹ See SBA, Office of Advocacy, "Frequently Asked Questions," available at https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

not dominant in its field.³⁰ In addition, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”³¹ U.S. Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.³² We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”³³ Thus, we estimate that most local government jurisdictions are small.

20. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable and IPTV) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”³⁴ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.³⁵ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than

1,000 employees.³⁶ Thus, under this size standard, the majority of firms in this industry can be considered small.

21. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ According to census data from 2012, there were 3,117 establishments that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.³⁸ The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the *Further Notice*.

22. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁹ According to census data from 2012, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴⁰ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.⁴¹ Of this total of 1,307 incumbent local exchange service providers, an estimated 1,006 operated with 1,500 or fewer employees.⁴² Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules proposed in this *Further Notice*.

23. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs),*

Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴³ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁴⁴ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁴⁵ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴⁶ Also, 72 carriers have reported that they are Other Local Service Providers.⁴⁷ Of this total, 70 have 1,500 or fewer employees.⁴⁸ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in this *Further Notice*.

24. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴⁹ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁵⁰ According to Commission data, 359 companies reported that their primary

³⁰ 5 U.S.C. 601(4).

³¹ 5 U.S.C. 601(5).

³² See SBA, Office of Advocacy, “Frequently Asked Questions,” available at https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

³³ The 2011 U.S. Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local governmental organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table. If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789,237 are small.

³⁴ See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁵ See 13 CFR 120.201, NAICS code 517110.

³⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³⁷ 13 CFR 121.201, NAICS code 517110.

³⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³⁹ 13 CFR 121.201, NAICS code 517110.

⁴⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴¹ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

⁴² See *id.*

⁴³ 13 CFR 121.201, NAICS code 517110.

⁴⁴ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴⁵ See *Trends in Telephone Service*, at Table 5.3.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 13 CFR 121.201, NAICS code 517110.

⁵⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

telecommunications service activity was the provision of interexchange services.⁵¹ Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules proposed in this *Further Notice*.

25. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.⁵² Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.⁵³ U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.⁵⁴ Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.⁵⁵ All 193 carriers have 1,500 or fewer employees.⁵⁶ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules proposed in this *Further Notice*.

26. *Local Resellers*. Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer

employees.⁵⁷ Census data for 2012 show that 1,341 firms provided resale services during that year.⁵⁸ Of that number, 1,341 operated with fewer than 1,000 employees.⁵⁹ Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁶⁰ Of this total, an estimated 211 have 1,500 or fewer employees.⁶¹ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules proposed in this *Further Notice*.

27. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.⁶² Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶³ Census data for 2012 show that 1,341 firms provided resale services during that year.⁶⁴ Of that number, 1,341 operated with fewer than 1,000 employees.⁶⁵ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁶⁶ Of this total, an estimated 857 have 1,500 or fewer employees.⁶⁷ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules proposed in the *Further Notice*.

28. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the

categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁸ Census data for 2012 shows that there were 3,117 firms that operated that year.⁶⁹ Of this total, 3,083 operated with fewer than 1,000 employees.⁷⁰ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁷¹ Of these, an estimated 279 have 1,500 or fewer employees.⁷² Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the *Further Notice*.

29. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁷³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2012 show that there were 967 firms that operated for the entire year.⁷⁴ Of this total, 955 firms had fewer than 1,000 employees.⁷⁵ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to Commission data, 413

⁵⁷ 13 CFR 121.201, NAICS code 517911.

⁵⁸ http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁵⁹ http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁶⁰ See *Trends in Telephone Service*, at Table 5.3.

⁶¹ *Id.*

⁶² 13 CFR 121.201, NAICS code 517911.

⁶³ *Id.*

⁶⁴ http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁶⁵ *Id.*

⁶⁶ *Trends in Telephone Service*, at Table 5.3.

⁶⁷ *Id.*

⁶⁸ 13 CFR 121.201, NAICS code 517110.

⁶⁹ http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁷⁰ *Id.*

⁷¹ *Trends in Telephone Service*, at Table 5.3.

⁷² *Id.*

⁷³ NAICS code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

⁷⁴ http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁷⁵ http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁵¹ See *Trends in Telephone Service*, at Table 5.3.

⁵² <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

⁵³ 13 CFR 121.201, NAICS code 517911.

⁵⁴ http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁵⁵ See *Trends in Telephone Service*, at Table 5.3.

⁵⁶ *Id.*

carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.⁷⁶ Of this total, an estimated 261 have 1,500 or fewer employees.⁷⁷ Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules proposed in this *Further Notice*.

30. *Television Broadcasting*. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”⁷⁸ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule.

Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$38.5 million or less in annual receipts.⁷⁹ The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,387.⁸⁰ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.⁸¹ We therefore estimate that the majority of commercial television broadcasters are small entities.

31. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations⁸² must be included. Our

estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

32. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.⁸³ These stations are non-profit, and therefore considered to be small entities.⁸⁴ There are also 2,528 low power television stations, including Class A stations (LPTV).⁸⁵ Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

33. *Radio Broadcasting*. This Economic Census category “comprises establishments primarily engaged in broadcasting programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”⁸⁶ The SBA has established a small business size standard for this category, which is: Such firms having \$38.5 million or less in annual receipts.⁸⁷ U.S. Census data for 2012 show that 2,849 radio station firms operated during that year.⁸⁸ Of that number, 2,806 operated with annual receipts of less than \$25 million per year.⁸⁹ According to

control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

⁸³ See FCC News Release, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

⁸⁴ See generally 5 U.S.C. 601(4), (6). Noncommercial television stations are not required to pay regulatory fees. 47 U.S.C. 159(e)(1)(C).

⁸⁵ See FCC News Release, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

⁸⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁷ 13 CFR 121.201, NAICS code 515112.

⁸⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁸⁹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

Commission staff review of BIA Advisory Services, LLC’s *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97 percent) of 11,102 commercial radio stations had revenues of \$38.5 million or less. Therefore, the majority of such entities are small entities.

34. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.⁹⁰ In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.⁹¹ It is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

35. *Cable Television and other Subscription Programming*. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature, e.g., limited format, such as news, sports, education, or youth-oriented. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.⁹² The SBA has established a size standard for this industry of \$38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year.⁹³ Of this total, 319 operated with annual receipts of less than \$25 million.⁹⁴ Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules proposed in this *Further Notice*.

36. *Cable Companies and Systems*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.⁹⁵

⁹⁰ “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 CFR 121.103(a)(1).

⁹¹ 13 CFR 121.102(b) (an SBA regulation).

⁹² <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁹³ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁹⁴ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=Table.

⁹⁵ 47 CFR 76.901(e).

⁷⁶ *Trends in Telephone Service*, at Table 5.3.

⁷⁷ *Id.*

⁷⁸ U.S. Census Bureau, 2012 NAICS code Economic Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁹ 13 CFR 121.201, NAICS code 515120.

⁸⁰ See FCC News Release, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012; http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

⁸¹ We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

⁸² “[Business concerns] are affiliates of each other when one concern controls or has the power to

Industry data indicate that there are currently 4,600 active cable systems in the United States.⁹⁶ Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.⁹⁷ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁹⁸ Current Commission records show 4,600 cable systems nationwide.⁹⁹ Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.¹⁰⁰ Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

37. *Cable System Operators (Telecom Act Standard)*. The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁰¹ There are approximately 52,403,705 cable video subscribers in the United States today.¹⁰² Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁰³ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.¹⁰⁴ The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.¹⁰⁵ Although it seems certain

that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

38. *Direct Broadcast Satellite (DBS) Service*. DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VOIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹⁰⁶ The SBA determines that a wireline business is small if it has fewer than 1500 employees.¹⁰⁷ Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.¹⁰⁸ Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: AT&T and DISH Network.¹⁰⁹ AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that DBS service is provided only by large firms.

39. *All Other Telecommunications*. "All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or Voice over internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.¹¹⁰ The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less.¹¹¹ For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.¹¹² Thus, a majority of "All Other Telecommunications" firms potentially affected by the proposals in the *Further Notice* can be considered small.

40. *RespOrgs*. Responsible Organizations, or RespOrgs, are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.¹¹³ Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.*, Carrier RespOrgs and Non-Carrier RespOrgs.

41. *Carrier RespOrgs*. Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers,¹¹⁴ and Wireless Telecommunications Carriers (except satellite).¹¹⁵

⁹⁶ August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). See www.fcc.gov/coals.

⁹⁷ See SNL KAGAN at www.snl.com/interactiveX/topcableMSOs.aspx?period=2015Q1&sortcol=subscribersbasic&sortorder=desc.

⁹⁸ 47 CFR 76.901(c).

⁹⁹ See footnote 2, *supra*.

¹⁰⁰ August 5, 2015 report from the Media Bureau based on its research in COALS. See www.fcc.gov/coals.

¹⁰¹ 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

¹⁰² See SNL KAGAN at www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx.

¹⁰³ 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

¹⁰⁴ See SNL KAGAN at www.snl.com/Interactivex/TopCableMSOs.aspx.

¹⁰⁵ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 47 CFR 76.901(f) of the Commission's rules. See 47 CFR 76.901(f).

¹⁰⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁰⁷ NAICS code 517110; 13 CFR 121.201.

¹⁰⁸ http://factfinder.census.gov/faces/tableservices.jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹⁰⁹ See 15th Annual Video Competition Report, 28 FCC Rcd at 1057, Section 27.

¹¹⁰ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹¹¹ 13 CFR 121.201; NAICS code 517919.

¹¹² http://factfinder.census.gov/faces/tableservices.jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹¹³ See 47 CFR 52.101(b).

¹¹⁴ 13 CFR 121.201, NAICS code 517110.

¹¹⁵ *Id.*

42. The U.S. Census Bureau defines Wired Telecommunications Carriers as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹¹⁶ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹¹⁷ Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.¹¹⁸ Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

43. The U.S. Census Bureau defines Wireless Telecommunications Carriers (except satellite) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.¹¹⁹ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.¹²⁰ Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.¹²¹ Based on that data, we conclude that the majority of Carrier

RespOrgs that operated with wireless-based technology are small.

44. *Non-Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are “Other Services Related to Advertising”¹²² and “Other Management Consulting Services.”¹²³

45. The U.S. Census defines Other Services Related to Advertising as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).¹²⁴ The SBA has established a size standard for this industry as annual receipts of \$15 million dollars or less.¹²⁵ Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,612 operated with annual receipts of less than \$10 million.¹²⁶ Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

46. The U.S. Census defines Other Management Consulting Services as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.¹²⁷ The SBA has established a size standard for this industry of \$15 million dollars or less.¹²⁸ Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than \$10 million in annual receipts.¹²⁹ Based on this data,

we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.¹³⁰

47. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016 there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

48. This *Further Notice* does not propose any changes to the Commission’s current information collection, reporting, recordkeeping, or compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

49. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹³¹

50. This *FNPRM* seeks comment on issues that the Commission may address in the regulatory fee collection for Fiscal Year 2020. Specifically, the *FNPRM* seeks comment on (i) adding a new fee category for non-U.S. licensed satellite operators who have been granted access to the U.S. market; (ii) adjusting the apportionment among fee categories within the International Bureau; (iii) adjusting TV broadcaster regulatory fees for VHF licenses; and (iv) adopting a lower regulatory fee for broadcast incubator licensees. Some of these

productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹³⁰ The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs.

¹³¹ 5 U.S.C. 603(c)(1)–(c)(4).

¹¹⁶ <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

¹¹⁷ 13 CFR 120.201, NAICS code 517110.

¹¹⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹¹⁹ <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

¹²⁰ 13 CFR 120.201, NAICS code 517120.

¹²¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹²² 13 CFR 120.201, NAICS code 541890.

¹²³ 13 CFR 120.201, NAICS code 541618.

¹²⁴ <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

¹²⁵ 13 CFR 120.201, NAICS code 541890.

¹²⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹²⁷ <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

¹²⁸ 13 CFR 120.201, NAICS code 514618.

¹²⁹ <http://factfinder.census.gov/faces/tableservices/jsf/pages/>

issues may affect small entities. For example, revising intra-bureau allocations in the International Bureau could result in changes of regulatory fees for small entities, if this is adopted. Adjusting regulatory fees for TV broadcasters that hold VHF broadcast licenses could affect small entities, and ultimately provide them a benefit in the form of lower regulatory fees, if the Commission adjusts VHF fees in the future. Incubator licensees will likely be small entities and adopting a lower regulatory fee for them would benefit small entities. These issues in the *FNPRM* may be addressed in the FY 2020 annual regulatory fee notice of proposed rulemaking.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

51. None.

V. Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to section 9(a), (b), (e), (f), and (g) of the Communications Act of 1934, as amended, 47 U.S.C. 159(a), (b), (e), (f), and (g), this Further Notice of Proposed Rulemaking is hereby adopted.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019-22914 Filed 10-22-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 96

[AU Docket No. 19-244; FCC 19-96]

Auction of Priority Access Licenses for the 3550–3650 MHz Band; Comment Sought on Competitive Bidding Procedures for Auction 105; Bidding in Auction 105 Scheduled To Begin June 25, 2020

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: In this document, the Commission announces auctions of Priority Access Licenses for the 3550–3650 MHz Band, designated as Auction 105. This document proposes and seeks comment on competitive bidding procedures to be used for Auction 105.

DATES: Comments are due on or before October 28, 2019, and reply comments are due on or before November 12, 2019.

ADDRESSES: Comments may be filed using the Commission's Electronic

Comment Filing System (ECFS) or by filing paper copies. *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). All filings in response to the *Auction 105 Comment Public Notice* must refer to AU Docket No. 19–244. The Commission strongly encourages interested parties to file comments electronically and requests that an additional copy of all comments and reply comments be submitted electronically to the following email address: auction105@fcc.gov.

Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, AU Docket No. 19–244.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Mary Lovejoy or Kelly Quinn in the Auctions Division of the Office of Economics and Analytics at (202) 418–0660. For general auction questions, the Auctions Hotline at (717) 338–2868. For Priority Access License questions, Jessica Quinley in the

Wireless Telecommunications Bureau's Mobility Division at (202) 418–1991.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice (*Auction 105 Comment Public Notice*), AU Docket No. 19–244, FCC 19–96, adopted on September 26, 2019 and released on September 27, 2019. The *Auction 105 Comment Public Notice* includes the following attachment: Attachment A, Summary of Licenses to Be Auctioned. The complete text of the *Auction 105 Comment Public Notice*, including its attachment, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's website at www.fcc.gov/auction/105/ or by using the search function for AU Docket No. 19–244 on the Commission's ECFS web page at www.fcc.gov/ecfs/. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the *Auction 105 Comment Public Notice* in AU Docket No. 19–244.

I. Introduction

1. By the *Auction 105 Comment Public Notice*, the Commission seeks comment on the procedures to be used for Auction 105, the auction of Priority Access Licenses (PALs) in the 3550–3650 MHz band. Bidding in the auction is scheduled to commence on June 25, 2020. By initiating the pre-bidding process for assigning licenses in Auction 105, the Commission takes an important step toward releasing flexible-use mid-band spectrum to the market and furthering deployment of fifth-generation wireless, the Internet of Things, and other advanced spectrum-based services in the United States.

II. Licenses To Be Offered in Auction 105

2. Auction 105 will offer seven PALs in each county-based license area and counties shall be defined using the United States Census Bureau's data reflecting county legal boundaries and names valid through January 1, 2017. Each PAL consists of a 10-megahertz unpaired channel within the 3550–3650 MHz band. The auction will offer a total

of 22,631 PALs. PALs are 10-year renewable licenses. Priority Access Licensees may hold up to four 10-megahertz channel licenses (out of a total of seven) within the band in any license area at any given time.

3. A frequency coordinator called a Spectrum Access System (SAS) will assign the specific channel for a particular licensee on a dynamic basis. Individual PALs will not be identified by specific spectrum blocks. Although Priority Access Licensees may request a particular channel or frequency range from an SAS following the auction, bidders should be mindful that licensees are not guaranteed a particular assignment. Potential bidders should also understand that an SAS may dynamically reassign a PAL to a different channel as needed to accommodate a higher priority Incumbent Access user. An SAS will “assign geographically contiguous PALs held by the same Priority Access Licensee to the same channels in each geographic area” and “assign multiple channels held by the same Priority Access Licensee to contiguous frequencies within the same License Area,” to the extent feasible. However, an SAS may temporarily reassign individual PALs to non-contiguous channels to the extent necessary to protect incumbent users from harmful interference or, if necessary, to perform its required functions.

4. Each Priority Access Licensee must register its Citizens Broadband Radio Service Devices (CBSDs) with an SAS before operating those devices in the band. A CBSD registration includes its geographic location, antenna height, CBSD class, requested authorization status, FCC identification number, call sign, user contact information, air interface technology, unique manufacturer’s serial number, sensing capabilities (if supported), and information on its deployment profile. An SAS relies on this information to coordinate access for Priority Access Licensees and General Authorized Access (GAA) users, and an SAS Administrator may charge Priority Access Licensees and GAA users a reasonable fee for its services.

A. Sharing in the 3.5 GHz Band

5. The 3.5 GHz band (3550–3700 MHz) is governed by a three-tiered spectrum authorization framework. The three tiers of authorization are: Incumbent Access, Priority Access, and General Authorized Access (GAA). SASs will facilitate sharing among the three tiers of authorized users. Incumbent users receive protection from Priority Access Licensees and GAA

users, while Priority Access Licensees receive protection from GAA users. The three-tiered structure is designed to accommodate a variety of commercial uses on a shared basis with incumbent federal and non-federal uses of the band. The Citizens Broadband Radio Service includes Priority Access Licensees and GAA users in the 3550–3650 MHz band and GAA users in the 3550–3700 MHz band (collectively, the 3.5 GHz band).

6. Incumbent users, which have the highest priority, include federal radiolocation users in the 3550–3650 MHz band and non-Federal grandfathered Fixed Satellite Service (FSS) earth stations in the 3600–3650 MHz band.

7. The 3550–3650 MHz band segment is allocated for use by Department of Defense (DoD) radar systems on a primary basis and by Federal non-military Radiolocation Service on a secondary basis. Federal aeronautical radionavigation (ground-based) stations may also be authorized on a primary basis in the 3500–3650 MHz band when accommodation in the 2700–2900 MHz band is not technically or economically feasible. Non-Federal licensees, including Priority Access Licensees, may not cause harmful interference to, or claim protection from federal stations in the aeronautical radionavigation (ground-based) and radiolocation services in the 3550–3650 MHz band. The National Telecommunications and Information Administration (NTIA) may approve frequency assignments for new and modified Federal stations at current or new locations.

8. In the 3550–3650 MHz band, non-Federal stations in the Radiolocation Service that were licensed or had pending applications prior to July 23, 2015 may operate on a secondary basis to the Citizens Broadband Radio Service until the end of the equipment’s useful lifetime. FSS (space-to-Earth) earth station operations in the 3600–3650 MHz band may operate on a primary basis if the Commission authorized operation prior to or granted an application filed prior to July 23, 2015 and if the FSS licensee constructed the subject earth station(s) within 12 months of the initial authorization. Any new FSS (space-to-Earth) earth stations in the 3600–3650 MHz band assigned after July 23, 2015, are authorized on a secondary basis. Regardless of primary or secondary status, all non-Federal FSS (space-to-Earth) operations in the 3600–3650 MHz band are limited to international inter-continental systems and subject to case-by-case electromagnetic compatibility analysis.

9. GAA users may operate in the 3550–3700 MHz band, but are not guaranteed protection from interference. GAA users may operate on any frequencies not in use by Priority Access Licensees or Tier 1 licensees in the 3550–3650 MHz band. The GAA tier is licensed-by-rule to permit open, flexible access to the band for the widest possible group of potential users.

10. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a PAL that it may seek in Auction 105. In addition to the typical due diligence considerations that the Commission encourages of bidders in all auctions, the Commission calls particular attention in Auction 105 to the spectrum-sharing issues described above. Each applicant should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 3550–3650 MHz band.

III. Proposed Pre-Bidding Procedures

A. Information Procedures During the Auction Process

11. Consistent with most recent spectrum auctions, the Commission proposes to limit information available in Auction 105 in order to prevent the identification of bidders placing particular bids until after the bidding has closed. More specifically, the Commission proposes not to make public until after bidding has closed: (1) The licenses or license areas that an applicant selects for bidding in its auction application (FCC Form 175); (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 105; (3) an applicant’s bidding eligibility; and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

12. Under these proposed limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding in Auction 105 includes, for each county: the aggregate demand for licenses, the prices at the end of the last completed round, and the prices for the next round. The identities of bidders placing specific bids and the net bid amounts (reflecting bidding credits) would not be disclosed until after the close of bidding.

13. Bidders would have access to additional information related to their own bidding and bid eligibility. For example, bidders would be able to view their own level of eligibility, before and

during the auction, through the FCC auction bidding system.

14. After the close of bidding, bidders' county selections and the number of licenses selected for each county, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions would be made publicly available.

15. The Commission seeks comment on the above details of the proposal for implementing limited information procedures, or anonymous bidding, in Auction 105. Commenters opposing the use of anonymous bidding in Auction 105 should explain their reasoning and propose alternative information rules.

B. Bidding Credit Caps

16. The Commission administers its bidding credit programs to promote small business and rural service provider participation in auctions and in the provision of spectrum-based services. In 2018, the Commission determined that it would offer bidding credits in competitive bidding for PALS in the 3550–3650 MHz band auction to improve the ability of small businesses and rural service providers to attract the capital necessary to meaningfully acquire PALs. Specifically, the Commission adopted the gross revenue thresholds that define the eligibility tiers for the small business bidding credit, as revised by the *2015 Part 1 Report and Order*, 80 FR 56764, September 18, 2015, as well as a rural service provider bidding credit program. For the PALs in the 3550–3650 MHz band, the Commission determined that an entity with average annual gross revenues for the preceding three years not exceeding \$55 million will be eligible to qualify as a “small business” for a bidding credit of 15%, while an entity with average annual gross revenues for the preceding three years not exceeding \$20 million will be eligible to qualify as a “very small business” for a bidding credit of 25%, consistent with the standardized schedule in Part 1 of the Commission's rules. Additionally, the Commission determined that entities providing commercial communication services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in predominantly rural areas will be eligible for the 15% rural service provider bidding credit in competitive bidding for PALs in the 3550–3650 MHz band.

17. Consistent with the Commission's decision in the *2015 Part 1 Report and Order* to set a reasonable cap on the total amount of bidding credits that an eligible small business or rural service

provider may be awarded in any auction, the Commission now seeks comment on establishing the caps on the total amount of bidding credits that an eligible small business or rural service provider may be awarded for Auction 105. As the Commission explained in the *2015 Part 1 Report and Order*, the total amount of the bidding credit cap for small businesses will not be less than \$25 million, and the bidding credit cap for rural service providers will not be less than \$10 million.

18. For Auction 105, the Commission proposes a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business, and a \$10 million cap on the total amount of bidding credits that may be awarded to an eligible rural service provider. These proposals are consistent with the Commission's recent decisions in Auctions 101, 102, and 103. As in those auctions, the Commission believes that the range of potential use cases suitable for spectrum in the 3550–3650 MHz band, combined with the relatively small geographic areas for PALs, may permit deployment of smaller scale networks with lower total costs. Moreover, past auction data suggests that the proposed caps will allow the substantial majority of eligible businesses in the auction to take advantage of the bidding credit program. In addition, to create parity in Auction 105 among eligible small businesses and rural service providers competing against each other in small markets, the Commission proposes a \$10 million small markets cap on the overall amount of bidding credits that any winning small business bidder may apply to licenses won in counties located within any Partial Economic Area (PEA) with a population of 500,000 or less. These markets correspond to PEAs 118–416, excluding PEA 412 (Puerto Rico).

19. The Commission seeks comment on these proposed caps. Specifically, do the expected capital requirements associated with operating in the 3550–3650 MHz band, the potential number and value of PALs, past auction data, or any other considerations justify the proposed caps or a higher cap for either type of bidding credit? Commenters are encouraged to identify circumstances and characteristics of Auction 105 that should guide us in establishing bidding credit caps, and to provide specific, data-driven arguments in support of their proposals.

20. The Commission reminds applicants applying for designated entity bidding credits that they should take account of the requirements of the Commission's rules and implementing

orders regarding de jure and de facto control of such applicants. These rules include a prohibition, which applies to all applicants (whether or not seeking bidding credits), against changes in ownership of the applicant that would constitute an assignment or transfer of control. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements. This policy will help ensure compliance with the Commission's rules applicable to the award of bidding credits prior to the conduct of Auction 105, which will involve competing bids from those with and without bidding credits, and thus preserve the integrity of the auctions process. The Commission also believes that this will meet the objectives that the Commission must consider in awarding licenses through the competitive bidding process, including “the development and rapid deployment of new technologies, products, and services for the benefit of the public . . . without administrative or judicial delays” and “promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses.”

IV. Proposed Bidding Procedures

A. Clock Auction Design

21. The Commission proposes to conduct Auction 105 using an ascending clock auction design, in which bidders indicate their demands for generic license blocks in specific geographic areas—in this case, counties. The Commission's proposed clock auction format would proceed in a series of rounds, with bidding being conducted simultaneously for all spectrum blocks in all counties available in the auction. During each bidding round, the Commission would announce a per-block price in each county, and qualified bidders would submit, for each county for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds would be open for predetermined periods of time. Bidders would be subject to activity and eligibility rules

that govern the pace at which they participate in the auction.

22. Under this proposal, in each county, the clock price for a generic license block would increase from round to round if bidders indicate total demand in that county that exceeds the number of blocks available. The bidding rounds would continue until, for all counties, the total number of blocks that bidders demand does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block at the final price would be deemed winning bidders.

23. The clock auction design the Commission proposes for Auction 105 is similar in many respects to that used by the Commission for Auctions 1002 and 102, and that will be used for Auction 103, but it would differ in several important respects. First, no assignment phase will be held to assign frequency-specific licenses, as was done in previous auctions, because Priority Access Licensees will not be assigned frequency-specific licenses, but will be authorized to use frequencies associated with their PALs as dynamically assigned by SASs. Second, although the geographic licensing areas will be counties, the Commission seeks comment on a proposal to allow any bidder to elect to bid at a Cellular Market Area (CMA)-level for certain large CMAs rather than bidding separately for the counties within the CMA. The Commission seeks comment on bid incrementing and processing procedures to accommodate CMA-level bidding. These approaches could permit greater flexibility for bidders seeking to serve areas larger than a county. Third, the Commission proposes to modify the bidding activity rules that were used in prior clock auctions to provide a safeguard against a bidder losing bidding eligibility under certain circumstances.

24. The Commission directs the Office of Economics and Analytics (OEA), in conjunction with the Wireless Telecommunications Bureau (Bureau), to prepare and release, concurrent with the Auction 105 Comment Public Notice, a technical guide that provides mathematical details and algorithms of the proposed auction design.

B. Generic License Blocks

25. According to the *2018 3.5 GHz Order*, 83 FR 63076, December 7, 2018, the 70 megahertz of spectrum designated for PALs in the 3550–3650 MHz band will be licensed in seven generic 10-megahertz blocks by county. Accordingly, in the auction, seven generic block licenses will be available for bidding in each county.

26. *Limit on number of blocks per bidder.* In the *2018 3.5 GHz Order*, the Commission affirmed the its previous decision to impose a spectrum aggregation limit for PALs of 40 megahertz (*i.e.*, four PALs) in any geographic area at any point in time. Consistent with this limit on the number of blocks that a single entity can hold in any single county, the bidding system will limit to four the quantity of blocks that a bidder can demand in any given area at any point in the auction. Therefore, in each bidding round, a bidder will have the opportunity to bid for up to four generic blocks of spectrum per county.

27. *County-level or CMA-level bidding.* As indicated in the *2018 3.5 GHz Order*, the Commission seeks comment on proposed procedures that could give greater bidding flexibility to bidders interested in serving areas larger than a county. Under this proposal, a bidder could elect prior to the start of the bidding to bid at a CMA level for blocks in all of the counties comprising certain large CMAs. A bid at the CMA level would indicate demand for a single quantity of blocks for every county in the CMA. If a bidder is bidding at the CMA level and wins blocks in the CMA, the bidder would win the same number of blocks specified in the bid in each of the counties in the CMA. For example, if an entity bids successfully on four channels in CMA-60 that covers Orange, Osceola, and Seminole counties in Florida, then the Commission would issue twelve licenses. After the auction, the licensee would hold four 10-megahertz channel licenses within the 3550–3650 MHz band in each of the three counties. If a bidder elects CMA-level bidding for a CMA, the bidder would forego the opportunity to bid also at the county level for the individual counties in that CMA for the duration of Auction 105. PALs will be licensed on a county basis regardless of whether demands for the counties in a specific CMA are expressed through CMA-level or county-by-county bidding.

28. Since the benefits to bidders of being able to bid for an aggregation of counties, rather than having to bid for the counties separately, would likely be greatest for large metropolitan areas, the Commission proposes that CMA-level bidding, subject to the conditions and procedures specified, be permitted only for the top CMAs that include more than one county. For purposes of Auction 105, we have used the 1992 CMA markets, adjusted for changes to county boundaries since that time. Where the benefits of bidding for an aggregation of counties are likely to be less significant,

the Commission proposes to maintain procedures for county-level bidding only. Accordingly, the Commission proposes to allow a bidder to elect CMA-level bidding for the 172 CMAs that are classified as Metropolitan Statistical Areas (MSAs) and that incorporate multiple counties. Not including the Gulf of Mexico, 305 CMAs are classified as MSAs (Metropolitan Statistical Areas). Of these, 133 encompass a single county. Each of the remaining 172 MSAs comprises multiple counties. A bidder that does not elect CMA-level bidding for a given CMA would be able to bid for any or all of the counties in the CMA individually. A bidder would only be able to bid for all other counties—those in CMAs classified as Rural Service Areas (RSAs) and single-county MSAs—on a county-by-county basis.

29. Under this proposal to permit CMA-level bidding, a bidder would be permitted to elect CMA-level bidding for a given CMA only if it has selected all the counties in that CMA on its Form 175. Further, its initial eligibility must be sufficient to bid for at least one block within the CMA (*i.e.*, one block in each county in the CMA).

30. We clarify that under this proposal, prices will be determined on a county-by-county basis, consistent with the basic clock mechanism. Prices in a particular county would depend upon whether the aggregate demand for blocks in that county exceeds the supply, regardless of whether the demand comes from bidders bidding on a CMA level, on a county level, or both.

31. We seek comment on this proposal for CMA-level bidding generally. In particular, we ask for comment on the proposal to make eligible for CMA-level bidding the multi-county CMAs that are classified as MSAs, to require a bidder to make an irrevocable election to bid at the CMA level or the county level, and on the specific implementation procedures we propose. We seek comment on how this proposal, including the proposed implementation procedures described below, would affect auction participation by bidders that seek licenses for individual counties. We also seek comment on whether there are modifications that should be made to our proposal for CMA-level bidding that would assist auction participation by smaller entities interested in county-sized licenses.

C. Bidding Rounds

32. Under the proposed clock auction format, Auction 105 would consist of sequential bidding rounds, each

followed by the release of round results. The initial bidding schedule would be announced in a public notice to be released at least one week before the start of bidding.

33. The Commission will conduct Auction 105 over the internet. Bidders will upload bids in a specified file format for processing by the FCC auction bidding system.

34. Under this proposal, OEA would retain the discretion to adjust the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Such adjustments may include changes in the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, and would depend upon bidding activity and other factors. The Commission seeks comment on this proposal. Commenters should address the role of the bidding schedule in managing the pace of the auction and should specifically discuss the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirement percentage or bid increment parameters, or by using other means.

D. Stopping Rule

35. The Commission proposes a simultaneous stopping rule for Auction 105, under which all blocks in all counties would remain available for bidding until the bidding stops in every county. Specifically, the Commission proposes that bidding close for all blocks after the first round in which there is no excess demand in any county. Excess demand is calculated as the difference between the number of blocks of aggregate demand (from both county-level and CMA-level bids) and supply (equal to 7 blocks in all counties). Consequently, under this approach, it is not possible to determine in advance how long Auction 105 would last. The Commission seeks comment on the proposed simultaneous stopping rule.

E. Information Relating to Auction Delay, Suspension, or Cancellation

36. For Auction 105, the Commission proposes that, at any time before or during the bidding process, OEA, in conjunction with the Bureau, may delay, suspend, or cancel bidding in Auction 105 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of

competitive bidding. In such a case, OEA would notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, OEA, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or it may cancel the auction in its entirety. The Commission emphasizes that OEA and the Bureau would exercise this authority solely at their discretion. The Commission seeks comment on this proposal.

F. Upfront Payments and Bidding Eligibility

37. In keeping with the Commission's usual practice in spectrum license auctions, the Commission proposes that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid. As described below, the upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on licenses. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. With these considerations in mind, the Commission proposes upfront payments based on \$0.01 per MHz-pop, with a minimum of \$500 per county. The results of these calculations will be rounded using the Commission's standard rounding procedures for auctions: Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. The proposed upfront payments equal approximately half the proposed minimum opening bids, which are established as described in section IV.H.1 of the Auction 105 Comment Public Notice. The Commission seeks comment on these upfront payment amounts, which are specified in the Attachment A files of the Auction 105 Comment Public Notice.

38. The Commission further proposes that the amount of the upfront payment submitted by a bidder would determine its initial bidding eligibility in bidding units, which are a measure of bidder eligibility and bidding activity. The Commission proposes to assign each block in a given county a specific number of bidding units, equal to one bidding unit per \$10 of the upfront payment listed in Attachment A. The number of bidding units for one block in a given county is fixed, since it is based on the MHz-pops in the block,

and does not change during the auction as prices change. To the extent that bidders wish to bid on multiple generic blocks simultaneously, whether within the same county or in different counties, they would need to ensure that their upfront payment provides enough eligibility to cover multiple blocks.

39. Under the proposed approach, a bidder's upfront payment would not be attributed to blocks in a specific county or counties. A bidder may place bids on multiple blocks in counties that it selected for bidding in its FCC Form 175, provided that the total number of bidding units associated with those blocks does not exceed its eligibility-based limit for the round. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount, and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount covering that total number of bidding units. The Commission seeks comment on these proposals.

G. Activity Rule, Activity Upper Limit, and Reducing Eligibility

40. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For this clock auction, a bidder's activity in a round for purposes of the activity rule would be the sum of the bidding units associated with the bidder's demands as applied by the auction system during bid processing. Bidders are required to be active on a specific percentage (*the activity requirement percentage*) of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level would result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

41. The Commission proposes to require that bidders maintain a fixed, high level of activity in each round of Auction 105 in order to maintain bidding eligibility. Specifically, the Commission proposes to require that bidders be active on between 90% and 100% of their bidding eligibility in all clock rounds. Thus, the activity rule would be satisfied when a bidder has bidding activity on blocks with bidding units that total 90% to 100% of its current eligibility in the round. If the activity rule is met, then the bidder's

eligibility does not change for the next round. If the activity rule is not met in a round, the bidder's eligibility would be reduced. The Commission proposes to calculate bidding activity based on the bids that are accepted by the FCC auction bidding system. That is, if a bidder requests a reduction in the quantity of blocks it demands in a county, but the FCC auction bidding system does not accept the request because demand would fall below the available supply, then the bidder's activity would reflect its unreduced demand. Under the ascending clock auction format, the FCC auction bidding system will not allow a bidder to reduce the quantity of blocks it demands in an individual county if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the county.

42. Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids with activity that exceeds the required activity for the round. This may occur, for example, if the bidder bids to reduce its demand in county A by two blocks (with 10 bidding units each) and bids to increase its demand by one block (with 20 bidding units) in county B. If the bidder's demand can only be reduced by one block in county A (because there is only one block of excess demand), the increase in county B cannot be applied, and absent other bidding activity the bidder's eligibility would be reduced. To help a bidder avoid having its eligibility reduced as a result of submitted bids that could not be accepted during bid processing, the Commission proposes to allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility. For example, under this proposal, and depending upon the bidder's overall bidding eligibility and the activity limit percentage, a bidder could submit an "additional" bid or bids that would be considered (in price point order with its other bids) and applied as available eligibility permits during the bid processing. However, under the proposed procedures, the bidder's activity as applied by the auction system during bid processing would not exceed the bidder's current bidding eligibility. That is, a bidder may submit bids with associated bidding units exceeding 100% of its current bidding eligibility, but its processed activity may never exceed its eligibility.

43. Specifically, the Commission proposes that after Round 1 a bidder may submit bids with bidding units

totaling up to an *activity upper limit* equal to the bidder's current bidding eligibility for the round times a percentage (the *activity limit percentage*) equal to or greater than 100%. For Round 1, the activity upper limit would be 100% of the bidder's initial bidding eligibility. The Commission proposes an initial activity limit percentage of 120% and a range of potential percentages between 100% and 140% to apply to Round 2 and subsequent rounds. In any bidding round, the auction bidding system will advise the bidder of its current bidding eligibility, its required bidding activity, and its activity upper limit.

44. Under the proposed procedures, OEA would retain the discretion to change the activity requirement percentage and the activity limit percentage during the auction. The bidding system would announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

45. The Commission invites comment on this proposal and, in particular, on using an activity upper limit to address the potential for loss of bidding eligibility under some circumstances. We also encourage commenters to address specifically whether to set the activity requirement percentage between 90% and 100% and whether to set the activity limit percentage between 100% and 140%. Further, the Commission seeks comment on where to set these percentages initially. The Commission also seeks comment on the relationship between the proposed activity rules and the ability of bidders to switch their demands across counties. The Commission encourages any commenters that oppose the proposed ranges for the activity requirement percentage and the activity limit percentage to explain their reasons with specificity.

46. The Commission points out that under the proposed clock auction format, bidders are required to indicate their demands in every round, even if their demands at the new round's prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as requests to reduce to a quantity of zero blocks for the county or CMA (if the bidder is bidding at the CMA level). If these requests are applied, or applied partially, a bidder's bidding activity, and hence its bidding eligibility for the next round, may be reduced. A CMA-level bid may be applied partially with respect to the number of blocks specified in the bid,

not for fewer than the full number of counties in the CMA.

47. For Auction 105, the Commission does not propose to provide for activity rule waivers to preserve a bidder's eligibility. The Commission notes that its proposal to permit a bidder to submit bids with bidding activity greater than its eligibility, within the precise limits set forth above, would address some of the circumstances under which a bidder risks losing bidding eligibility and otherwise could wish to use a bidding activity waiver, while minimizing any potential adverse impacts on bidder incentives to bid sincerely and on the price setting mechanism of the clock auction. This approach not to allow waivers is consistent with the ascending clock auction procedures used in Auction 1002 and 102 and with the procedures adopted for Auction 103. The clock auction relies on precisely identifying the point at which demand decreases to equal supply to determine winning bidders and final prices. Allowing waivers would create uncertainty with respect to the exact level of bidder demand and interfere with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the bidding system, as addressed below. The Commission seeks comment on this approach.

H. Acceptable Bids

1. Reserve Price or Minimum Opening Bids

48. As part of the pre-bidding process for each auction, the Commission seeks comment on the use of a minimum opening bid amount and/or reserve price, as mandated by Section 309(j) of the Communications Act of 1934, as amended.

49. The Commission proposes to establish minimum opening bid amounts for Auction 105. The bidding system will not accept bids lower than these amounts. Based on the Commission's experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process. In the first bidding round of Auction 105, a bidder would indicate how many generic license blocks in a county (or CMA, if applicable) it demands at the minimum opening bid price. For Auction 105, the Commission proposes to establish initial clock prices, or minimum opening bids, by county, as set forth in the following paragraph. For CMA-level bids, the Commission proposes minimum

opening bids that are the sum of the minimum opening bids for all of the counties in the CMA. There are no circumstances associated with Auction 105 that suggest the Commission should propose a separate aggregate reserve price in Auction 105. Accordingly, the Commission does not propose to establish an aggregate reserve price or block reserve prices that are different from minimum opening bid amounts for the licenses to be offered in Auction 105.

50. For Auction 105, the Commission proposes to calculate minimum opening bid amounts using a formula based on bandwidth and license area population, which is similar to the Commission's approach in many previous spectrum auctions. The Commission proposes to use a calculation based on \$0.02 per MHz-pop, with a minimum of \$1,000. The Commission seeks comment on these minimum opening bid amounts, which are specified in the Attachment A files. If commenters believe that these minimum opening bid amounts would result in unsold licenses, are not reasonable amounts, or should instead operate as reserve prices, they should explain their reasoning and propose an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids.

51. In establishing minimum opening bid amounts, the Commission particularly seeks comment on factors that could reasonably affect bidders' valuation of the spectrum, including the type of service offered, market size, population covered by the proposed facility, and any other relevant factors.

52. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—e.g., by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changing the bidding schedule, the activity requirement percentage, or the bid increment parameters.

2. Clock Price Increments

53. Under the proposed clock auction format for Auction 105, after bidding in the first round and before each subsequent round, the FCC auction bidding system would announce the start-of-round price and the clock price for the upcoming round—that is, the lowest price and the highest price at which bidders can specify the number of blocks they demand during the

round. As long as aggregate demand for blocks in the county exceeds the supply of blocks, the start-of-round price would be equal to the clock price from the prior round. If demand equaled supply at a price in a previous round, then the start-of-round price for the next round would be equal to the price at which demand equaled supply. If demand was less than supply in the previous round, then the start-of-round price for the next round would not increase.

54. The Commission proposes to set the clock price for blocks in a specific county for a round by adding a percentage increment, which may be county-specific, to the start-of-round price. For example, if the start-of-round price for a block in a given county is \$10,000, and the percentage increment is 20%, then the clock price for the round will be \$12,000. The Commission further proposes that the total dollar amount of the increment (the difference between the clock price and the start-of-round price) would not exceed a certain amount. The Commission proposes that this cap on the increment initially be set at \$10 million, and proposes to retain the discretion to adjust this cap as rounds continue.

55. Under the proposed procedures, the percentage increment for a county would depend upon whether the county is in a CMA for which CMA-level bids are allowed.

56. *For counties not subject to CMA-level bidding.* The Commission proposes to set the clock price for blocks in a county not subject to CMA-level bidding (counties in CMAs 307–734 and counties in single-county MSAs) by adding a fixed increment—the *basic increment percentage*—to the start-of-round price. The Commission proposes to set the basic increment percentage within a range of 5% to 20% inclusive, to set the initial basic increment percentage at 10%, and potentially to adjust the increment as rounds continue. The proposed 5% to 20% increment range will allow us to set a percentage that manages the auction pace and takes into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly.

57. *For counties subject to CMA-level bidding.* The Commission proposes to set the clock price for counties that are subject to CMA-level bidding using a formula that attempts to equalize aggregate demand across the counties in the CMA, thereby discouraging excess supply that can occur with CMA-level bids. Because of the exception to the no excess supply rule, one unit of CMA-level bid to reduce demand may be applied even if that causes aggregate

demand to drop below supply in some counties. Thus, the aggregate demand in a county can drop in later rounds even if the aggregate demand in that county initially exceeded supply. Under this proposal, when there is significant variation in the extent of aggregate demand across the counties in a CMA, the increment percentage will be larger for counties with greater aggregate demand, increasing prices more quickly. As a result, aggregate demand for those counties will tend to fall relative to aggregate demand for counties in which prices are increasing less quickly. As aggregate demand across the counties in the CMA tends to equalize, it becomes less likely that there will be excess demand in one county but not in others, a situation which under the proposed procedures may allow a CMA-level bidder to reduce demand such that demand falls below supply in one or more counties.

58. Under this proposal, the bidding system would set the clock price for counties subject to CMA-level bidding using an algorithm. The algorithm would first consider the extent of variation in excess demand across the counties in the CMA. If the variation does not exceed a given basic threshold, the increment percentage for all counties in the CMA would be set equal to the basic increment percentage. Then the clock price would be determined by adding the basic increment percentage to the start-of-round price for each county in the CMA, as it would be for counties not subject to CMA-level bidding.

59. If instead the algorithm shows that the extent of variation in aggregate demand across the counties in a CMA exceeds the basic threshold, indicating that there is significantly more demand for blocks in some counties than others, the algorithm would calculate an increment percentage for each county based on how aggregate demand in that county compares to aggregate demand in the other counties. The increment percentage for counties with relatively high demand would be greater than the increment percentage for counties with relatively low demand. The county-specific percentage increment calculated by the algorithm would then be added to the start-of-round price to determine the clock price for the county. The increment percentages would be no greater than a maximum, which the Commission proposes to set within a range of 5% to 20% and no less than a minimum, which the Commission proposes to set within a range of 2% to 20%. The Commission proposes to set the initial maximum increment percentage at 15%, and the

initial minimum increment percentage at 5%.

60. The specific algorithm proposed for calculating the increment percentage in counties subject to CMA-level bidding is set forth in the Auction 105 Technical Guide. The Commission seeks comment on these proposed procedures for setting the clock increment under various circumstances, including the variable pricing algorithm and the use of the algorithm with CMA-level bids. As an alternative to our proposal to use a variable price increment for counties subject to CMA-level bidding to help avoid creating excess supply, should we apply the basic increment to all counties? In particular, the Commission asks for feedback on the proposed 5% to 20% range for the basic increment percentage, with an initial basic increment percentage of 10%. The Commission also asks for specific feedback on the proposed 2% to 20% range for the minimum increment percentage, with an initial minimum increment percentage of 5%, and on the proposed 5% to 20% range for the maximum increment percentage, with an initial maximum increment percentage of 15%.

3. Intra-Round Bids

61. The Commission proposes generally to permit a bidder to make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for blocks changes. In placing an intra-round bid, a bidder would indicate a specific price and a quantity of blocks it demands if the price for blocks should increase beyond that price.

62. The Commission also proposes an exception to this general rule. In the case of a CMA-level bid to reduce demand, the bid could only be made at the start-of-round price. This proposed exception would help to ensure that the price does not increase above the start-of-round price when there is excess supply (that is, unsold blocks), which may result from a CMA-level bid to reduce demand.

63. Intra-round bids would be optional; a bidder may choose to express its demands only at the clock prices. This proposal to permit intra-round bidding would allow the auction system to use relatively large increments, thereby speeding the auction, without running the risk that a jump in the clock price will overshoot the market clearing price—the point at which demand for blocks equals the available supply. The Commission seeks comment on the proposal to allow intra-round bids.

I. Bids To Change Demand and Bid Processing

64. Under the ascending clock format the Commission proposes for Auction 105, a bidder would indicate in each round the number of blocks in each county and/or CMA (if bidding at a CMA level) that it demands at a given price. A bidder that wishes to change the quantity it demands (relative to its demands from the previous round as processed by the bidding system) would express its demands at the clock price or at an intra-round price. However, CMA-level bids to reduce demand must be made at the start-of-round price. A bidder that is willing to maintain the same demand in a county at the new clock price would bid for that quantity at the clock price, indicating that it is willing to pay up to that price, if need be, for the specified quantity. Bids to maintain demand would always be applied by the auction bidding system.

65. The Commission proposes bid processing procedures that the auction bidding system would use, after each bidding round, to process bids to change demand to determine the *processed demand* of each bidder and a *posted price* for each county that would serve as the start-of-round price for the next round.

1. No Excess Supply Rule

66. Under the ascending clock auction format, the FCC auction bidding system will not allow a bidder to reduce the quantity of blocks it demands in an individual county if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the county. Therefore, if a bidder bids to reduce the number of blocks that it holds as of the previous round, the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the “no excess supply” rule would be satisfied.

67. The Commission proposes a limited exception to the “no excess supply” rule for CMA-level bids only. Under this proposed modification, for CMA-level bids, if there is excess demand in at least one county of the CMA at the time a CMA-level bid to reduce demand is processed, then a reduction of one block would be applied even if that creates excess supply in other counties of the CMA. Once the first unit of a CMA-level bid to reduce demand has been applied, the “no excess supply” rule then would be in effect for any further reduction requested in that bidder’s CMA-level bid that has not yet been applied. CMA-level bids to reduce demand would only

be allowed at the lowest price associated with the round (the start-of-round price). The Commission notes that the price incrementing rules for CMAs for which CMA-level bidding is permitted make it more likely that aggregate demands would be equalized across the counties in the CMA, thus making it less likely that the “no excess supply” exception would be triggered.

2. Partial Application of Bids

68. Under the proposed bid processing procedures, a bid that involves a reduction from the bidder’s previous demands could be applied partially—that is, reduced by fewer blocks than requested in the bid—if excess demand is insufficient to support the entire reduction. A bid to increase a bidder’s demands could be applied partially if the total number of bidding units associated with the bidder’s demand exceeds the bidder’s bidding eligibility for the round.

3. Processed Demands

69. The Commission proposes to process bids to change demand in order of price point after a round ends, where the price point represents the percentage of the bidding interval for the round. For example, if the start-of-round price is \$5,000 and the clock price is \$6,000, a price of \$5,100 will correspond to the 10% price point, since it is 10% of the bidding interval between \$5,000 and \$6,000. Under this proposal, the FCC auction bidding system would process bids to change demand in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system would consider bids at the lowest price point across all counties and all CMAs subject to CMA-level bidding, then look at bids at the next price point in all areas, and so on. The Commission proposes that, if there are multiple bids at a single price point, the system will process bids in order of a bid-specific pseudo-random number. As it considers each submitted bid during bid processing, the FCC auction bidding system would determine the extent to which there is excess demand in each county at that point in the processing in order to determine whether a bidder’s request to reduce demand can be applied. Likewise, the auction bidding system would evaluate the activity associated with the bidder’s most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

70. Because in any given round some bidders may request to increase

demands for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. In addition to proposing that bids be considered by the system in increasing order of price point, the Commission further proposes that bids not applied because of insufficient aggregate demand or insufficient eligibility be held in a queue and considered, again in order, if there should be excess supply or sufficient eligibility later in the processing after other bids are processed.

71. Therefore, under the proposed procedures, once a round closes, the auction system would process bids to change demand by first considering the bid submitted at the lowest price point and determining the maximum extent to which that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied (either in full or partially), the number of licenses the bidder holds at that point in the processing would be adjusted, and aggregate demand would be recalculated accordingly. If the bid cannot be applied in full, the unfulfilled bid, or portion thereof, would be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system would then consider the bid submitted at the next highest price point, applying it in full, in part, or not at all, given the most recently determined demands of bidders. Any unfulfilled requests would again be held in the queue, and aggregate demand would again be recalculated. Every time a bid or part of a bid is applied, the unfulfilled bids held in the queue would be reconsidered, in the order of their original price points (and by pseudo-random number, in the case of tied price points). The auction bidding system would not carry over unfulfilled bid requests to the next round, however. The bidding system would advise bidders of the status of their bids when round results are released.

4. Price Determination

72. The Commission further proposes bid processing procedures that would determine, based on aggregate demand, the posted price for each county for the round that will serve as the start-of-round price for the next round. Under this proposal, the uniform price for all of the blocks in a county would increase from round to round as long as there is excess demand for blocks in the county but would not increase if aggregate demand does not exceed the available supply of blocks.

73. The Commission proposes that if, at the end of a round, the aggregate demand for blocks in the county (considering both county-level and CMA-level bids) exceeds the supply of blocks (7), the posted price would equal the clock price for the round. If a reduction in demand was applied during the round and caused demand in the county to equal (or fall below) supply, the posted price would be the price at which the reduction was applied. If aggregate demand is less than supply and no bid to reduce demand was applied for the county, then the posted price would equal the start-of-round price for the round. The range of acceptable bid amounts for the next round would be set by adding the percentage increment to the posted price.

74. When a county-level bid to reduce demand can be applied only partially, the uniform price for the county would stop increasing at that point, since the partial application of the bid would result in demand falling to equal supply. Hence, a bidder that makes a county-level bid to reduce demand that cannot be fully applied would not face a price for the remaining demand that is higher than its bid price. A bidder that makes a CMA-level bid to reduce demand that is partially applied may face a price for the remaining demand that is higher than its bid price for some of the counties. This is the case when some counties in the CMA still have excess demand, which will cause the prices in those counties to increase.

75. After the bids of the round have been processed, if the stopping rule has not been met, the FCC auction bidding system would announce clock prices to indicate a range of acceptable bids for the next round. Each bidder would be informed of its processed demand and the extent of excess demand for blocks in each county.

76. The Commission seeks comment on the proposals regarding bid processing for Auction 105.

J. Winning Bids

77. Under the proposed clock auction format for Auction 105, bidders that are still expressing demand for a quantity of blocks in a county—either on an individual county basis or through a CMA-level bid—at the time the stopping rule is met would become the winning bidders of licenses corresponding to that number of blocks. The final price for a generic block in a county would be the posted price for the final round.

K. Bid Removal and Bid Withdrawal

78. The FCC auction bidding system allows each bidder to remove any of the

bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively “unsubmits” the bid. Once a round closes, a bidder may no longer remove a bid.

79. Unlike an auction conducted using the Commission's standard simultaneous multiple-round auction format for bidding on frequency-specific licenses (as opposed to generic blocks), there are no provisionally winning bids in a clock auction. As a result, the concept of bid withdrawals does not apply to a clock auction. As proposed above, however, bidders in Auction 105 may request to reduce demand for generic blocks.

V. Post-Auction Process

A. Deficiency Payments and Additional Default Payment Percentage

80. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under Section 1.2104(g)(2) of the rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

81. *Deficiency payment for CMA-level bidding.* Under the CMA-level bidding procedures the Commission proposes, a CMA-level bid requests a quantity of blocks in each county at a price equal to the sum of the per-block prices in the individual constituent counties times the number of blocks demanded. Accordingly, in the event of default on a CMA-level bid, the deficiency payment for each individual county-based license will be calculated using the per-block price for the specific county, and the deficiency payment for the CMA will be the sum of the payment for each county.

82. *Additional Default Payment Percentage.* The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. Without combinatorial bidding, the amount can range from 3% up to a maximum of 20%, established in advance of the auction and based on the nature of the service and the inventory of the licenses

being offered. In auctions with combinatorial bidding, the additional payment is set, pursuant to Section 1.2104(g)(2)(ii), at 25% of the applicable bid. This higher level reflects the fact that a defaulted winning bid in an auction with combinatorial bidding may affect the award of other licenses in the auction and may be used to effectuate anti-competitive strategies; hence a stronger deterrent against insincere bidding and strategic default is warranted. If adopted, under the proposed procedures, bidders would be permitted to bid for a group of counties that comprise a CMA. Thus, the Commission proposes an approach consistent with past auctions where the bidding procedures allowed for bidders to package their bids. Specifically, the Commissions propose to establish for Auction 105 an additional default payment of 25% for a default on any winning CMA-level bid.

83. For winning county-level bids, the Commission proposes an additional default payment of 20% of the relevant bid. As noted in the *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to 20% should be more effective in deterring defaults than the 3% used in some earlier auctions. Given the large number of PALs available for bidding in Auction 105, the Commission believes that a 20% default payment is necessary to ensure that entities only bid on those licenses that they reasonably expect to use. The Commission seeks comment on this proposal.

84. In case they are needed for post-auction administrative purposes, the bidding system will calculate individual per-license prices that are separate from a bidder's final auction payment, which is calculated on an aggregate basis. In calculating the per-license prices, the bidding system will apportion to individual licenses any capped bidding credit discounts, since a single amount may apply to multiple licenses.

B. Tutorial and Additional Information

85. The Commission intends to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 105 to familiarize themselves with the FCC auction application system and the auction bidding system. For example, the Commission intends to release an online tutorial for Auction 105 that will help applicants understand the procedures to be followed in the filing of their auction short-form applications

(FCC Form 175) for Auction 105 and in their use of the auction bidding system.

VI. Procedural Matters

86. *Supplemental Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the proposed policies and rules addressed in the Public Notice to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *2017 Notice of Proposed Rulemaking*, 82 FR 56193 (2017), and *2018 3.5 GHz Order*, respectively. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified on the first page of the Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

87. *Need for, and Objectives of, the Proposed Rules.* The Public Notice seeks comment on proposed auction procedures for those entities that seek to acquire Priority Access Licenses in Auction 105. This process is intended to provide notice of and adequate time for potential applicants to comment on proposed auction procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 105 participants, the Commission seeks comment on the following proposed procedures: (1) Use of anonymous bidding/limited information procedures which will not make public: (a) The licenses or license areas that an applicant selects for bidding in its auction application (FCC Form 175); (b) the amount of any upfront payment made by or on behalf of an applicant for Auction 105; (c) an applicant's bidding eligibility; and (d) any other bidding-related information that might reveal the identity of the bidder placing a bid, until after bidding has closed; (2) establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 105; (3) retention by OEA of discretion to adjust the bidding schedule in order to manage the pace of Auction 105; (4) use of a simultaneous stopping rule where all blocks in all counties will remain open

for bidding until bidding has stopped in every county; (5) provision of discretionary authority to OEA, in conjunction with the Bureau, to delay, suspend, or cancel bidding in Auction 105 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently; (6) use of a clock auction format for Auction 105 under which each qualified bidder will indicate in successive clock bidding rounds its demands for generic blocks in specific counties, and associated bidding and bid processing procedures to implement the clock auction format; (7) procedures to permit a bidder to elect to bid at a CMA level, rather than a county level, for certain large, multi-county CMAs, and procedures to implement CMA-level bidding; (8) use of an activity rule, which requires a bidder to bid actively during the auction on a high percentage of its bidding eligibility, including a modification that would allow a bidder to submit bids, but not to be assigned bids, that exceed its bidding eligibility; (9) use of an activity rule that does not include a waiver of the rule to preserve a bidder's eligibility; (10) a specific minimum opening bid amount for generic blocks in each county available in Auction 105; (11) a specific upfront payment amount for generic blocks in each county available in Auction 105; (12) establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each generic block; (13) establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a proposed methodology for calculating such amounts; (14) use of bid processing procedures that the auction bidding system will use, after each bidding round, to process bids to determine the processed demand of each bidder and a posted price for each county that would serve as the start-of-round price for the next round; and (15) establishment of additional default payments of 20% for county-level bids and 25% for CMA-level bids pursuant to Section 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

88. *Legal Basis.* The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in Sections 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. 154(i),

301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(j)). The Commission has established a framework of competitive bidding rules, updated most recently in 2015, pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 105.

89. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

90. As noted above, Regulatory Flexibility Analyses were incorporated into the *2017 Notice of Proposed Rulemaking* and *2018 3.5 GHz Order*. In those analyses, the Commission described in detail the small entities that might be significantly affected. The Commission hereby adopts by reference the descriptions and estimates of the number of small entities from the Regulatory Flexibility Analyses completed in the *2017 Notice of Proposed Rulemaking* and *2018 3.5 GHz Order*.

91. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission’s two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant’s short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant which fails to become a winning bidder does not need to file a long-form application or provide the additional showings and more detailed demonstrations required of a winning bidder.

92. We do not expect that the processes and procedures proposed in this Public Notice will require small entities to hire attorneys, engineers, consultants, or other professionals for compliance or to participate in Auction 105 because of the information, resources, and guidance we make available to potential and actual participants. For example, we intend to release an online tutorial that will help applicants understand the procedures for filing the auction short-form application (FCC Form 175). We also intend to make information on the bidding system available and to offer demonstrations and other educational opportunities for applicants in Auction 105 to familiarize themselves with the FCC auction application system and the auction bidding system. By providing these resources as well as the resources discussed below, we expect small business entities that use the available resources to experience lower participation and compliance costs. Nevertheless, while we cannot quantify the cost of compliance with the proposed procedures, we do not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the proposals for Auction 105 are similar in many respects to the procedures in recent auctions conducted or to be conducted by the Commission.

93. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

94. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the many resources it provides potential auction participants. Small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and the FCC’s auction bidding system. An FCC Auctions

Hotline provides access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC’s auction bidding system. Small entities may also use the web-based, interactive online tutorial produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

95. The Commission also makes various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small businesses to conduct research prior to and throughout the auction. Prior to and at the close of Auction 105, the Commission will post public notices on the Auction’s website, which articulate the procedures and deadlines for the respective auction. The Commission makes this information easily accessible and without charge to benefit all Auction 105 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission’s competitive bidding rules.

96. Prior to the start of bidding in Auction 105, eligible bidders are given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, the Commission intends to conduct Auction 105 electronically over the internet using its web-based auction system, which eliminates the need for bidders to be physically present in a specific location. These mechanisms are made available to facilitate participation in Auction 105 by all eligible bidders and may result in significant cost savings for small business entities who use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small entities.

97. For Auction 105, the Commission proposes a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business and a \$10 million cap on the total amount of bidding credits that may be awarded to a rural service provider. The Commission also proposes a \$10 million cap on the overall amount of bidding

credits that any winning small business bidder may apply to winning licenses in counties located within any PEA with a population of 500,000 or less. Based on the technical characteristics of the 3550–3650 MHz band and the Commission's analysis of past auction data, the Commission anticipates that the proposed caps will allow the majority of small businesses and rural service providers to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses.

98. These proposed procedures for the conduct of Auction 105 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 96 of the Commission's rules and the underlying rulemaking orders, including the *2018 3.5 GHz Order* and relevant competitive bidding orders, and are fully consistent therewith.

99. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

100. *Ex Parte Rules.* This proceeding has been designated as a “permit-but-

disclose” proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations must file a copy of any written presentations or memoranda summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph

numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019-22892 Filed 10-22-19; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 84, No. 205

Wednesday, October 23, 2019

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.

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure

AGENCY: Advisory Committee on the Federal Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Civil Procedure has been canceled: Civil Rules Hearing on October 28, 2019, in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

SUPPLEMENTARY INFORMATION: Announcements for this hearing were previously published in 84 FR 42951.

Dated: October 17, 2019.

Rebecca A. Womeldorf,
Rules Committee Secretary.

[FR Doc. 2019-23033 Filed 10-22-19; 8:45 am]

BILLING CODE 2210-55-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Revisions to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability; request for comment.

SUMMARY: The Natural Resources Conservation Service (NRCS) is giving this notice that it intends to issue a

series of revised conservation practice standards in the National Handbook of Conservation Practices (NHCP), and NRCS is also giving the public an opportunity to provide comments on specified practice conservation standards in NHCP.

DATES: We will consider comments that we receive by November 22, 2019. Comments received after this date will be considered to the extent possible. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period and the consideration of all comments.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for docket ID NRCS-2019-0011. Follow the instructions for submitting comments.

- *Mail, or Hand Delivery:* Mr. Bill Reck, National Environmental Engineer, Conservation Engineering Division, U.S. Department of Agriculture, NRCS, 1400 Independence Avenue, South Building, Room 6136, Washington, DC 20250.

NRCS will post all comments on <http://www.regulations.gov>. In general, personal information provided with comments will be posted. If your comment includes your address, phone number, email, or other personal identifying information (PII), your comments, including PII, may be available to the public. You may request that your PII be withheld from public view, but this cannot be guaranteed.

The copies of the proposed revised standards are available through <http://www.regulations.gov> by accessing Docket No. NRCS-2019-0011.

Alternatively, the proposed revised standards can be downloaded or printed from <http://go.usa.gov/TXye>.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Reck, (202) 720-4485; or bill.reck@usda.gov.

SUPPLEMENTARY INFORMATION: NRCS State Conservationists who choose to adopt these practices in their States will incorporate these practices into the respective electronic Field Office Technical Guide. These practices may

be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

The amount of the proposed changes varies considerably for each of the conservation practice standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version, which can be found at http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/cp/npcs/?cid=nrcs143_026849.

NRCS is requesting for comments on the practice standards: Contour Buffer Strips (Code 332), Dam, Diversion (Code 348); Deep Tillage (Code 324); Irrigation and Drainage Tailwater Recovery (Code 447); Irrigation Canal or Lateral (Code 320); Irrigation Ditch Lining (Code 428); Irrigation Field Ditch (Code 388); Irrigation Reservoir (Code 436); Land Clearing (Code 460); Obstruction Removal (Code 500); Surface Roughening (Code 609); Waste Treatment (Code 629); and Waterspreading (Code 640). The following are highlights of some of the proposed revisions to each standard:

Contour Buffer Strips (Code 332): Formatting and writing style were updated to meet current agency requirements. Updated missing units, tabular values, and changed term flexible membrane to geosynthetic to meet current industry standards. Moved items related to energy use from the Criteria section to the Considerations section.

Dam, Diversion (Code 348): The Criteria section was updated, and references were added. Other changes were made to improve the clarity of language used in the standard.

Deep Tillage (Code 324): Formatting and writing style were updated to meet current agency requirements. Several paragraphs in the Considerations section were edited to improve clarity.

Irrigation and Drainage Tailwater Recovery (Code 447): The title was changed to "Irrigation and Drainage Tailwater Recovery" from "Irrigation System, Tailwater Recovery". Scope and

purposes of the standard were updated to include drainage water as well as irrigation water. This standard applies to lands that have a properly designed and installed irrigation or subsurface drainage system where recoverable irrigation runoff, subsurface drainage outflows, or rainfall runoff are expected under current or planned management practices.

Irrigation Canal or Lateral (Code 320): Formatting and writing style were updated to meet current agency requirements. The Considerations section has a new paragraph that suggests ways the practice can be implemented that enhances the practice for pollinators and other beneficial insects.

Irrigation Ditch Lining (Code 428): Formatting and writing style were updated to meet current agency requirements. Updated missing units, tabular values, and reworded the term flexible membrane to geosynthetic to meet current industry standards. Moved items related to energy use from the Criteria section to the Considerations section.

Irrigation Field Ditch (Code 388): Formatting and writing style were updated to meet current agency requirements. In addition, a sentence on spoil disposal was added in the Criteria section. The Considerations section was significantly re-written.

Irrigation Reservoir (Code 436): Formatting and writing style were updated to meet current agency requirements. Removed energy use bulleted items from the Purpose section. Moved items related to energy use from the Criteria section to the Considerations section. Also moved fencing and critical planting from the Considerations section to the Criteria section.

Land Clearing (Code 460): Formatting and writing style were updated to meet current agency requirements. Relatively minor changes have been made to simplify and clarify the definition, purpose and criteria within the standard.

Obstruction Removal (Code 500): Formatting and writing style were updated to meet current agency requirements. Changes to Purpose and

Conditions where Practice Applies sections were made to help clarify standard usage. Changes were made to help simplify and clarify the Criteria and Consideration section within the standards.

Surface Roughening (Code 609): Formatting and writing style were updated to meet current agency requirements. Several paragraphs in the Considerations section were deleted and edited for improved clarity. Reference to the Crop Tolerance Table in the National Agronomy Manual was added.

Waste Treatment (Code 629): Purpose revised to improve water quality, improve air quality resource concerns, and facilitate waste handling and storage. Conditions where this practice applies is on all land uses where manure and/or agricultural waste is being generated and where soils, geology, and topography are suitable for construction of the waste treatment system. Criteria sections added to address system designs outside the scope of current accepted NRCS conservation practice standards, waste stream pretreatment requirements, byproducts handling and storage, and required technical review of treatment performance.

Waterspreading (Code 640): Purpose statements were also reworded to more directly relate to the stated resource concern. In "Conditions where Practice Applies" the language was simplified and more clearly explains where practice may be used. References were added.

Kevin Norton,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 2019-23111 Filed 10-22-19; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Cardinal-Hickory Creek 345-kv Transmission Line Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has prepared a Final Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA) and the Code of Federal Regulations related to providing financial assistance to Dairyland Power Cooperative (DPC) for its share in the construction of a proposed 345-kilovolt (kV) transmission line and associated infrastructure connecting the Hickory Creek Substation in Dubuque County, Iowa, with the Cardinal Substation in the Town of Middle, Wisconsin (near Madison, Wisconsin). The Project also includes a new intermediate 345/138-kV substation near the Village of Montfort in either Grant County or Iowa County, Wisconsin. The total length of the 345-kV transmission lines associated with the proposed project will be approximately 100 to 125 miles, depending on the final route. DPC, along with the two other project participant utilities, American Transmission Company LLC, and ITC Midwest LLC (together the Utilities) have identified proposed and alternate segments and locations for transmission lines and associated facilities and for the intermediate substation. DPC is requesting RUS to provide financing for its portion of the proposed project.

DATES: Written comments on this Final EIS will be accepted no later than 30 days following the publication of the U.S. Environmental Protection Agency's notice of receipt of the Final EIS in the **Federal Register**.

ADDRESSES: A copy of the Final EIS may be viewed online at the following website: <https://www.rd.usda.gov/publications/environmental-studies/impact-statements/cardinal-%E2%80%93-hickory-creek-transmission-line>.

A hard copy of the Final EIS is available for review at Dairyland Power Cooperative, 3521 East Avenue, South, La Crosse, WI 54602 and at 13 local libraries in the project area and the USFWS McGregor District Office in Prairie du Chien, WI which are listed below.

Library	Address
Allen-Dietzman Public Library	220 W Barber Avenue, Livingston, WI 53554.
Barneveld Public Library	107 W Orbison Street, Barneveld, WI 53507.
Dodgeville Public Library	139 S Iowa Street, Dodgeville, WI 53533.
Dubuque County Library, Asbury Branch	5290 Grand Meadow Drive, Asbury, IA 52002.
Eckstein Memorial Library	1034 E Dewey Street, Cassville, WI 53806.
Guttenberg Public Library	603 S 2nd Street, Guttenberg, IA 52052.
Middleton Public Library	7425 Hubbard Avenue, Middleton, WI 53562.

Library	Address
Montfort Public Library	102 E Park Street, Montfort, WI 53569.
Mount Horeb Public Library	105 Perimeter Road, Mount Horeb, WI 53572.
Platteville Public Library	65 S Elm Street, Platteville, WI 53818.
Potosi Branch Library	103 N Main Street, Potosi, WI 53820.
Rosemary Garfoot Public Library	2107 Julius Street, Cross Plains, WI 53528.
Schreiner Memorial Library	113 W Elm Street, Lancaster, WI 53813.
USFWS McGregor District Office	470 Cliff Haven Road, Prairie du Chien, WI 53821.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the Final EIS or for further information, contact: Dennis Rankin, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue SW, Room 2244, Stop 1571, Washington, DC 20250–1571, by phone at (202) 720–1953 or email Dennis.Rankin@usda.gov.

SUPPLEMENTARY INFORMATION: RUS is the lead agency for the federal environmental review with U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (USEPA) serving as cooperating agencies, and the National Park Service (NPS) as a participating agency.

The purpose of the proposed project is to: (1) Address reliability issues on the regional bulk transmission system, (2) alleviate congestion that occurs in certain parts of the transmission system and remove constraints that limit the delivery of power, (3) expand the access of the transmission system to additional resources, (4) increase the transfer capability of the electrical system between Iowa and Wisconsin, (5) reduce the losses in transferring power and increase the efficiency of the transmission system, and (6) respond to public policy objectives aimed at enhancing the nation's transmission system and to support the changing generation mix.

The Final EIS addresses the construction and operation of the proposed project, which, in addition to the 345-kV transmission line and associated infrastructure, includes the following facilities:

- At the existing Cardinal Substation in Dane County, Wisconsin: A new 345-kV terminal within the substation;
- At the proposed Hill Valley Substation near the Village of Montfort, Wisconsin: An approximately 22-acre facility with five 345-kV circuit breakers, one 345-kV shunt reactor, one 345-/138-kV autotransformer, three 138-kV circuit breakers, and a 345-kV and 138-kV terminals;
- At the existing Eden Substation near the village of Montfort, Wisconsin:

Transmission line protective relaying upgrades to be compatible with new productive relays installed at the new Hill Valley Substation and replacement of conductors and switches to meet the Utilities' operating limits;

- Between the existing Eden Substation and the proposed Hill Valley Substation near the village of Montfort, Wisconsin: A rebuild of the approximately 1 mile Hill Valley to Eden 138-kV transmission line;
- At the existing Wyoming Valley Substation near Wyoming, Wisconsin: Installation of nine 16-foot ground rods to mitigate fault current contributions from the proposed project;
- At either the Lancaster or Hillman substation, depending on the final route, equipment installation to use the optical ground wire that would be part of the C–HC Project;
- Between the existing Cardinal Substation and the proposed Hill Valley Substation: A new 50- to 53-mile (depending on the final route) 345-kV transmission line;
- Between the proposed Hill Valley Substation and existing Hickory Creek Substation: A new 50- to 70-mile (depending on the final route) 345-kV transmission line;
- At the Mississippi River in Cassville, Wisconsin: A rebuild and possible relocation of the existing Mississippi River transmission line crossing to accommodate the new 345-kV transmission line and Dairyland's 161-kV transmission line, which would be capable of operating at 345-/345-kV but will initially be operated at 345-/161-kV;
 - depending on the final route and the Mississippi River crossing location:
 - A new 161-kV terminal and transmission line protective relaying upgrades within the existing Nelson Dewey Substation in Cassville, Wisconsin;
 - a replaced or reinforced structure within the Stoneman Substation in Cassville, Wisconsin;
 - Multiple, partial, or complete rebuilds of existing 69-kV, 138-kV, and 161-kV transmission lines in Wisconsin that would be collocated with the new 345-kV line;

- At the existing Turkey River Substation in Clayton County, Iowa: One new 161-/69-kV transformer, three new 161-kV circuit breakers, and four new 69-kV circuit breakers;

- At the completion of the C–HC Project construction and energization at the Turkey River Substation, Dairyland would retire and decommission approximately 2.8 miles of the existing N–9 transmission line (69-kV); and
- At the existing Hickory Creek Substation in Dubuque County, Iowa: A new 345-kV terminal within the existing Hickory Creek Substation.

Among the alternatives addressed in the Final EIS is the No Action alternative, under which the proposed project would not be undertaken. Additional alternatives addressed in the Final EIS include six action alternatives connecting the Cardinal Substation in Wisconsin with the Hickory Creek Substation in Iowa. RUS has carefully studied public health and safety, environmental impacts, and engineering aspects of the proposed project.

RUS used input provided by government agencies, private organizations, and the public in the preparation of the Final EIS. RUS has considered all comments received on the Draft EIS and revised the EIS accordingly. Following the 30-day comment period for the Final EIS, RUS will prepare a Record of Decision (ROD). A Notice announcing the availability of the ROD will be published in the **Federal Register** and in local newspapers. Additionally, letters and emails will be sent to stakeholders.

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulation, "Protection of Historic Properties" (36 CFR 800) and as part of its broad environmental review process, RUS must take into account the effect of the proposed project on historic properties. Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Any party wishing to participate more directly with RUS as a "consulting

party” in Section 106 review may submit a written request to the RUS contact provided in this notice.

The proposed project involves unavoidable impacts to wetlands and floodplains; this Notice of Availability also serves as a statement of no practicable alternatives to impacts on wetlands and floodplains, in accordance with Executive Orders 11990 and 11988, respectively (see Final EIS Sections 3.3 and 3.5).

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR 1970).

Christopher A. Mclean,

*Assistant Administrator, Electric Programs,
Rural Utilities Service.*

[FR Doc. 2019-23049 Filed 10-22-19; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Central Electric Power Cooperative, Inc.: Extension of Comment Period for an Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice: Extension of Comment Period for an Environmental Impact Statement.

SUMMARY: The Rural Utilities Service (RUS), a Rural Development agency of the U.S. Department of Agriculture (USDA), has issued a Supplemental Draft Environmental Impact Statement (Supplemental Draft EIS) for Central Electric Power Cooperative's (Central Electric) proposed McClellanville Area 115-kV Transmission Project (Project) in South Carolina. In this document, RUS analyzes the environmental impacts associated with an anticipated decision request to approve or deny funding for Central Electric's proposed Project. The Supplement Draft EIS was prepared to address substantial changes to the proposed action and assesses new circumstances and information relevant to potential environmental impacts originally evaluated in the Draft Environmental Impact Statement (Draft EIS). RUS published a Notice of Intent and Availability on August 30, 2019, that provided a 60-day comment period, ending on the date announced in the U.S. Environmental Protection Agency's (USEPA) EIS receipt notice on October 22, 2019. RUS is extending the public

comment period for the Draft EIS by an additional 30 days to November 21, 2019.

DATES: With this notice, RUS extends the public comment period to November 21, 2019. Comments submitted to RUS regarding the Supplemental Draft EIS prior to this announcement do not need to be resubmitted as a result of this extension to the comment period. The date(s) and time for a public meeting will be announced in local newspapers and published on the agency's website at: <https://www.rd.usda.gov/publications/environmental-studies/impact-statements/mcclellanville-115kv-transmission-line>.

ADDRESSES: The Supplemental Draft EIS and associated documents are available at the weblink provided in this Notice (<https://www.rd.usda.gov/publications/environmental-studies/impact-statements/mcclellanville-115kv-transmission-line>). RUS will consider all substantive written comments on the Supplemental Draft EIS received or postmarked within the 90-day timeframe or until November 21, 2019. Agencies, interested parties, and the public are invited to submit comments on the Supplemental Draft EIS at any time during the public comment period by either of the following methods:

- **Email:** Please send your comments to Comments-mcclellanville@louisberger.com.
- **Postal Mail/Commercial Delivery:** Please send your comment addressed to Ms. Lauren Rayburn, Environmental Scientist, Rural Utilities Service, 160 Zillicoa Street, Suite 2, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: For information on the proposed Project and the EIS process, please contact Ms. Lauren Rayburn, Environmental Scientist, Rural Utilities Service, 160 Zillicoa Street, Suite 2, Asheville, North Carolina 28801 or email to: lauren.rayburn@usda.gov. Parties wishing to be placed on the Project mailing list for future information and to receive copies of the Supplemental Draft EIS and the Final EIS when available should also contact Ms. Rayburn.

SUPPLEMENTARY INFORMATION: RUS is authorized to make loans and loan guarantees that finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacements required to furnish and improve electric service in rural areas, as well as demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. Central

Electric is an electric transmission cooperative that provides transmission service from the bulk transmission system to South Carolina's 20 retail electric cooperatives. Berkeley Electric, a member distribution electric cooperative of Central Electric, was formed in 1940 to bring electric service to rural areas of coastal South Carolina. Berkeley Electric owns and operates more than 5,000 miles of distribution line serving more than 80,000 accounts in Berkeley, Charleston, and Dorchester counties.

Project Description: Central Electric has identified the need for additional electric transmission capacity in the McClellanville area of coastal South Carolina to meet reliability and energy load requirements of its member owner, Berkeley Electric Cooperative. Investigations and analyses conducted for the overall power delivery systems found that without improvements, the flow of power along existing lines may result in local line overloads and power outages. To resolve these issues, Central Electric is proposing to construct, own and operate a new 115-kV transmission line and associated supporting infrastructure to energize the new McClellanville Substation, located near the McClellanville service area. Berkeley Electric owner-customers that would benefit from the proposed Project include those located in the areas near Rutledge Road, South Santee Road, Wedge Plantation, Germantown, Toby Road, Dupree Road, Lincoln High School, Randall Road, Tibwin Road, St. James-Santee School, Shellmore, Buck Hall, Town of Awendaw, Doar Road, and areas adjacent to U.S. Highway 17 in northern Charleston County.

The Supplemental Draft EIS considers three alternatives, encompassing three potential corridor locations with one corridor including two different alignments. The corridors range in length from 16 to 31 miles and encompasses parts of Berkeley, Georgetown and Charleston counties in South Carolina. The corridor locations propose to cross both public and private lands, including the Francis Marion National Forest, Santee Coastal Reserve, and other private and public lands used for conservation management purposes; all corridors are located entirely within the Gullah Geechee Cultural Heritage Corridor. The Supplemental Draft EIS analyzes the extent of Central's Electric's proposal with regard to the following: Water resources, biological resources, soils and geology, air quality and greenhouse gas emissions, cultural resources, recreation and land use, visual resources, socioeconomics,

environmental justice, transportation, health and safety, and noise.

Central Electric plans to request financial assistance for the proposed Project from RUS. Completing the EIS is one of RUS's requirements in processing a future application from Central Electric, along with other technical and financial considerations. In accordance with 40 CFR 1501.5(b) of the Council on Environmental Quality's (CEQ) Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ Regulations), RUS will serve as the lead agency in the preparation of the EIS. The U.S. Army Corps of Engineers and the U.S. Forest Service are participating as cooperating agencies. RUS has prepared a Supplemental Draft EIS to analyze the impacts of the respective federal actions and the proposed Project in accordance with the National Environmental Policy Act (NEPA), as amended, CEQ Regulations, RUS Environmental Policies and Procedures, and the U.S. Forest Service's National Environmental Policy Act procedures.

Because the proposed Project may involve action in floodplains or wetlands, this Notice also serves as a notice of proposed floodplain or wetland action. The Supplemental Draft EIS will include an assessment of effects to floodplains/wetlands and, if required, a statement of findings will be issued with the Final EIS.

RUS has determined that its action regarding the proposed Project would be an undertaking subject to review under Section 106 of the National Historic Preservation Act (Section 106), and its implementing regulations, "Protection of Historic Properties." As part of its broad environmental review process, RUS must consider the effect of the proposed Project on historic properties in accordance with Section 106. Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to this Notice will inform RUS decision-making in its Section 106 review process. Any party wishing to participate more directly with RUS as a "consulting party" in Section 106 review may submit a written request to the RUS contact provided in this Notice.

Agency Responsibilities: RUS is serving as the lead agency, as defined at 40 CFR 1501.5, for preparation of the Supplemental Draft EIS. The U.S. Army Corps of Engineers and the U.S. Forest Service are participating as cooperating agencies and may issue separate

Records of Decision relevant to the Project under separate authorities. For the U.S. Forest Service, a draft Record of Decision would be subject to the Agency's administrative review process at 36 CFR part 218, subparts A and B. The U.S. Forest Service may need to issue a special use permit to authorize occupancy of National Forest System lands for this proposal. Per 40 CFR 1506.3, the U.S. Forest Service intends to review and adopt the Final EIS, if found sufficient, in support of issuance of a special use permit.

Public Participation: The EIS process has included past scoping meetings and comment periods; consultation and involvement with appropriate Federal, State, local, and tribal governments; and a public meeting and comment period on the Draft EIS issued in 2014. Comments may be submitted as provided in the **ADDRESSES** section of this notice. The process will be followed by the publication of a Final EIS as well as publication of a Record of Decision in the **Federal Register**.

Christopher A. Mclean,

*Assistant Administrator—Electric Program,
Rural Utilities Service.*

[FR Doc. 2019-23065 Filed 10-22-19; 8:45 am]

BILLING CODE 3410-15-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the New York Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on: Friday, November 8, 2019; and at 12:00 p.m. (EST) on Friday November 22, 2019. The purpose of the meetings is to discuss progress on the report regarding Education Funding in New York, make edits, and approve the final report.

DATES: Friday, November 8, 2019 at 12:00 p.m. EST and Friday November 22, 2019 at 12:00 p.m. EST.

Public Call-In Information:

Conference call-in number: 1-206-800-4892 and conference ID# 791290248.

FOR FURTHER INFORMATION CONTACT:

David Barreras, at dbarreras@usccr.gov or by phone at 312-353-8311.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the

discussion by calling the following toll-free conference call-in number: 1-206-800-4892 and conference ID# 791290248. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-800-977-8339 and providing the operator with the conference call-in number: 1-206-800-4892 and conference ID# 791290248.

Members of the public are invited to make statements during the open comment period of the meetings or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Midwest Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353-8324, or emailed to David Barreras at dbarreras@usccr.gov. Persons who desire additional information may contact the Midwest Regional Office at (312) 353-8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at <https://database.faca.gov/committee/meetings.aspx?cid=265>; click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, www.usccr.gov, or to contact the Midwest Regional Office at the above phone numbers, email or street address.

Agenda: Friday, November 8 and 22, 2019

- Open—Roll Call
- Discussion on the draft of the Education Funding report
- Open Comment
- Next Steps (Nov. 22 will be a vote on the final draft)
- Adjourn

Dated: October 17, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019-23038 Filed 10-22-19; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received

petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below.

Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[10/9/2019 through 10/16/2019]

Firm name	Firm address	Date accepted for investigation	Product(s)
Wyoming Authentic Products, LLC	2517 Lt. Childers Street, Cody, WY 82414.	10/11/2019	The firm produces processed beef products.
Convectronics, Inc	111 Neck Road, Haverhill, MA 01835	10/15/2019	The firm manufactures electric heaters.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2019-23025 Filed 10-22-19; 8:45 am]

BILLING CODE 3510-WH-P

SUMMARY: The Department of Commerce (Commerce) determines that certain uncoated paper (uncoated paper) from Brazil is being sold at less than normal value during the period of review (POR), March 1, 2017 through February 28, 2018.

DATES: Applicable October 23, 2019.

FOR FURTHER INFORMATION CONTACT: Christian Llinas, 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) 482-4877.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2019, Commerce published the preliminary results of the administrative review of the antidumping duty order on uncoated paper from Brazil.¹ The review covers one producer/exporter of the subject merchandise, Suzano Papel e Celulose S.A. (Suzano). For a discussion of events since the *Preliminary Results* were published, see the accompanying Issues and Decision Memorandum.²

¹ See *Certain Uncoated Paper from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 22440 (May 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Certain Uncoated Paper from Brazil: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2017-2018," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Order

The product covered by this order is uncoated paper from Brazil. For a full description of the scope, see the Issues and Decision Memorandum dated concurrently with and hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.³ A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and in the Central Records Unit (CRU), Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

³ *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-842]

Certain Uncoated Paper From Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018

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

Changes Since the Preliminary Results

Based on a review of the record and of the comments received from interested parties, we have made certain changes to Suzano's margin calculation and recalculated Suzano's weighted-average dumping margin. For further discussion, see the Issues and Decision Memorandum.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margin exists for the period March 1, 2017 through February 28, 2018.

Exporter/producer	Weighted-average margin (percent)
Suzano Papel e Celulose S.A.	36.54

Assessment Rate

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.⁴

For entries of subject merchandise during the POR produced by Suzano for which they did not know their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this review for all shipments of uncoated paper from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation but the producer

is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 27.11 percent, the all-others rate established in the less-than-fair-value investigation.⁵ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order

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

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

Dated: October 16, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. List of Comments
- V. Discussion of Comments

⁵ See *Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders*, 81 FR 11174 (March 3, 2016).

VI. Recommendation

[FR Doc. 2019-23064 Filed 10-22-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-092]

Mattresses From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part

SUMMARY: The Department of Commerce (Commerce) determines that imports of mattresses from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable October 23, 2019.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0193 or (202) 482-3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are Corsicana Mattress Company, Elite Comfort Solutions, Future Foam Inc., FXI, Inc., Innocor, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated, Serta Simmons Bedding, LLC, and Tempur Sealy International, Inc. (the petitioners). The mandatory respondents in this investigation are Healthcare Co., Ltd. (Healthcare), and Zinus Xiamen Inc.¹ On June 4, 2019, Commerce published its *Preliminary Determination* for this investigation and invited interested parties to comment.² On July 10, 2019, Commerce published its *Amended Preliminary Determination* for this investigation and invited

¹ For this final determination, Commerce has collapsed Zinus Xiamen Inc. with Zinus Inc. and Zinus Zhangzhou Inc. (collectively, Zinus). See Memorandum, "Antidumping Duty Investigation of Mattresses from the People's Republic of China: Final Determination of Affiliation/Single Entity Treatment of Zinus Xiamen Inc., Zinus Zhangzhou Inc., and Zinus Inc., dated concurrently with this notice (Single Entity Memorandum).

² See *Mattresses from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 84 FR 25732 (June 4, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

⁴ See section 751(a)(2)(C) of the Act; 19 CFR 351.212(b).

interested parties to comment.³ A summary of the events that occurred since Commerce published the *Preliminary Determination* and *Amended Preliminary Determination* may be found in the Issues and Decision Memorandum.⁴ The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and it is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation (POI) is January 1, 2018 through June 30, 2018.

Scope of the Investigation

The products covered by this investigation are mattresses from China. For a full description of the scope of this investigation, see the "Scope of the Investigation," at Appendix I.

Scope Comments

During the course of this investigation Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.⁵ We received scope comments from Innovation Living, Inc. regarding convertible furniture products also referred to as "convertible sofas" or "sofa beds."⁶

³ See *Mattresses from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 84 FR 32867 (July 10, 2019) (*Amended Preliminary Determination*).

⁴ See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See Memorandum, "Mattresses from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated May 28, 2019 (Preliminary Scope Memorandum); and *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 5–6.

⁶ See Letter from Innovation Living, Inc., "Mattresses from the People's Republic of China: Scope Brief Addressing Preliminary Scope Determination," dated July 5, 2019; and "Mattresses from the People's Republic of China: Redacted Scope Brief Addressing Preliminary Scope Determination," dated July 31, 2019.

Further, we received a scope exclusion request from interested parties proposing to exclude convertible furniture products.⁷ We also received a letter from the petitioners agreeing to the proposed scope exclusion regarding convertible furniture products.⁸ We have addressed all scope comments received in the Issues and Decision Memorandum. As a result, we have made certain changes to the scope of this investigation. Specifically, we have excluded convertible furniture products, also referred to as "convertible sofas" or "sofa beds," from the scope published in the *Amended Preliminary Determination*.⁹

Final Affirmative Determination of Critical Circumstances

In accordance with 735(a)(3) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.206, Commerce determines that critical circumstances exist with respect to imports of mattresses from all non-individually examined companies receiving a separate rate and the China-wide entity. For a full description of the methodology and results of Commerce's final affirmative critical circumstances analysis, see the Issues and Decision Memorandum at Comment 1, "Whether Commerce Should Adjust the Critical Circumstances Analysis."

Verification

As provided in section 782(i) of the Act, Commerce verified the sales and factors of production data reported by Healthcare and Zinus, for use in our final determination.¹⁰ We used standard verification procedures, including an examination of relevant accounting and production records, and original source

⁷ See Letter from Target General Merchandise Inc. and Ashley Furniture Industries, Inc., "Mattresses from the People's Republic of China: Scope Exclusion Proposal," dated August 19, 2019.

⁸ See Letter from the petitioners, "Mattresses from the People's Republic of China: Petitioners' Response to Scope Exclusion Request of Target General Merchandise and Ashley Furniture," dated August 21, 2019.

⁹ See the Issues and Decision Memorandum.

¹⁰ See Memorandum, "Verification of Factors of Production and Sales Response of Healthcare Co., Ltd. in the Antidumping Investigation of Mattresses from the People's Republic of China," dated July 17, 2019; Memorandum, "Verification of Sales Response of Healthcare Co., Ltd. in the Antidumping Investigation of Mattresses from the People's Republic of China," dated July 29, 2019; Memorandum, "Verification of the Questionnaire Responses of Zinus (Xiamen) Inc. and Zinus Inc. (Korea) in the Antidumping Investigation of Mattresses from the People's Republic of China," dated August 5, 2019; and Memorandum, "Constructed Export Price Verification of the Questionnaire Responses of Zinus (Xiamen) Inc. in the Antidumping Investigation of Mattresses from the People's Republic of China," dated August 8, 2019.

documents provided by Healthcare and Zinus.

Analysis of Comments Received

In response to our invitation to comment on the *Preliminary Determination* and *Amended Preliminary Determination*, interested parties submitted case and rebuttal briefs to Commerce, as well as scope case and rebuttal briefs. All issues timely raised in the case and rebuttal briefs and the scope case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 731 of the Act. Export price was calculated in accordance with section 772(a) of the Act. Constructed export price was calculated in accordance with section 772(b) of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value (NV) was calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying Commerce's determination, see the Preliminary Decision Memorandum; see also the Issues and Decision Memorandum.

Changes Since the Preliminary Determination and Amended Preliminary Determination

Based on our analysis of the comments received and verification, we made certain changes to the *Preliminary Determination* and *Amended Preliminary Determination*. For a discussion of these changes, see the Issues and Decision Memorandum.

China-Wide Entity and Use of Adverse Facts Available

For the reasons explained in the *Preliminary Determination*, we continue to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity. In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹¹ Specifically, it is

¹¹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland*, 69 FR 77216

Commerce's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.¹² For the final determination, we are assigning the China-wide entity, as AFA, the highest petition margin of 1,731.75 percent. In order to corroborate the highest dumping margin alleged in the Petition,¹³ 1,731.75 percent, and to determine its probative value, the Department of Commerce (Commerce) examined (A) the range of individual dumping margins calculated using average-to-transaction (A-to-T) comparisons calculated for Healthcare and Zinus in the final determination of this investigation, (B) the range of individual dumping margins calculated using average-to-average (A-to-A) comparisons calculated for Healthcare and Zinus in this final determination, and (C) the U.S. price and normal value that are the basis of the highest dumping margin alleged in the Petition compared to the U.S. prices reported by Healthcare

and Zinus and the normal values calculated for Healthcare and Zinus in this investigation. We are able to corroborate the highest petition dumping margin, to the extent practicable within the meaning of section 776(c) of the Act, using transaction-specific dumping margins, weighted-average dumping margins calculated for Healthcare and Zinus, and Healthcare and Zinus normal values and U.S. prices. Thus, we assigned this dumping margin to the China-wide entity as AFA. For further discussion, see the proprietary version of the Issues and Decision Memorandum at Comment 4 "Whether the China-wide Entity Rate is Corroborated and Reasonable."

Separate Rates

No parties commented on our decision in the *Amended Preliminary Determination* to grant separate rate status to 38 companies, including Healthcare and Zinus. The exporters granted separate rate status in this final determination are listed in the table in the "Final Determination" section of

this notice. We continue to assign the estimated weighted-average dumping margin calculated for Healthcare and Zinus to the exporters not individually examined that are entitled to a separate rate. The companies denied a separate rate will be treated as part of the China-wide entity whose estimated weighted-average dumping margin, for the reasons explained, and as corroborated, in the *Preliminary Determination* and this final determination, is based on total adverse facts available pursuant to sections 776(a) and (b) of the Act.

Combination Rates

As explained in the *Initiation Notice* and implemented in the *Preliminary Determination*, we have continued to calculate producer/exporter combination rates for the respondents that are eligible for a separate rate.¹⁴ Policy Bulletin 05.1 also describes this practice.¹⁵

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Healthcare Co., Ltd	Healthcare Co., Ltd	57.03
Zinus Inc./Zinus Xiamen Inc./Zinus Zhangzhou Inc. ¹⁶	Zinus Inc./Zinus Xiamen Inc./Zinus Zhangzhou Inc	192.04
Dockter China Limited	Dongguan Beijianing Household Products Co., Ltd. (a.k.a. Better Zs, Ltd.)	162.76
Dockter China Limited	Healthcare Co., Ltd	162.76
Dockter China Limited	Huizhou Lemeijia Household Products Co., Ltd. (a.k.a. Better Zs, Ltd.)	162.76
Foshan Chiland Furniture Co., Ltd	Foshan Chiland Furniture Co., Ltd	162.76
Foshan City Jinxingma Furniture Manufacture Co., Ltd	Foshan City Jinxingma Furniture Manufacture Co., Ltd	162.76
Foshan City Kewei Furniture Co., Ltd	Foshan City Kewei Furniture Co., Ltd	162.76
Foshan City Shunde Haozuan Furniture Co., Ltd	Foshan City Shunde Haozuan Furniture Co., Ltd	162.76
Foshan EON Technology Industry Co., Ltd	Foshan EON Technology Industry Co., Ltd	162.76
Foshan Mengruo Household Furniture Co., Ltd	Foshan Mengruo Household Furniture Co., Ltd	162.76
Foshan Qisheng Sponge Co., Ltd	Foshan Qisheng Sponge Co., Ltd	162.76
Foshan Ruixin Non Woven Co., Ltd	Foshan Ruixin Non Woven Co., Ltd	162.76
Foshan Suilong Furniture Co. Ltd	Foshan Suilong Furniture Co. Ltd	162.76
Foshan Ziranbao Furniture Co., Ltd	Foshan Ziranbao Furniture Co., Ltd	162.76
Guangdong Diglant Furniture Industrial Co., Ltd	Guangdong Diglant Furniture Industrial Co., Ltd	162.76
Healthcare Sleep Products Limited	Healthcare Co., Ltd	162.76
Hong Kong Gesin Technology Limited	Inno Sports Co., Ltd	162.76
Inno Sports Co., Ltd	Inno Sports Co., Ltd	162.76
Jiangsu Wellcare Household Articles Co., Ltd	Jiangsu Wellcare Household Articles Co., Ltd	162.76
Jiashan Nova Co., Ltd	Jiashan Nova Co., Ltd	162.76
Jiaxing Taien Springs Co., Ltd	Jiaxing Taien Springs Co., Ltd	162.76

(December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland*, 70 FR 28279 (May 17, 2005)).

¹² See, e.g., *Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

¹³ See Letter from the petitioners, "Mattresses from the People's Republic of China: Antidumping Duty Petition," September 18, 2018 (Petition) at 38; Letter from the petitioners, "Mattresses from the People's Republic of China: Request for Revised Normal Value and Dumping Margin Calculations," October 2, 2019, at Exhibit 2, Memorandum, "Antidumping Duty Investigation Initiation Checklist," October 9, 2018 (Initiation Checklist) at 10.

¹⁴ See *Mattresses from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 83 FR 52386 (October 17, 2018)

(*Initiation Notice*); see also *Preliminary Determination*, 84 FR at 25733; and *Amended Preliminary Determination*, 84 FR at 32868.

¹⁵ See Policy Bulletin No. 05.1, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

¹⁶ See Single Entity Memorandum.

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Jiaxing Visco Foam Co., Ltd	Jiaxing Visco Foam Co., Ltd	162.76
Jinlongheng Furniture Co., Ltd	Jinlongheng Furniture Co., Ltd	162.76
Luen Tai Group (China) Limited	Shenzhen L&T Industrial Co., Ltd	162.76
Luen Tai Global Limited	Shenzhen L&T Industrial Co., Ltd	162.76
Man Wah Furniture Manufacturing (Hui Zhou) Co., Ltd., Man Wah (MACAO Commercial Offshore), Ltd. and Man Wah (USA), Inc.	Man Wah Household Industry (Huizhou) Co., Ltd	162.76
Ningbo Megafeat Bedding Co., Ltd	Ningbo Megafeat Bedding Co., Ltd	162.76
Ningbo Shuibishen Home Textile Technology Co., Ltd	Ningbo Shuibishen Home Textile Technology Co., Ltd	162.76
Nisco Co., Ltd	Healthcare Co., Ltd	162.76
Quanzhou Hengang Imp. & Exp. Co., Ltd	Quanzhou Hengang Industries Co., Ltd	162.76
Shanghai Glory Home Furnishings Co., Ltd	Shanghai Glory Home Furnishings Co., Ltd	162.76
Sinomax Macao Commercial Offshore Limited	Dongguan Sinohome Limited	162.76
Sinomax Macao Commercial Offshore Limited	Sinomax (Zhejiang) Polyurethane Technology Ltd	162.76
Wings Developing Co., Limited	Quanzhou Hengang Industries Co., Ltd	162.76
Xianghe Kaneman Furniture Co., Ltd	Xianghe Kaneman Furniture Co., Ltd	162.76
Xilinmen Furniture Co., Ltd	Xilinmen Furniture Co., Ltd	162.76
Zhejiang Glory Home Furnishings Co., Ltd	Zhejiang Glory Home Furnishings Co., Ltd	162.76
China-wide entity .....	.....	1,731.75

Disclosure

We intend to disclose, to interested parties under Administrative Protective Order (APO), the calculations performed in connection with 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 the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As noted above, Commerce continues to find that critical circumstances exist with respect to imports of subject merchandise from the separate rate companies and the China-wide entity, but do not exist for Healthcare and Zinus. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of mattresses from China as described in Appendix I of this notice, from the separate rate companies and the China-wide entity that were entered, or withdrawn from warehouse, for consumption on or after March 6, 2019, which is 90 days before the publication of the *Preliminary Determination*. Because we continue to find that critical circumstances do not exist with regard to Healthcare and Zinus, in accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all Healthcare and Zinus entries of mattresses from China as described in Appendix I of this notice, which were entered, or

withdrawn from warehouse, for consumption on or after June 4, 2019, the date of publication of the *Preliminary Determination*.

Further, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of exporters/producers of subject merchandise not listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed in the table for the China-wide entity; and (3) for all non-Chinese exporters of subject merchandise not listed in the table above, the cash deposit rate is equal to the cash deposit rate applicable to the exporter/producer of subject merchandise combination (or the China-wide entity) that supplied that non-Chinese exporter.

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, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination 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, by reason of imports or sales (or the likelihood of sales) for importation of subject mattresses, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposited for antidumping duties will be refunded. If the ITC determines that such 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, as discussed above in the "Continuation of Suspension of Liquidation" section.

Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to the parties subject to Administrative Protective Order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or, alternatively, conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: October 17, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term “mattress” denotes an assembly of materials that at a minimum includes a “core,” which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain (1) “upholstery,” the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) “ticking,” the outermost layer of fabric or other material (e.g., vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only “adult mattresses” and “youth mattresses.” “Adult mattresses” have a width exceeding 35 inches, a length exceeding 72 inches, and a depth exceeding 3 inches on a nominal basis. Such mattresses are frequently described as “twin,” “extra-long twin,” “full,” “queen,” “king,” or “California king” mattresses. “Youth mattresses” have a width exceeding 27 inches, a length exceeding 51 inches, and a depth exceeding 1 inch (crib mattresses have a depth of 6 inches or less from edge to edge) on a nominal basis. Such mattresses are typically described as “crib,” “toddler,” or “youth” mattresses. All adult and youth mattresses are included regardless of actual size description.

The scope encompasses all types of “innerspring mattresses,” “non-innerspring mattresses,” and “hybrid mattresses.” “Innerspring mattresses” contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as “innerspring mattresses” or “hybrid mattresses.” “Hybrid mattresses” contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

“Non-innerspring mattresses” are those that do not contain any innerspring units. They are generally produced from foams (e.g., polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (e.g., convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed

mattresses, crib mattresses), or as part of a set in combination with a “mattress foundation.” “Mattress foundations” are any base or support for a mattress. Mattress foundations are commonly referred to as “foundations,” “boxsprings,” “platforms,” and/or “bases.” Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are “futon” mattresses. A “futon” is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A “futon mattress” is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are integrated into the design and construction of, and inseparable from, the furniture framing. Such furniture may, and without limitation, be commonly referred to as “convertible sofas,” “sofa beds,” “sofa chaise sleepers,” “futons,” “ottoman sleepers” or a like description.

Further, also excluded from the scope of this investigation are any products covered by the existing antidumping duty order on uncovered innerspring units. *See Uncovered Innerspring Units from the People’s Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009).

Additionally, also excluded from the scope of this investigation are “mattress toppers.” A “mattress topper” is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under Harmonized Tariff Schedule for the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments

- IV. Scope of the Investigation
- V. Changes From the Preliminary Determination

VI. Analysis of Comments

Comment 1: Whether Commerce Should Adjust the Critical Circumstances Analysis

Comment 2: Whether to Allow the Inclusion of Cash Deposits for the 90-Day Retroactive Period

Comment 3: Whether Commerce Should Take into Consideration the Claimed Impact of Section 301 Tariffs on the Critical Circumstances Surge Analysis

Comment 4: Whether the China-wide Entity Rate is Corroborated and Reasonable

Comment 5: Whether Commerce Should Rely on Malaysia or Mexico as the Surrogate Country

Comment 6: Whether Commerce Should Remove Luxury Sleep’s Distribution Costs from the Financial Ratio Calculation

Comment 7: Whether Commerce Should Average the Luxury Sleep and Aerofoam Financial Statements

Comment 8: Whether Commerce Should Apply AFA to Healthcare

Comment 9: Whether Commerce Should Allow an Adjustment for Healthcare’s Freight Revenue

Comment 10: Whether Commerce Should Recalculate Healthcare’s Indirect Selling Expense Ratio

Comment 11: Surrogate Values for Certain Zinus Inputs

Comment 12: Zinus’ Per-Unit Calculation of Water

Comment 13: Zinus’ Direct Expenses Calculation

Comment 14: Zinus’ Cash Deposit Instructions

VII. Recommendation

[FR Doc. 2019–23107 Filed 10–22–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2017

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

SUMMARY: The Department of Commerce (Commerce) determines that exporters and/or producers subject to the administrative review of certain crystalline silicon photovoltaic products (solar products) from the People’s Republic of China (China) received countervailable subsidies during the January 1, 2017 through December 31, 2017 period of review.

DATES: Applicable October 23, 2019.

FOR FURTHER INFORMATION CONTACT:

Gene H. Calvert, 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) 482-3586.

SUPPLEMENTARY INFORMATION:**Background**

On April 16, 2019, Commerce published the *Preliminary Results* of this administrative review, and invited interested parties to comment on the *Preliminary Results*.¹ On May 16, 2019, Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science and Technology Co., Ltd. (collectively, Trina Solar), a company subject to this administrative review but not selected for individual examination, timely submitted comments on the *Preliminary Results* and requested a hearing.² On May 21, 2019, SolarWorld Americas, Inc. (the petitioner in the underlying countervailing duty investigation), filed timely rebuttal comments.³ On July 31, 2019, Commerce extended the deadline for these final results until October 10, 2019.⁴ On August 28, 2019, Commerce permitted interested parties to supplement their case and rebuttal briefs to address a claim of no shipments submitted by Trina Solar,⁵ for which Commerce received comments from Trina Solar on September 9, 2019.⁶ On September 16, 2019, Commerce received rebuttal comments on this issue from domestic interested party SunPower Manufacturing Oregon LLC.⁷ On

September 19, 2019, Trina Solar withdrew its request for a hearing.⁸ For a detailed history of the events that occurred since the publication of the *Preliminary Results*, see the Issues and Decision Memorandum.⁹

Scope of the Order

The merchandise covered by this order are modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this order, subject merchandise includes modules, laminates and/or panels assembled in China consisting of crystalline silicon photovoltaic cells produced in a customs territory other than China. For a complete description of the scope of this administrative review, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in their case and rebuttal briefs, and Commerce's analysis thereof, are addressed in the Issues and Decision Memorandum. These issues are identified 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 System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Commerce Building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and its electronic version are identical in content.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce finds that there is a subsidy (*i.e.*, a financial

contribution from an authority that gives rise to a benefit to the recipient), and that the subsidy is specific.¹⁰ Commerce notes that in making these findings, it relied on total facts available and, because Commerce finds that the mandatory respondents did not act to the best of their ability to respond to Commerce's request for information, Commerce continues to find all programs in this review countervailable.¹¹

Changes From the Preliminary Results

Based on the comments received from interested parties, Commerce made no changes to the net subsidy rates calculated for the companies subject to this administrative review.

Final Results of Administrative Review

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Commerce normally determines the rates for non-selected companies in administrative reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(ii) of the Act provides that, if the countervailable subsidy rates established for all individually-examined exporters/producers are *de minimis* or based entirely on adverse facts available under section 776 of the Act, Commerce may use any reasonable method to establish a subsidy rate for exporters/producers that were not individually-examined, including averaging the weighted-average countervailable subsidy rates determined for the individually-examined exporters and producers.

In this review, the countervailable subsidy rates calculated for the three mandatory respondents (*i.e.*, Risen Energy Co., Ltd.; Shenzhen Sungold Solar Co., Ltd.; and Sol-Lite Manufacturing Co., Ltd.) are based entirely on facts available pursuant to section 776 of the Act.¹² As a result, Commerce is using "any reasonable method" to establish the subsidy rate for the non-selected companies under review. Commerce finds that it is

¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review in Part*: 2017, 84 FR 15585 (April 16, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

² See Trina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from China: Request for a Hearing and Case Brief," dated May 16, 2019.

³ See Petitioner's Letter, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: SolarWorld America's Rebuttal Brief," dated May 21, 2019.

⁴ See Memorandum, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated July 31, 2019.

⁵ See Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; U.S. Customs and Border Protection Entry Summary Information: Changzhou Trina Solar Energy Co., Ltd.," dated August 28, 2019.

⁶ See Trina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from China: Supplemental Case Brief," dated September 9, 2019.

⁷ See SunPower's Letter, "Crystalline Silicon Photovoltaic Products from the People's Republic of

China: Supplemental Rebuttal Brief," dated September 16, 2019.

⁸ See Trina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from China: Withdrawal of Request for a Hearing," dated September 19, 2019.

⁹ See Memorandum, "Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; 2017," which is dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹⁰ See section 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.

¹¹ See sections 776(a) and (b) of the Act; see also Preliminary Decision Memorandum.

¹² See *Preliminary Results* and accompanying Preliminary Decision Memorandum.

reasonable to rely on the rates established for the three mandatory respondents as the rate for the non-selected companies under review, particularly because there is no other information on the record that can be used to determine the rate for the non-selected companies. This method is consistent with Commerce's past practice.¹³ Commerce finds the countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent <i>ad valorem</i>)
Changzhou Trina Solar Energy Co., Ltd	94.83
Chint Solar (Zhejiang) Co., Ltd	94.83
Hefei JA Solar Technology Co., Ltd	94.83
Risen Energy Co., Ltd	94.83
Ri Shen Products (SZ) Ltd ...	94.83
Shanghai JA Solar Technology Co., Ltd	94.83
Shenzhen Sungold Solar Co., Ltd	94.83
Sunny Apex Development Limited	94.83
Sol-Lite Manufacturing Co., Ltd	94.83
Trina Solar (Changzhou) Science & Technology Co., Ltd	94.83

Disclosure

All calculations in these final results are based on publicly-available information and are described in their entirety in the Preliminary Decision Memorandum.¹⁴ As such, the publication of this notice constitutes disclosure of the calculations performed in connection with these final results to interested parties.¹⁵

¹³ See, e.g., *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 81 FR 20619 (April 8, 2016), unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Countervailing Duty Determination*, 81 FR 75045 (October 28, 2016) (assigning the sole mandatory respondent's rate, which was based on adverse facts available, as the all-others rate), and *Circular Welded Carbon-Quality Steel Pipe from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 77 FR 19192 (March 30, 2012), unchanged in *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (assigning the average of the mandatory respondents' rates, which were based solely on adverse facts available, as the all-others rate).

¹⁴ See Preliminary Determination Memorandum at Appendix I, "AFA Rate Calculation."

¹⁵ In accordance with 19 CFR 351.224(b), Commerce is normally required to disclose

Assessment Rates

Consistent with 19 CFR 351.212(b)(2), Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review, to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered, or withdrawn from warehouse, for consumption on or after January 1, 2017 through December 31, 2017, at the *ad valorem* rates listed above.

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order (APO)

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

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Subsidy Rate for the Non-Selected Companies Under Review
- V. Discussion of the Issue: Whether To Rescind This Review for Trina Solar
- VI. Recommendation

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calculations performed in connection with the final results of a review within five days of its public announcement or, if there is no public announcement of, within five days after the date of publication of the final results of review.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG947

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Auke Bay Ferry Terminal Modifications and Improvements Project in Juneau, Alaska

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

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Alaska Department of Transportation and Public Facilities (ADOT&PF) to incidentally harass, by Level A and Level B harassment, marine mammals during pile driving activities associated with the Auke Bay Ferry Terminal Modifications and Improvements Project in Juneau, Alaska.

DATES: This Authorization is effective from January 1, 2020 through December 31, 2019.

FOR FURTHER INFORMATION CONTACT:

Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

Summary of Request

On January 17, 2019, NMFS received a request from ADOT&PF for an IHA to take marine mammals incidental to pile driving activities at the Auke Bay Ferry Terminal in Juneau, Alaska. The application was deemed adequate and complete on April 1, 2019. ADOT&PF's request was for take of a small number of seven species of marine mammals by Level B harassment and Level A harassment. Neither ADOT&PF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Specified Activity

ADOT&PF is planning to modify and improve the existing dolphin structures at the Auke Bay Ferry Terminal. There are currently three Alaska Marine Highway System ferry berths in Auke

Bay. The planned project will involve the East Stern Berth facility, which was originally constructed in 2003 to accommodate new fast vehicle ferries. The East Stern Berth must be renovated to accommodate two new Alaska-class ferries, which will enter service in spring 2020. Four existing dolphins at the ferry terminal will be removed using a vibratory driver, and three breasting dolphins and two mooring dolphins will be installed using both vibratory and impact hammers. Vibratory pile removal and installation and impact pile installation would introduce underwater sounds at levels that may result in take, by Level A and Level B harassment, of marine mammals in Auke Bay.

During the 30-day public comment period, ADOT&PF notified NMFS that based on experiences docking the *M/V Tazlina* at the Auke Bay Ferry Terminal, ADOT&PF engineers had developed an updated design concept that would result in a decrease in the number and size of piles to be installed and removed, and therefore a decrease in the estimated number of days of activity. Differences between the activities described in the **Federal Register** notice of proposed IHA (84 FR 22453; May 17, 2019) and the updated project plans are described here.

Dates and Duration

In the original project plan, construction was scheduled to begin in November 2019 and continue through April 2020. Construction is now scheduled to occur over a two-month period between January and June 2020. Pile driving will be intermittent during this period, depending on weather, construction and mechanical delays,

and logistical constraints. Pile installation and removal can occur at variable rates, from a few minutes to several hours per day. Vibratory pile installation and removal was previously estimated to occur over 27 non-consecutive days within the 6-month construction window, and impact installation was estimated to occur intermittently on 12 of those 27 days. With the updated project design, vibratory pile installation and removal is expected to occur on 14 non-consecutive days within the construction window, and impact installation is expected to occur intermittently on 10 of those 14 days.

Specific Geographic Region

The project occurs in Auke Bay, north of Juneau, Alaska. A detailed description of the area is provided in the **Federal Register** notice of proposed IHA (84 FR 22453; May 17, 2019) and is not repeated here. Please see that **Federal Register** notice for more information.

Detailed Description of Specific Activity

The original project design included the removal and replacement of four existing 5-pile dolphins and a single 1-pile dolphin with three 4-pile dolphins and two 3-pile dolphins. A total of 21 steel pipe piles were to be removed and 18 steel pipe piles were to be installed (Table 1). The updated design removes one existing 5-pile dolphin and installing three new 5-pile dolphins. A total of 15 steel pipe piles will be installed and 5 piles will be removed. Table 1 provides a comparison between the piles and duration of the original and updated designs.

TABLE 1—NUMBER OF PILES AND DURATION OF ACTIVITY BY PILE TYPE

Pile size	Number of piles		Days of installation/ removal	
	Original design	Updated design	Original design	Updated design
<i>Install:</i>				
30-in steel piles	12	6	8	4
24-in steel piles	6	9	4	6
<i>Remove:</i>				
30-in steel piles	1	0	1	0
24-in steel piles	12	3	8	2
20-in steel piles	8	2	6	2
Total	39	20	27	14
Total Install	18	15	12	10
Total Remove	21	5	15	4

Piles range in size from 20 to 30-inch (in) diameter. Piles will be installed vertically (plumb) and/or installed at an

angle (battered). Piles will be advanced to refusal using a vibratory hammer and the final approximately 10 ft will be

driven using an impact hammer so that the structural capacity of the pile embedment can be verified. The pile

installation methods used will depend on sediment depth and conditions at each pile location. ADOT&PF estimates that one to three piles could be installed per day. To account for inefficiencies and delays, ADOT&PF estimated a mean installation and removal rate of 1.5 piles per day. While the number of piles to be installed and removed and the number of days of activity have changes, the duration per pile of vibratory installation and removal and the anticipated number of strikes per pile have remained the same as those presented in the **Federal Register** notice of proposed IHA (84 FR 22453; May 17, 2019). Specifically, vibratory installation of both 24- and 30-in piles is expected to take 45 minutes per pile, while vibratory removal of 20-, 24-, and 30-in piles is expected to take 30 minutes per pile. Each pile installed is expected to require 400 strikes from an impact hammer.

In addition to the pile size and number changes described above, ADOT&PF now plans to use a drilled soil anchor to secure 12 of the piles to the glacial till layer to withstand uplift forces. Anchors will be installed within some of the pipe piles and drilled into dense glacial till below the elevation of the pile tip after the pile has been driven through the overlying sediment layer to refusal. An 8-in diameter steel pipe casing is inserted within the larger diameter production piles (24- or 30-in piles) and driven into the glacier till layer. A drill bit attached to a stem rod is then inserted into the steel pipe casing and a 6- to 8-in diameter hole is drilled into the soil with rotary and percussion drilling methods. The drilling work is contained within the steel pipe casing and the steel pipe pile. The typical depth of the drilled hole varies, but an anticipated depth of 30 ft or more is expected to be necessary. After drilling, a steel anchor rod is then grouted into the drilled hole and affixed to the top of the pile.

Underwater noise from soil anchor installation is anticipated to be low considering the double encasement surrounding the drill rod and the depth of the overlying sediments. The glacial till layer is overlain with 35 to 75 ft of sediments, and is expected to attenuate noise production from drilling and reduce noise propagation into the water column. Additionally, the casing used during drilling is inside the larger diameter pile, further reducing noise levels. The pile that the casing and drill will be lowered into will serve as a cofferdam and prevent drilling noise from propagating through the water column. Noise associated with the soil anchor drilling is anticipated to be

contained nearly entirely within the piling and is not expected to reach or exceed the 120 decibel (dB) threshold for continuous noise sources (NMFS 2019). An air impact hammer may be used to install the soil anchor. These additional strikes are conservatively accounted for in the total estimated strikes per pile (400) for the outer production piles. Due to the low noise levels associated with the soil anchor drilling, drilling is not expected to result in harassment and is not discussed further.

Above-water work associated with the project will consist of the installation of two shore anchor struts above the high tide line. Additionally, there will be some improvement and retrofitting to the dock-attached stern fenders. Existing utilities, including electrical and sewer, will be replaced and improved. No in-water noise is anticipated in association with above-water and upland construction activities. Airborne sound is only expected to impact pinnipeds that are hauled out in the area where sound levels exceed in-air harassment thresholds. No pinniped haulouts exist in the project area and no harassment from airborne sound is expected to result from project activities. Therefore, above-water construction will not be discussed further in this document.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to ADOT&PF was published in the **Federal Register** on May 17, 2019 (84 FR 22453). That notice described, in detail, ADOT&PF's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission. The Marine Mammal Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Comment 1: The Commission noted that the source levels used for impact installation of 24- and 30-in piles were nearly identical. The Commission stated that while the source level ranges for 24- and 30-in piles overlap, the use of the same source level for different-sized piles is an artifact of choosing one-off source measurements of only a single or a few piles. Source levels associated with impact installation of steel pipe piles should exhibit increasing trends with increasing diameter of the piles. The Commission recommended that NMFS conduct internal reviews of compiled source level data and make the compilation(s) available to all

relevant action proponents for use in the near term.

Response: NMFS agrees that the range of source level values overlaps for these pile sizes. In this case, sound source verification for impact installation of 30-in piles at the exact project site was used to provide the source levels for installation of 30-in piles (Denes *et al.*, 2016). Absent site-specific source levels for 24-in piles, NMFS used the source levels reported in the California Department of Transportation (Caltrans) pile driving source level compendium (Caltrans 2015). Additionally, the Caltrans compendium reports equal root mean square (rms) and single-strike sound exposure level (SEL_{ss}) for 24- and 30-in piles. NMFS is currently compiling source level reports from various sources to create a comprehensive pile driving source level compendium and will make that document available once it has been finalized.

Comment 2: The Commission recommended that NMFS refrain from using the proposed renewal process for ADOT&PF's authorization. The renewal process should be used sparingly and selectively, by limiting its use only to those proposed incidental harassment authorizations that are expected to have the lowest levels of impacts on marine mammals and that require the least complex analyses. If NMFS elects to use the renewal process frequently or for authorizations that require a more complex review or for which much new information has been generated the Commission recommended that NMFS provide the Commission and other reviewers the full 30- day comment period as set forth in section 101(a)(5)(D)(iii) of the MMPA.

Response: We appreciate the Commission's input and direct the reader to our recent response to a similar comment, which can be found at 84 FR 52464 (October 2, 2019), pg. 52466. We will consider the Commission's comment further when and if ADOT & PF requests a Renewal IHA.

Changes From the Proposed IHA to Final IHA

As described above, the design of the project has changed since publication of the **Federal Register** notice of proposed IHA (84 FR 22453; May 17, 2019), such that fewer piles will be removed and installed over fewer days. In addition to the changes to the project design, NMFS has revised the estimated proportion of Western Distinct Population Segment (DPS) Steller sea lions from 2 percent to 18.1 percent, based on information presented in Hastings *et al.* (2019). As

a result, NMFS has authorized more takes of wDPS Steller sea lions and fewer takes of Eastern DPS Steller sea lions than what was proposed. This change is described further in the “Estimated Take” section.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS’s Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’s

website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species with expected potential for occurrence in Auke Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’s SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’s stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’s U.S. Alaska and U.S. Pacific SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.*, 2018; Caretta *et al.*, 2018) and draft 2018 SARs (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae: <i>Gray whale</i>	<i>Eschrichtius robustus</i>	Eastern North Pacific	-/-; N	26,960 (0.05, 25,849, 2016).	801	138
Family Balaenopteridae (rorquals):						
<i>Humpback whale</i>	<i>Megaptera novaeangliae</i>	Central North Pacific	-/-; Y	10,103 (0.3, 7,890, 2006)	83	25
<i>Minke whale</i>	<i>Balaenoptera acutorostrata</i>	Alaska	-/-; N	N/A (see SAR, N/A, see SAR).	UND	0
<i>Fin whale</i>	<i>Balaenoptera physalus</i>	Northeast Pacific	E/D; Y	see SAR (see SAR, see SAR, 2013).	5.1	0.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
<i>Killer whale</i>	<i>Orcinus orca</i>	Alaska Resident	-/-; N	2,347 (N/A, 2347, 2012)	24	1
<i>Killer whale</i>	<i>Orcinus orca</i>	Northern Resident	-/-; N	261 (N/A, 261, 2011)	1.96	0
<i>Killer whale</i>	<i>Orcinus orca</i>	West Coast Transient	-/-; N	243 (N/A, 243, 2009)	2.4	0
Family Phocoenidae (porpoises):						
<i>Harbor porpoise</i>	<i>Phocoena phocoena</i>	Southeast Alaska	-/-; Y	975 (0.10; 896; 2012)	8.9	34
<i>Dall’s porpoise</i>	<i>Phocoenoides dalli</i>	Alaska	-/-; N	83,400 (0.097, N/A, 1991).	UND	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
<i>Steller sea lion</i>	<i>Eumetopias jubatus</i>	Eastern DPS	E/D; Y	54,267 (see SAR, 54,267, 2017).	326	252
<i>Steller sea lion</i>	<i>Eumetopias jubatus</i>	Western DPS	-/-; N	41,638 (see SAR, 41,638, 2015).	2,498	108
Family Phocidae (earless seals):						
<i>Harbor seal</i>	<i>Phoca vitulina</i>	Lynn Canal/Stephens Passage	-/-; N	9,478 (see SAR, 8,605, 2011).	155	50

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

³ These values, found in NMFS’s SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

NOTE—*Italicized species are not expected to be taken and are not included in this authorization.*

All species that could potentially occur in the project area are included in Table 2. However, the spatial and temporal occurrence of gray whales and fin whales in the area is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Sightings of gray whales and fin whales are uncommon in the inland waters of southeast Alaska. These species are typically seen closer to the open waters of the Gulf of Alaska. Additionally, the timing of the project (November through April) coincides with the period when these species are expected to be further south in their respective breeding areas. Take of gray whales and fin whales was not requested and has not been authorized, and these species are not considered further in this document.

A detailed description of the of the species likely to be affected by the Auke Bay Ferry Terminal Modifications and Improvements project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 22453; May 17, 2019); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from ADOT&PF's activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (84 FR 22453; May 17, 2019) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to that **Federal Register** notice (84 FR 22453; May 17, 2019) for that information.

Marine Mammal Habitat Effects

The main impact associated with ADOT&PF's activities would be temporarily elevated sound levels and the associated direct effects on marine mammals. The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, but may have potential short-term impacts to food sources such as forage fish, and minor impacts to the immediate substrate during installation

and removal of piles during the pile driving project. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (84 FR 22453; May 17, 2019), therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the vibratory and impact pile hammers has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species and phocids because predicted auditory injury zones are larger than for other hearing groups. Auditory injury is unlikely to occur for other groups. The required mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively

inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (e.g., frequency, predictability, duty cycle), the environment (e.g., bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μ Pa) (root mean square (rms)) for continuous (e.g., vibratory pile-driving, drilling) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources.

ADOT&PF's planned activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μ Pa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). ADOT&PF's planned

activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in Table 3. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may

be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1 $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2 $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3 $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4 $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5 $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6 $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7 $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8 $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9 $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10 $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the planned project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, impact pile driving, vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 22.5 km² (8.69 mi²), and is governed by the topography of Auke Bay and the various islands located within and around the bay. The eastern part of Auke Bay is acoustically shadowed by Auke Cape,

while Portland Island, Coghlan Island, Suedla Island, and Spuhn Island would inhibit sound transmission from reaching the more open waters toward Mansfield Peninsula (see Figure 6–2 in the IHA application). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

The project includes vibratory and impact pile installation of steel pipe piles and vibratory removal of steel pipe piles. Source levels of pile installation and removal activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature, including past pile driving activities in Auke Bay. Source levels for each pile size and driving method are presented in Table 4. The source level for vibratory

installation of 24-inch piles and vibratory removal of 24-inch and 20-inch piles are from measurements of 24-inch steel piles driven at Navy installations in Puget Sound, Washington (United States Navy 2015). As there are no measurements of source levels for these pile types in Alaska, we use the Navy’s source levels as a proxy. The vibratory and impact source levels for 30-inch pile installation is from pile driving activities at the Auke Bay ferry terminal in November 2015 (Denes *et al.*, 2016). The source level for impact installation of 24-inch piles is based on the averaged source level of the same type of pile reported by California Department of Transportation (Caltrans) in a pile driving source level compendium document (Caltrans 2015). Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 4—SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile size	Method	Source level			Literature source
		dB RMS	dB SEL ^a	dB peak	
20-inch	vibratory	^b 161	N/A	N/A	Navy 2015.
24-inch	vibratory	161	N/A	N/A	Navy 2015.
24-inch	impact	190	177	203	Caltrans 2015.
30-inch	vibratory	168	N/A	N/A	Denes <i>et al.</i> 2016.
30-inch	impact	191	177	206	Denes <i>et al.</i> 2016.

^a Sound exposure level (dB re 1 μ Pa²–sec).

^b Source level data for 20-in piles are not available. Source levels for 20-in piles are conservatively assumed to be the same as 24-in piles.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic

pressure wave propagates out from a source. TL parameters vary with

frequency, temperature, sea conditions, current, source and receiver depth,

water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

Where

TL = transmission loss in dB

B = transmission loss coefficient

R₁ = the distance of the modeled SPL from the driven pile, and

R₂ = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. For vibratory and impact pile driving of 30-inch piles at the Auke Bay ferry terminal, Denes *et al.*, (2016) measured transmission loss that differed slightly from the standard practical value of 15. The transmission loss coefficient for vibratory driving of 30-inch piles was

determined to be 16.4 while the coefficient for impact driving of 30-inch piles was determined to be 14.6. These transmission loss coefficients were used to calculate the Level A and Level B harassment zones for 30-inch piles. Site-specific transmission loss data for 20- and 24-inch piles are not available, therefore the default coefficient of 15 is used for these pile sizes to determine the distances to the Level A and Level B harassment thresholds.

TABLE 5—PILE DRIVING SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Pile size and method	Source level at 10 m (dB re 1 µPa rms)	Level B threshold (dB re 1 µPa rms)	Propagation (xLogR)	Distance to Level B threshold (m)	Level B harassment ensonified area (km ²)
20-inch vibratory	161	120	15	5,412	15.3
24-inch vibratory	161	120	15	5,412	15.3
24-inch impact	190	160	15	1,000	1.5
30-inch vibratory	168	120	16.4	8,449	22.5
30-inch impact	191	160	14.6	1,328	2.3

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the

assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and

will qualitatively address the output where appropriate. For stationary sources (such as pile drivers), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet (Table 6), and the resulting isopleths are reported below (Table 7).

TABLE 6—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Source level at 10 m	Propagation (xLogR)	Number of strikes per pile	Number of piles per day	Duration to per pile (minutes)
20-inch and 24-inch Vibratory Removal.	A.1) Vibratory pile driving	2.5	161 dB rms ...	15LogR .....	.....	3	30
30-inch Vibratory Removal	A.1) Vibratory pile driving	2.5	168 dB rms ...	16.4LogR .....	.....	3	30
24-inch Vibratory Installation	A.1) Vibratory pile driving	2.5	161 dB rms ...	15LogR .....	.....	3	45
30-inch Vibratory Installation	A.1) Vibratory pile driving	2.5	168 dB rms ...	16.4LogR .....	.....	3	45
24-inch Impact Installation	E.1) Impact pile driving	2	177 dB SEL ..	15LogR	400	^a 1–3	.....
30-inch Impact Installation	E.1) Impact pile driving	2	177 dB SEL ..	14.6LogR	400	^a 1–3	.....

^a To account for potential variations in daily productivity during impact installation, isopleths were calculated for different numbers of piles that could be installed per day (Table 1).

TABLE 7—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)				
	LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	Otariids
20-inch and 24-inch Vibratory Removal	9	1	14	6	1
30-inch Vibratory Removal	25	3	25	16	2
24-inch Vibratory Installation	12	1	18	8	1
30-inch Vibratory Installation	31	4	45	20	2
24-inch Impact Installation (3 piles per day)	449	16	535	241	18
24-inch Impact Installation (2 piles per day)	343	13	409	184	14
24-inch Impact Installation (1 pile per day)	216	8	258	116	9
30-inch Impact Installation (3 piles per day)	499	17	597	263	18
30-inch Impact Installation (2 piles per day)	378	13	452	199	14

TABLE 7—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS—Continued

Activity	Level A harassment zone (m)				
	LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	Otariids
30-inch Impact Installation (1 pile per day)	235	8	281	124	9

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals and describe how it is brought together with the information above to produce a quantitative take estimate. When available, peer-reviewed scientific publications were used to estimate marine mammal abundance in the project area. However, scientific surveys and resulting data such as population estimates, densities, and other quantitative information are lacking for most marine mammal populations and most areas of southeast Alaska, including Auke Bay. Therefore, AKDOT&PF gathered qualitative information from discussions with knowledgeable local people in the Auke Bay area, including biologists, the harbormaster, a tour operator, and other individuals familiar with marine mammals in the Auke Bay area.

Here we describe how the information provided above is brought together to produce a quantitative take estimate. Because reliable densities are not available, the applicant requests take based on the maximum number of animals that may occur in the harbor per day multiplied by the number of days of the activity.

Steller Sea Lion

Steller sea lions are common within Auke Bay but generally only occur in the area during winter. Most individuals that frequent Auke Bay haul out at Benjamin Island in Lynn Canal. The Auke Bay boating community observes Steller sea lions transiting between Auke Bay and Benjamin Island regularly during winter. Steller sea lions are not known to haul out on any beaches or structures within Auke Bay, but animals have been observed foraging within Auke Bay, and may rest in large raft groups in the water. Groups as large as 121 individuals have been observed in Auke Bay (Ridgway pers. observ.).

ADOT&PF estimates that one large group (121 individuals) may be exposed to project-related underwater noise daily on 14 days of pile installation and removal activities, for a total of 1,694 exposures. In the **Federal Register** notice of proposed IHA (84 FR 22453;

May 17, 2019), NMFS assumed only two percent of Steller sea lions present in Auke Bay were expected to belong to the wDPS. However, new research on the numbers of wDPS Steller sea lions in southeast Alaska suggests that up to 18.1 percent of Steller sea lions in the project vicinity may be from the wDPS (Hastings *et al.*, 2019). Therefore, NMFS has assigned 18.1 percent of the calculated exposures to the wDPS, for a total of 307 exposures of wDPS Steller sea lions and 1,387 exposures of eDPS Steller sea lions.

The largest Level A harassment zone for otariid pinnipeds extends 18 m from the source (Table 6). ADOT&PF is planning to implement a minimum 20 m shutdown zone during all pile installation and removal activities (see *Mitigation* section), which is expected to eliminate the potential for Level A take of Steller sea lions. Therefore, no takes of Steller sea lions by Level A harassment were requested or authorized.

Harbor Seal

Harbor seals are commonly sighted in the waters of the inside passages throughout southeast Alaska. Seals occur year-round within the project area and are regularly sighted in Auke Bay, including Statler Harbor. NOAA aerial survey data indicate that groups ranging from 10 to 52 seals could be present within the project area during summer at haulouts on the western side of Coghlan Island, as well as on Battleship Island (Ridgway unpubl. data).

Harbor seals are known to haul out within the Level B harassment zones and may be exposed to noise levels in excess of the Level B harassment thresholds upon entering the water. ADOT&PF estimates up to 52 harbor seals could be exposed to elevated sound levels on each day of pile driving, for a total of 728 exposures.

The largest Level A harassment zone for phocid pinnipeds results from impact pile driving of 30-inch piles and extends 263 m from the source (Table 6). There are no haulouts located within the Level A harassment zone and although it is unlikely that harbor seals will enter this area without detection while pile driving activities are underway, it is possible that harbor

seals may approach and enter the Level A harassment zone undetected.

ADOT&PF estimated that up to 11 harbor seals may approach the site within 263 m of the source each day. Impact pile driving may occur on up to 10 days. For this reason, ADOT&PF has requested Level A take of 11 harbor seals daily on the 10 days of impact pile driving for a total of 110 takes by Level A harassment. The largest Level A harassment zone for phocid pinnipeds from vibratory pile driving extends 20 m from the source (Table 6). ADOT&PF is planning to implement a minimum 20 m shutdown zone during all pile installation and removal activities (see *Mitigation* section), which is expected to eliminate the potential for Level A harassment of harbor seals from vibratory pile driving.

Harbor Porpoise

Although there have been no systematic studies or observations of harbor porpoises specific to Auke Bay, there is the potential for them to occur within the project area. Abundance data for harbor porpoises in southeast Alaska were collected during 18 seasonal surveys spanning 22 years, from 1991 to 2012. During that study, a total of 398 harbor porpoises were observed in the northern inland waters of southeast Alaska, including Lynn Canal (Dahlheim *et al.*, 2015). Mean group size of harbor porpoises in southeast Alaska varies by season. In the fall, mean group size was determined to be 1.88 harbor porpoises (Dahlheim *et al.*, 2009). ADOT&PF has conservatively assumed that one pair of harbor porpoises may be present in Auke Bay per day.

One pair of harbor porpoises per day could enter the Level B harassment zone for a total of 28 exposures. The largest Level A harassment zone results from impact driving of 30-inch piles, and extends 597 m from the source (Table 6). Impact pile driving may occur on up to 10 days (Table 1). ADOT&PF will implement a shutdown zone for harbor porpoises that encompasses the largest Level A harassment zone (see *Mitigation* section). However, harbor porpoises are known to be an inconspicuous species and are challenging for protected species observers (PSOs) to sight, making any approach to a specific area

potentially difficult to detect. Because harbor porpoises move quickly and elusively, it is possible that they may enter the Level A harassment zone without detection. ADOT&PF has estimated that one pair of harbor porpoises may enter the Level A harassment zone every other day over the 10 days of impact pile driving, which is used to conservatively predict a total of 10 exposures to Level A harassment. The largest Level A harassment zone for high-frequency cetaceans from vibratory pile driving is 45 m. ADOT&PF is planning to implement a minimum 50 m shutdown zone for all cetacean species during vibratory pile installation and removal activities (see *Mitigation* section), which is expected to eliminate the potential for Level A harassment of harbor porpoises from vibratory pile driving.

Dall's Porpoise

Dall's porpoises are not expected to occur within Auke Bay because the shallow water habitat of the bay is atypical of areas where Dall's porpoises usually occur. However, Dall's porpoises may opportunistically inhabit nearshore habitat, especially in spring. Therefore, ADOT&PF estimated that one large pod of Dall's porpoise (15 individuals) may occur within the Level B harassment zone once per month in the months of March and April, for a total of 30 takes by Level B harassment.

ADOT&PF will implement shutdown zones for porpoises that encompass the largest Level A harassment zones for each pile driving activity (see *Mitigation* section). The largest Level A harassment zone for Dall's porpoise extends 597 m from the source during impact installation of 30-inch piles (Table 6). Given the larger group size and more conspicuous rooster-tail generated by swimming Dall's porpoises, which makes them more noticeable than

harbor porpoises, PSOs are expected to detect Dall's porpoises prior to them entering the Level A harassment zone. Therefore, takes of Dall's porpoises by Level A harassment have not been authorized.

Killer Whale

Killer whales are observed occasionally during summer throughout Lynn Canal but their presence in Auke Bay is unlikely. As a precaution, because Level B harassment zones extend beyond the more enclosed waters of Auke Bay, AKDOT&PF has estimated that one pod of killer whales (15 individuals) may enter the Level B harassment zone once over the course of the project for a total of 15 takes by Level B harassment.

ADOT&PF will implement shutdown zones that encompass the largest Level A harassment zones for killer whales during all pile driving activities. Killer whales are generally conspicuous and PSOs are expected to detect killer whales and implement a shutdown before the animals enter the Level A harassment zone. Therefore, takes by Level A harassment have not been authorized.

Humpback Whale

Use of Auke Bay by humpback whales is intermittent and irregular year-round. During winter, researchers have documented 1 to 19 individual humpback whales per month in waters close to the project area, including Lynn Canal (Moran *et al.*, 2018a; Straley *et al.*, 2018). Group sizes in southeast Alaska generally range from one to four individuals (Dahlheim *et al.*, 2009). Based on observations of humpback whales within Auke Bay during winter, ADOT&PF estimates that one group of up to four individuals may be exposed to project-related underwater sound each day during the 14 days of pile

driving activities, for a total of 56 exposures.

The largest Level A harassment zone for humpback whales extends 499 m from the source during impact installation of 30-inch piles (Table 6). Given the irregular and small presence of humpback whales in Auke Bay, along with the fact that PSOs are expected to detect humpback whales before they enter the Level A harassment zone and implement shutdowns to prevent take by Level A harassment, no Level A takes have been authorized.

Minke Whale

Dedicated surveys for cetaceans in southeast Alaska found that minke whales were scattered throughout inland waters from Glacier Bay and Icy Strait to Clarence Strait, with small concentrations near the entrance of Glacier Bay. All sightings were of single minke whales, except for a single sighting of multiple minke whales. Surveys took place in spring, summer, and fall, and minke whales were present in low numbers in all seasons and years (Dahlheim *et al.*, 2009). Anecdotal reports have not included minke whales near Auke Bay. However, minke whales are distributed throughout a wide variety of habitats and have been observed in nearby Glacier Bay, indicating they may potentially occur within the Level B harassment zone. Therefore, ADOT&PF estimates that one minke whale per month may enter the Level B harassment zone over the course of pile driving activities, for a total of six takes by Level B harassment.

The Level A harassment zones for minke whales are the same as for humpback whales, and the shutdown protocols will be the same as well. Therefore, given the low occurrence of minke whales combined with the mitigation, takes by Level A harassment have not been authorized.

TABLE 8—AUTHORIZED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance ^a	Level A	Level B	Total authorized take	Authorized take as percentage of stock
Humpback whale	Central North Pacific	10,103	0	^b 56	56	0.55
Minke Whale	Alaska	N/A	0	6	6	N/A
Killer whale	Alaska Resident	2,347	0	15	15	^d 0.64
	Northern Resident	261				^d 5.75
	West Coast Transient	243				^d 6.17
Harbor porpoise	Southeast Alaska	975	10	18	28	2.87
Dall's porpoise	Alaska	83,400	0	30	30	<0.1
Steller sea lion	Western U.S.	54,267	0	307	^c 307	0.57
	Eastern U.S.	41,638	0	1,387	1,387	3.33
Harbor seal	Lynn Canal/Stephens Passage.	9,478	110	618	728	7.68

^a Stock or DPS size is N_{best} according to NMFS 2018 Draft Stock Assessment Reports.

^bFor ESA section 7 consultation purposes, 6.1 percent are designated to the Mexico DPS and the remaining are designated to the Hawaii DPS; therefore, we assigned 4 Level B takes to the Mexico DPS.

^cBased on the percent of branded animals at Gran Point and in consultation with the Alaska Regional Office, we used an 18.1 percent distinction factor to determine the number of animals potentially from the western DPS.

^dThese percentages assume all 15 takes may occur to each individual stock, thus the percentage of one or more stocks are likely inflated as the takes would be divided among multiple stocks.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity,

personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

In addition to the measures described later in this section, ADOT&PF must employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (e.g., standard barges, etc.), if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal must shut down immediately if such species are observed within or on a path towards the monitoring zone (i.e., Level B harassment zone); and
- If take reaches the authorized limit for an authorized species, pile installation/removal must be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures also apply to ADOT&PF's mitigation requirements:

Establishment of Shutdown Zone for Level A Harassment—For all pile

installation and removal activities, ADOT&PF must establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). These shutdown zones must be used to prevent incidental Level A exposures from impact pile driving for Steller sea lions, Dall's porpoises, killer whales, humpback whales, and minke whales, and to reduce the potential for such take for harbor seals and harbor porpoises. During all pile driving and removal activities, a minimum shutdown zone of 20 m must be enforced (Table 9). During vibratory pile driving and removal activities, ADOT&PF must enforce a 50 m shutdown zone for all cetacean species (Table 9). Shutdown zones for impact pile driving activities are based on the Level A harassment zones and therefore vary by pile size, number of piles installed per day, and marine mammal hearing group (Table 9). Shutdown zones for impact pile driving must be established each day for the greatest number of piles that are expected to be installed that day. If no marine mammals enter their respective Level A harassment zones during impact installation of the first pile of the day, the shutdown zone for the next pile that same day will be smaller (e.g., the shutdown zone for a three-pile day will be reduced in size to the shutdown zone for a two-pile day for the second pile). Shutdown zones will be further reduced to those for a one-pile day for the third pile of the day, as long as no marine mammals have been exposed to noise levels exceeding the Level A harassment thresholds that day. The placement of Protected Species Observers (PSOs) during all pile driving activities (described in detail in the *Monitoring and Reporting Section*) must ensure shutdown zones are visible.

TABLE 9—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Piles per day	Shutdown zone (m)				
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
All vibratory installation and removal	3	50			20	
30-inch pile impact installation	3	500	20	600	270	20

TABLE 9—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL—Continued

Activity	Piles per day	Shutdown zone (m)				
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
24-inch pile impact installation	2	380		460	200	
	1	250		290	130	
	3	450		550	250	
	2	350		410	200	
	1	220		260	120	

Establishment of Monitoring Zones for Level B Harassment—ADOT&PF must establish monitoring zones to correlate with Level B disturbance zones or zones of influence which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The monitoring zones are presented in Table 10. Placement of PSOs on the shorelines around Auke Bay allow PSOs to observe marine mammals within and near Auke Bay. Should PSOs determine the monitoring zone cannot be effectively observed in its entirety, Level B harassment exposures must be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible.

TABLE 10—MARINE MAMMAL MONITORING ZONES

Activity	Monitoring zone (m)
20-inch vibratory removal	5,415
24-inch vibratory removal and installation	
24-inch impact installation	1,000
30-inch vibratory installation	8,450
30-inch impact installation	1,330

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors are required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting

period. This procedure must be conducted a total of three times before impact pile driving begins. Soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile installation/removal of 30 minutes or longer occurs, PSOs must observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone must be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B monitoring zone. When a marine mammal permitted for Level B take is present in the Level B harassment zone, activities may begin and Level B take will be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B and shutdown zone must commence.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the

monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Marine Mammal Visual Monitoring

Monitoring must be conducted by NMFS-approved observers. Trained observers must be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring must be conducted 30 minutes before, during, and 30 minutes after pile installation/removal activities. In addition, observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and must document any behavioral reactions in concert with distance from piles being driven or removed. Pile installation/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

At least two land-based PSOs must be on duty during all pile installation and removal activities. One PSO must be positioned at the ferry terminal to allow full monitoring of the waters within the shutdown zones and the closest waters of the Level B harassment monitoring zones. An additional PSO will be positioned on the shoreline around Auke Bay to observe the larger monitoring zones. Potential PSO locations are shown in Figure 2–2 of ADOT&PF's Marine Mammal Mitigation and Monitoring Plan.

PSOs must scan the waters using binoculars, and/or spotting scopes, and must use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs must be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring must be conducted by qualified observers, placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when

applicable by calling for the shutdown to the hammer operator. ADOT&PF must adhere to the following observer qualifications:

- (i) Independent observers (*i.e.*, not construction personnel) are required;
- (ii) At least one observer must have prior experience working as an observer;
- (iii) Other observers may substitute education (degree in biological science or related field) or training for experience; and
- (iv) ADOT&PF must submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
 - Experience or training in the field identification of marine mammals, including the identification of behaviors;
 - Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
 - Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
 - Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.
- A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile installation and removal activities. It must include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:
- Date and time that monitored activity begins or ends;
 - Construction activities occurring during each observation period;
 - Weather parameters (*e.g.*, percent cover, visibility);
 - Water conditions (*e.g.*, sea state, tide state);
 - Species, numbers, and, if possible, sex and age class of marine mammals;
 - Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
 - Distance from pile driving activities to marine mammals and distance from

the marine mammals to the observation point;

- Locations of all marine mammal observations; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, ADOT&PF must immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report must include the following information:

- Description of the incident;
- Environmental conditions (*e.g.*, Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ADOT&PF to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ADOT&PF would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ADOT&PF discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition as described in the next paragraph), ADOT&PF must immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report must include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with ADOT&PF to determine whether modifications in the activities are appropriate.

In the event that ADOT&PF discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ADOT&PF must report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. ADOT&PF must provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile installation/removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may

result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensounded above the thresholds for Level A or Level B harassment identified above when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Level A harassment is only anticipated for harbor porpoise and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the required mitigation measures (see *Mitigation* section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely for pile driving, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in southeast Alaska, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the planned project may produce sound at distances of many kilometers from the project site, thus intruding on some habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the harbor. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor

porpoises and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals’ habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals’ foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Nearly all inland waters of southeast Alaska, including Auke Bay, are included in the southeast Alaska humpback whale feeding BIA (Ferguson *et al.*, 2015), though humpback whale distribution in southeast Alaska varies by season and waterway (Dahlheim *et al.*, 2009). Humpback whales are present within Auke Bay intermittently and in low numbers. The area of the BIA that may be affected by the planned project is small relative to the overall area of the BIA, and the area of suitable humpback whale habitat that is not included in the BIA. The southeast Alaska humpback whale feeding BIA is active between March and November while the planned project is scheduled to occur between January and June, resulting in only four months of overlap. Additionally, pile driving associated with the project is expected to take only 14 days, further reducing the temporal overlap with the BIA. Therefore, the planned project is not expected to have significant adverse

effects on the southeast Alaska humpback whale feeding BIA.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The Level A harassment exposures are anticipated to result only in slight PTS, within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species, does not include ESA-designated critical habitat, and only temporally overlaps with the southeast Alaska humpback whale feeding BIA for four months of the planned six months of activity; and
- The required mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

In addition, although affected humpback whales and Steller sea lions may be from a DPS that is listed under the ESA, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers

and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 7 demonstrates the number of animals that could be exposed to received noise levels that could cause Level A and Level B harassment for the planned work in Auke Bay. Our analysis shows that less than 8 percent of each affected stock could be taken by harassment. The numbers of animals authorized to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes. The planned project is not known to occur in an important subsistence hunting area. It is a developed area with regular marine vessel traffic. However, ADOT&PF plans to provide advanced public notice of construction activities to reduce construction impacts on local residents, ferry travelers, adjacent businesses, and other users of the Auke Bay ferry terminal and nearby areas. This will include notification to local Alaska Native tribes that may have members who hunt marine mammals for subsistence. Of the marine mammals considered in this IHA application, only harbor seals are known to be used for subsistence in the project area. If any tribes express concerns regarding project impacts to subsistence hunting of marine mammals, further communication between will take place, including provision of any project information, and clarification of any

mitigation and minimization measures that may reduce potential impacts to marine mammals.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the required mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from ADOT&PF's planned activities.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS Alaska Region issued a Biological Opinion to NMF's Office of Protected Resources on October 3, 2019, which concluded the issuance of an IHA to ADOT&PF is not likely to jeopardize the continued existence of wDPS Steller sea lions or Mexico DPS humpback whales or adversely modify critical habitat because none exists in the area.

Authorization

NMFS has issued an IHA to ADOT&PF for conducting pile installation and removal activities at the Auke Bay ferry terminal between January 1, 2020 and December 31, 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 17, 2019.

Donna S. Wieting,

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

[FR Doc. 2019-23080 Filed 10-22-19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XR048

Take of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the North Jetty Maintenance and Repairs Project, Coos Bay, Oregon

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

ACTION: Notice; two proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers (USACE) for two authorizations to take marine mammals incidental to the pile driving and removal activities over two years associated with the Coos Bay North Jetty maintenance and repairs project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two incidental harassment authorizations (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewals that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than November 22, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief,

Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.Egger@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review. Under the MMPA, “take” is defined as meaning to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings shall be granted if NMFS finds that the

taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

These actions are consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of these proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

Summary of Request

On March 18, 2019, NMFS received a request from USACE for two IHAs to take marine mammals incidental to vibratory pile driving and removal associated with the North Jetty maintenance and repairs project, Coos Bay, Oregon over the course of two years with pile installation occurring during Year 1 and pile removal occurring during Year 2. The application was deemed adequate and

complete on September 10, 2019. The USACE's request is for take of a small number of seven species of marine mammals by Level B harassment only. Neither USACE nor NMFS expects injury, serious injury or mortality to result from this activity and, therefore, IHAs are appropriate. The IHAs, if issued, will be effective from September 1, 2020 through August 31, 2021 for pile driving installation (Year 1) and from July 1, 2022 through June 30, 2023 for pile removal (Year 2). The USACE, in coordination with the Oregon Department of Fish and Wildlife (ODFW) and NMFS' Northwest Region, proposes to conduct pile driving and removal October 1st through February 15th and June 1st and July 31st to minimize effects to listed salmonids. Adherence to the in-water work window is part of USACE's Endangered Species Act (ESA) consultation under Standard Local Operating Procedures for Endangered Species (SLOPES) to administer actions authorized or carried out by the USACE in Oregon (SLOPES IV In-water Over-water Structures). The ODFW will make the final determination of the in-water work window.

Description of Proposed Activity

Overview

The USACE is proposing to repair critically damaged sections of the North Jetty, monitor erosion, and to maintain stable deep-draft navigation through the entrance into Coos Bay. Repair activities completed now will reduce the risk of jetty failure or a potential breach of the Coos Bay North Spit (CBNS). The USACE maintains this jetty system and navigational channels, and is currently proposing major repair and rehabilitation of the North Jetty. As part of its mission to build and maintain navigation facilities, the USACE also continues to maintain ownership of CBNS land to support jetty monitoring, ensure evaluation access, and to provide

construction staging and stockpile areas in the event jetty maintenance or navigation repairs are needed. Work associated with the project may occur year-round beginning in September 2020. The USACE proposes to use vibratory pile driving/removal for the Material Off-loading Facility (MOF) portion of the project using 30-inch (in) steel piles and 24-in AZ sheet piles OR 12-in H piles. The use of AZ-sheets versus H-piles will be per the contractor's discretion, largely based on site conditions, material availability, and cost.

Dates and Duration

The USACE currently anticipates that construction for North Jetty maintenance and repair project will occur over two years. The IHA application is requesting take that may occur from the pile driving activities in the first year (September 1, 2020 through August 31, 2021) and from pile removal activities in the second year of pile driving activities (July 1, 2022 through June 30, 2023). The USACE proposes to complete pile driving activities between October 1st through February 15th and June 1st through July 31st each year to protect salmonids.

The USACE estimates vibratory pile driving may occur over a 1–4 month time period each year but likely would take one month for installation (Year 1) and one month for removal (Year 2). There would be an estimate of 7 days of noise expose during pile driving for each type of pile (*i.e.*, and 30-in steel piles and 24-in AZ sheet piles OR 12-in H piles) for a total of 14 days of pile driving activity each year. Pile driving may occur up to 6 hours per day depending on the pile type.

Specific Geographic Region

Coos Bay is an approximately 55.28 km² estuary located in Coos County on the Oregon coast, approximately 200 miles south of the Columbia River. The bay provides a harbor- and water-

dependent economy for the local and state community and, as the second largest estuary in Oregon (14,000 acres), the largest located entirely within state borders (Hickey and Banas 2003, Arneson 1975), and is an important biological resource. It is considered the best natural harbor between San Francisco Bay, California and the Puget Sound, Washington. The average depth of the Coos estuary is 4 m (13 ft). The Coos estuary exhibits the typical features of a drowned river valley estuary type. It features a V-shaped cross section, a relatively shallow and gently sloping estuary bottom, and a fairly uniform increase in depth from the upper, river-dominated part of the estuary toward the mouth. Large expanses of intertidal sand and mud flats complement channels, eelgrass beds, vegetated marshes, and swamps to provide a diversity of estuarine habitats.

The entrance to the Coos Bay estuary and navigation channel lies between Coos Head and the Coos Bay North Spit (CBNS) (see Figure 1–1 of the application). The Coos Bay north and south jetties stabilize a 1-mile long, 47-foot deep channel. Channel depth decreases to approximately 37 feet at RM 1 and extends 15 miles upstream where it runs adjacent to the cities of Charleston, North Bend, and Coos Bay.

The CBNS is a large isolated peninsula about 15 miles from downtown Coos Bay; supporting unique coastal habitats. The USACE parcel (see Figure 1–2 of the application) runs north from the boundary of the North Jetty, to the southern boundary of land owned by the U.S. Bureau of Land Management (BLM). It is bound by the Pacific Ocean to the west, which includes South Beach (the beach between the North Jetty and the FAA towers as shown), and by the Log-Spiral Bay (LSB) and Coos Bay to the east. The extent of the North Jetty repairs and staging areas of the overall project area are shown below in Figure 1.



Figure 1. Project Area and Components

Detailed Description of Specific Activity

The purpose of the proposed action is to repair critically damaged sections of the North Jetty in order to maintain stable deep-draft navigation through the entrance into Coos Bay and to prevent breaching of the CBNS. Completing the proposed repair activities now will reduce the risk of future jetty failure. Progressive damages to the North Jetty system over the last 20 years have resulted in an emergency repair action in 2002 and an interim repair in 2008. The proposed major maintenance of the Coos Bay North Jetty is critical to keeping the river and harbor open to deep-draft navigation and to sustaining important navigation-related components of local and state economies.

The proposed activities would include repair activities for three main jetty components: The jetty head, root, and trunk. Repair activities also require re-establishment and repair of the following three temporary construction features including the MOF, upland

staging areas and road turn-outs to facilitate equipment and material delivery. Removal and site restoration for each of the temporary construction features is proposed.

The majority of proposed jetty repairs will be completed within the existing authorized footprint of the jetty structure, returning specified sections to pre-erosional conditions. However, the length of the final repaired jetty (8,425 feet (ft)) will be shorter than its originally authorized footprint length of 9,600 ft. The jetty head stabilizes the oceanward end of the jetty structure and is exposed to the most severe loading. The jetty trunk connects the jetty head to the jetty root and transitions from a jetty reach exposed to both ocean-side and channel-side loading, to the root, which is primarily loaded from the channel-side. Proposed repair elements may include some minor areas that occur outside of the existing jetty footprint, but are necessary to maintain jetty function.

- Repair of the jetty root entails rebuilding up to 1,600 ft of the jetty root. Toe protection around the tip of the reconstructed section would be completed to compensate for accelerated ebb-tidal flows caused by the reconstructed root. This protection could extend beyond the area of the existing relic jetty root.

- Construction of a rubble-mound jetty head (located shoreward of the originally authorized North Jetty head). While it is expected that the vast majority of the head construction will remain on the relic stone base, there may be some small increase in footprint to ensure a stable jetty head design.

The USACE proposes to rebuild sections of the jetty root where the structure has deteriorated at or below the water line. The jetty head and trunk require extensive repairs, but not to the same extent as the jetty root, which has not been repaired since the original construction. Optional repairs to the jetty root could provide additional stability to LSB and prevent further

erosion. The optional repairs to the jetty trunk could place larger stone atop sections that were previously addressed with slightly smaller stone during an interim repair. Each of these optional repairs would be contingent on funding availability.

Construction Staging Areas

Jetty repairs and associated construction elements require additional areas for activities involving equipment and supply staging and storage, parking areas, access roads, scales, general yard requirements, and jetty stone stock pile areas. Staging areas are required to store materials, equipment and tools, field offices, turn and maneuver trucks, and to provide parking for contractors.

There are three proposed staging areas for the Proposed Action: The Overland Delivery Staging Area (ODSA, up to about 10 acres), the North Jetty Staging Area (NJSA, up to 20 combined acres from three alternate staging areas), and the MOF Staging Area (up to 2.5 acres) (see Figure 1–3 of the application). The MOF Staging Area is where all pile driving and removal activities will occur. The ODSA was used previously for the 2008 North Jetty Interim Repair Project. The MOF Staging Area, also previously used and located upland of the MOF itself, would be necessary to accommodate stockpile and transfer of jetty stone from barges to transport vehicles prior to delivery to the NJSA. The NJSA will be a combination of areas; either approximately 20 acres near the jetty root, on top of the LSB sand placement area, or a jetty root staging area (1.5 acres) and up to an additional 18.5 acres to be chosen by the Contractor from the available Alternate Staging Area locations shown on the plans.

Staging area equipment would include a crane or excavator for transferring large stones from the highway-transport vehicles to heavy-duty off-road vehicles, or from a barge to heavy-duty off-road vehicles, an excavator, front-end loaders, and bulldozers. All of the stockpile areas would accommodate storage of a range

of different sized jetty stone and other rock and gravel construction materials throughout the year. Construction of each upland staging area would require vegetation clearing and site grading, which would be followed by restoration at the completion of construction.

North Jetty Major Maintenance and Repairs

Most of the proposed jetty stone placement work would use land-based equipment for construction of the repair and modifications to the North Jetty. The majority of the work is expected to be conducted from on top of the jetty using an excavator or a crane. Where appropriate, there may also be rework and reuse of the existing relic and jetty prism stone. Most of the proposed stone placement would occur on existing relic stone that formed the original jetty. The prism footprint could increase in width compared to the existing prism by about 10 ft along the length of the proposed repair sections. During new stone placement, there is a chance of stone slippage down the slope of the jetty. This is only a remote possibility given the size of the rocks. Additionally, dropping armor stone from a height greater than 2 ft would be prohibited, further minimizing the risk of stone slippage. The length of the repaired jetty would remain shorter than its originally authorized footprint length.

The full width of the repaired jetty crest would double as a “jetty crest haul road” that allows construction equipment to access and reach the entire jetty construction areas (*i.e.*, crest, slope, and toe). As described in Table 1–2 of the application, up to three turnouts would also be required every 300 to 500 ft along the length of the jetty and parallel to the jetty crest haul road for safety purposes (allows for vehicle and equipment passing and turns while on the jetty). The footprint of repairs would not extend substantially beyond the extent of relic jetty stone (possibly up to 10 ft on either side).

Material Offloading Facility (MOF)

The MOF will be constructed from the land waterward using land-based

equipment. The MOF will provide vehicle access to/from the shore. The MOF could either be a simplified design of singular pipe piles for mooring a barge with spuds as a dock face, or a more complicated MOF design with piles supporting mooring dolphins with H or Z-piles to help retain material. In either case, pilings will be installed by barge using vibratory pile driving methods. Figure 1–4 of the application provides a basic overview of potential MOF elements, though the final configuration of pilings and specifications within the broader scope will be determined by the contractor. Fill material to construct the MOF could be obtained from maintenance dredging activities that occur annually in the Federal Navigation Channel, from dredging at the MOF site, or from other suitable sources, similar to those that provide the armor stone and gravel materials for the Project. Any imported material will be obtained from a clean and permitted source, suitable for in-water placement. Initial dredging of up to about 24,000 cubic yards may be required at the MOF to reach draft depth for the delivery barges. This activity will most likely be completed by mechanical dredge (*e.g.*, clamshell). Dredged material from the MOF site will be tested for contaminants, prior to dredging, following standard USACE and U.S. Environmental Protection Agency procedures. If clean, material will be side-cast or used to supplement MOF construction. If not suitable for ocean placement, dredged material will be transported to a suitable and certified upland facility. Maintenance dredging at the MOF will occur throughout construction to maintain depths needed for delivery vessels.

Additional details on the project construction elements can be found in Section 1 of the project application. The USACE has not requested, and NMFS does not propose to issue, take from any activities other than from vibratory pile driving and removal for the MOF.

The type and amount of piles associated with the project are provided in Table 1.

TABLE 1—PILE DRIVING (YEAR 1) AND REMOVAL (YEAR 2) ASSOCIATED WITH THE MOF OF THE NORTH JETTY REPAIRS AND MAINTENANCE PROJECT. THE SAME NUMBER OF PILES DRIVEN IN YEAR 1 WILL BE REMOVED IN YEAR 2

Pile type	Size	Total number of piles to be driven (year 1)	Total number of piles to be removed (year 2)	Maximum number of piles driven per day (year 1)	Maximum number of piles removed per day (year 2)	Driving type
Steel Pipe Pile	30-inch	24	24	6	6	Vibratory.
Steel H Pile	12-in	40	40	25	25	Vibratory.
Steel AZ Sheet	24-in	100	100	25	25	Vibratory.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation and Proposed Monitoring and Reporting* section).

Description of Marine Mammals in the Area of Specified Activities

Systematic marine mammal surveys in Coos Bay are limited; therefore, the USACE relied on two multi-day AECOM surveys of Coos Bay, Oregon Department of Fish and Wildlife (ODFW), and anecdotal reports to better understand marine mammal presence in Coos Bay and in support of the IHA application. Seven marine mammal species comprising seven stocks have the potential to occur within Coos Bay during the project.

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats

may be found in NMFS's Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species with expected potential for occurrence around Coos Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual

serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska 2018 SARs (e.g., Carretta *et al.*, 2018; Muto *et al.*, 2018). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2018 SARs <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>.

TABLE 2—MARINE MAMMALS OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Blue whale	<i>Balaenoptera m. musculus</i> ..	Eastern North Pacific Stock	E,D;Y	1,647 (0.07; 1,551; 2011)	2.3	≥19
Humpback whale	<i>Megaptera novaeangliae</i>	California/Oregon/Washington Stock.	E,D;Y	2,900 (0.05; 2,784; 2014)	16.7	≥40.2
Family Eschrichtiidae:						
Gray whale	<i>Eschrichtius robustus</i>	Eastern North Pacific	N, N	26,960 (0.05, 25,849, 2016)	801	139
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	<i>Orcinus orca</i>	West Coast Transient	N, N	243 (-, 243, 2006) ⁴	2.4	0
Family Phocoenidae (porpoises):						
Harbor porpoise	<i>Phocoena phocoena</i>	Northern CA/Southern OR	N, N	35,769 (0.52, 23,749, 2011)	475	≥0.6
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Northern elephant sea ...	<i>Mirounga angustirostris</i>	California breeding	N, N	179,000 (n/a, 81,368, 2010)	4,882	8.8
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern U.S.	N, N	41,638 (-, 41,638, 2015)	2,498	108
California sea lion	<i>Zalophus californianus</i>	U.S.	N, N	257,606 (n/a, 233,515, 2014) ...	14,011	>320
Family Phocidae (earless seals):						
Harbor seal	<i>Phoca vitulina</i>	Oregon/Washington Coast	N, N	24,732 (0.12, -, 1999) ⁵	unk	unk

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

³ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁴ The minimum population estimate (NMN) for the West Coast Transient stock of killer whales is derived from mark-recapture analysis for West Coast transient population whales from the inside waters of Alaska and British Columbia of 243 whales (95 percent probability interval = 180–339) in 2006 (DFO 2009), which includes animals found in Canadian waters.

⁵ Because the most recent abundance estimate is >8 years old (1999), there is no current estimate of abundance available for this stock. However, for purposes of this analysis, we apply the previous abundance estimate, corrected for animals missed in the water as described in Carretta *et al.* (2014) of 24,732.

All species that could potentially occur in the proposed survey areas are included in Table 2. Humpback whales (*Megaptera novaeangliae*) and blue whales (*Balaenoptera musculus musculus*) are not uncommon along the Oregon coast, however, they are unlikely to enter Coos Bay and be affected by construction noise. Given these considerations, the temporary duration of potential pile driving, and noise isopleths that would not extend beyond the river mouth, there is no reasonable expectation for proposed activities to affect these species and they are not discussed further.

As described below, the remaining seven species comprising seven stocks temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Gray Whales

Gray whales are only commonly found in the North Pacific. Genetic comparisons indicate there are distinct "Eastern North Pacific" (ENP) and "Western North Pacific" (WNP) population stocks, with differentiation in both mtDNA haplotype and microsatellite allele frequencies (LeDuc *et al.* 2002; Lang *et al.* 2011a; Weller *et al.* 2013). Tagging, photo-identification and genetic studies show that some whales identified in the WNP off Russia have been observed in the ENP, including coastal waters of Canada, the U.S. and Mexico (Lang 2010; Mate *et al.* 2011; Weller *et al.* 2012; Urbán *et al.* 2013; Mate *et al.* 2015). However, WNP gray whales are not expected to enter Coos Bay and therefore will not be discussed further.

From 2009 to 2013, researchers attached satellite tags to 35 gray whales off the coasts of Oregon and northern California from September to December 2009, 2012, and 2013 (Lagerquist *et al.*, 2019). These whales are members of the Pacific Coast Feeding Group (PCFG), a subset of gray whales in the ENP that feed off the PNW, during summer and fall. Tracking periods for the satellite-tagged whales in this study ranged from 3 days to 383 days. Feeding-area home ranges for the resulting 23 whales covered most of the near-shore waters from northern California to Icy Bay, Alaska, and ranged in size from 81 km² to 13,634 km². Core areas varied widely in size (11–3,976 km²) and location between individuals, with the highest-use areas off Point St. George in northern California, the central coast of Oregon, and the southern coast of Washington. Tag data indicates whales primarily occupied waters

predominantly over continental shelf waters less than 10 km from shore and in depths less than 50 m. Gray whales are not known to enter Coos Bay; however, they do enter larger bays such as San Francisco Bay during their northward and southward migration and therefore are included in this analysis.

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. This event has been declared an Unusual Mortality Event (UME). A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. As of September 5, 2019, 117 gray whales have stranded in the U.S. between Alaska and California with an additional 10 strandings in Canada and 81 in Mexico. Of the U.S. strandings, six of the animals have been found in Oregon. Full or partial necropsy examinations were conducted on a subset of the whales. Preliminary findings in several of the whales have shown evidence of emaciation. These findings are not consistent across all of the whales examined, so more research is needed. Threats to gray whales include ship strike, fishery gear entanglement, and climate change-related impacts such as reduction in prey availability, and increased human activity in the Arctic (Carretta *et al.*, 2019).

Killer Whales

Killer whales are found throughout the North Pacific. Along the west coast of North America, 'resident,' transient, and 'offshore' ecotypes have overlapping distributions and multiple stocks are recognized within that broader classification scheme. The West Coast Transient (WCT) Stock includes animals that range from California to southern Alaska, and is genetically distinct from other transient populations in the region (*i.e.*, Gulf of Alaska, Aleutian Islands, and Bering Sea transients and AT1 transients). While not regularly seen in Coos Bay, anecdotal accounts by ODFW biologists suggest bachelor pods of transient killer whales may be observed in Coos Bay semi-annually. In May 2017, a pair of killer whales feeding on what was concluded to be a seal were opportunistically observed in Coos Bay (AECOM 2017). The whales moved through the estuary northwards past Jordan Cove to the Highway 101 Bridge. However, the whales are not known to linger in the area and no biologically

important habitat for this stock exists in Coos Bay.

Harbor Porpoise

In the Pacific Ocean, harbor porpoise are found in coastal and inland waters from Point Conception, California to Alaska and across to Kamchatka and Japan (Gaskin 1984). There are several stocks of harbor porpoise along the west coast of the U.S. and in inland waterways. While harbor porpoise are rare within Coos Bay, if present, animals are likely belonging to the Northern California/Southern Oregon stock which is delimited from Port Arena, California in the south to Lincoln City, Oregon. Use of Coos Bay by this stock is rare.

Northern Elephant Seal

Northern elephant seals are found occasionally in Oregon either resting or molting (shedding their hair) on sandy beaches. Elephant seals do not generally breed in Oregon; however, there are a number of breeding sites in California such as Ano Nuevo State Reserve. Cape Arago State Park, just south of the entrance to Coos Bay, is the only spot where northern elephant seals haulout year-around in Oregon. The majority of the elephant seals seen in Oregon are sub-adult animals that come to shore to molt. Northern elephant seals regularly occur at haul-out sites on Cape Arago, approximately 3.7 miles south of the entrance to Coos Bay. Scordino (2006) reported total counts (average, maximum, minimum) of harbor seal, elephant seal, California sea lion, and Steller sea lion at Cape Arago during each month surveyed between 2002 and 2005. Abundance of elephant seals was low in all months, with a maximum of 54 animals reported in May (Scordino 2006). No Northern elephant seals have been observed within Coos Bay; however, given their close proximity to the mouth of the estuary, they have been included in this analysis.

California Sea Lion

California sea lions are distributed along the North Pacific waters from central Mexico to southeast Alaska, with breeding areas restricted primarily to island areas off southern California (the Channel Islands), Baja California, and in the Gulf of California (Wright *et al.*, 2010). There are five genetically distinct geographic populations. The population seen in Oregon is the Pacific Temperate stock, which are commonly seen in Oregon from September through May (ODFW 2015). The approximate growth rate for this species is 5.4 percent annually (Carretta *et al.*, 2004).

Almost all California sea lions in the Pacific Northwest are sub-adult or adult

males (NOAA 2008). The occurrence of the California sea lion along the Oregon coast is seasonal with lowest abundance in Oregon in the summer months, from May to September, as they migrate south to the Channel Islands in California to breed. During other times of the year, the primary areas where it comes ashore are Cascade Head, Tillamook County; Cape Argo, Coos County; and Rouge Reef and Orford Reef in Curry County.

The California sea lion stock has been growing steadily since the 1970s. The stock is estimated to be approximately 40 percent above its maximum net productivity level (MNPL = 183,481 animals), and it is therefore considered within the range of its optimum sustainable population (OSP) size (Laake *et al.*, 2018). The stock is also near its estimated carrying capacity of 275,298 animals (Laake *et al.*, 2018). However, there remain many threats to California sea lions including entanglement, intentional kills, harmful algal blooms, and climate change. For example, for each 1 degree Celsius increase in sea surface temperature (SST), the estimated odds of survival declined by 50 percent for pups and yearlings, while negative SST anomalies resulted in higher survival estimates (DeLong *et al.*, 2017). Such declines in survival are related to warm oceanographic conditions (*e.g.*, El Niño) that limit prey availability to pregnant and lactating females (DeLong *et al.*, 2017). Changes in prey abundance and distribution have been linked to warm-water anomalies in the California Current that have impacted a wide range of marine taxa (Cavole *et al.*, 2016).

There were at least eight California sea lions sighted opportunistically during the 2017 AECOM surveys (AECOM, 2017). No pups were observed.

Steller Sea Lion

The Steller sea lion range extends along the Pacific Rim, from northern Japan to central California. For management purposes, Steller sea lions inhabiting U.S. waters have been divided into two DPS: The Western U.S. and the Eastern U.S. The population known to occur within the Lower Columbia River is the Eastern DPS. The Western U.S. stock of Steller sea lions are listed as endangered under the ESA and depleted and strategic under the MMPA. The Eastern U.S. stock (including those living in Oregon) was de-listed in 2013 following a population growth from 18,000 in 1979 to 70,000 in 2010 (an estimated annual growth of 4.18 percent) (NOAA 2013). A population growth model indicates the eastern stock of Steller sea lions

increased at a rate of 4.76 percent per year (95 percent confidence intervals of 4.09–5.45 percent) between 1989 and 2015 based on an analysis of pup counts in California, Oregon, British Columbia, and Southeast Alaska (Muto *et al.*, 2017). This stock is likely within its OSP; however, no determination of its status relative to OSP has been made (Muto *et al.*, 2017).

Steller sea lions can be found along the Oregon coast year-round with breeding occurring in June and July. The southern coast of Oregon supports the largest Steller breeding sites in U.S. waters south of Alaska, producing some 1,500 pups annually. Near the entrance of Coos Bay, Steller sea lions can be found year round at Cape Arago State Park. The most recent Steller sea lion survey at Cape Arago was June 29, 2017, during which ODFW counted 910 non-pup Steller sea lions ashore. Steller sea lions may occasionally enter Coos Bay; however, no long-term residency patterns have been observed. One Steller sea lion was sighted opportunistically during the 2017 AECOM surveys (AECOM 2017). No pups were observed.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Baja California, north along the western coasts of the continental U.S., British Columbia, and Southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, and in the Bering Sea north to Cape Newenham and the Pribilof Islands (Caretta *et al.*, 2014). Within U.S. west coast waters, five stocks of harbor seals are recognized: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington Northern Inland Waters (including Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca); (3) Hood Canal; (4) Oregon/Washington Coast; and (5) California. Seals belonging to the Oregon/Washington Coast stock are included in this analysis.

Harbor seals generally are non-migratory, with local movements associated with tides, weather, season, food availability, and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981). Harbor seals do not make extensive pelagic migrations, though some long distance movement of tagged animals in Alaska (900 km) and along the U.S. west coast (up to 550 km) have been recorded (Brown and Mate 1983, Herder 1986, Womble 2012). Harbor seals have also displayed strong fidelity to haulout sites (Pitcher and Calkins 1979, Pitcher and McAllister 1981).

The harbor seal is the most widespread and abundant resident pinniped in Oregon. They haul out to rest at low tide on sand bars in most bays and estuaries along the Oregon coast. They are also found on nearshore rocks and islands usually within 3 miles of the coast. Within Coos Bay, four harbor seal haulout sites have been identified by ODFW (Wright 2013); three of which have documented pup sightings. From the inlet to the upper Bay, these are South Slough (southeast of the entrance channel), Pigeon Point, Clam Island, and Coos Port. However, only three of the four haulouts are in the project area including the South Slough, Pigeon Point, and Clam Island (see Figure 4–1 of the application). Harbor seals generally foraging with in close proximity to their haulouts. For example, a study of radio tagged harbor seals in San Francisco Bay found that the majority of foraging trips were less than 10 km from their regular haulout (Grigg *et al.*, 2012), and a similar study in Humboldt Bay found that the majority of seals travelled 13 km or less to forage (Ougzin 2013). Both studies found that harbor seals typically forage at in relatively shallow water depths; a median value of 7 m was reported for the San Francisco Bay Study (Grigg *et al.*, 2012).

The most recent haulout counts were conducted by ODFW in May and June 2014. In 2014, 333 seals were observed at Coos Bay haulouts in June (Wright, pers comm., August 27, 2019). May yielded slightly higher numbers, as expected since it is closer to peak pupping season; however, the South Slough haulout site was not surveyed in May due to fog.

Marine mammal presence and abundance data collection throughout Coos Bay in 2017 and 2018. These surveys were vessel based line transect surveys. Observations made by AECOM during May 2017 site-specific surveys found similar patterns to the ODFW aerial surveys. More than 350 observations of harbor seals were recorded in the estuary over the four days of survey. AECOM conducted additional surveys during November and December 2018 using vessel based line transect surveys and aerial surveys using a drone to establish a fall/winter local abundance estimate for harbor seals. A maximum of 167 seals were hauled out between the Clam Island and Pigeon Point haulouts at any one time. ODFW indicates it is likely many harbor seals are year-round residents in Coos Bay and relay on these waters for all life stages and behaviors including, but not limited to, breeding, pupping, and foraging (Wright 2013).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and

Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018)

described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The phocid pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seven marine mammal species (three cetacean and four pinniped (three otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, one is classified as a low-frequency cetacean (*i.e.*, all mysticete species), one is classified as a mid-frequency cetacean (*i.e.*, all delphinid and ziphiid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.*, harbor porpoise and *Kogia* spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this

document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound and the Sources Used

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz

(Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the "loudness" of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urlick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they

may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu\text{Pa}^2\text{-s}$) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.*, 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between

200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it

moves farther from the source, the signal duration becomes longer (*e.g.*, Greene and Richardson, 1988).

Pulsed sound sources (*e.g.*, airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.*, Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

Acoustic Effects on Marine Mammals

We previously provided general background information on marine mammal hearing (see *Description of Marine Mammals in the Area of the Specified Activity* section). Here, we discuss the potential effects of sound on marine mammals.

Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.*, Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly

variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.*, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.*, 1973).

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Tal *et al.*, 2015). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—NMFS defines a noise-induced threshold shift (TS) as “a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level” (NMFS, 2016). The amount of threshold shift is customarily expressed in dB (ANSI 1995, Yost 2007). A TS can be permanent (PTS) or temporary (TTS). As described in NMFS (2016), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral). When analyzing the auditory effects of noise exposure, it is often helpful to broadly categorize sound as either impulsive—noise with high peak sound pressure, short duration, fast rise-time, and broad frequency content—or non-impulsive. When considering auditory effects, vibratory pile driving is considered a non-impulsive source while impact pile driving is treated as an impulsive source.

TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an

individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see NMFS 2018 for review). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

NMFS defines TTS as a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Finneran 2014 for a review), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000; Finneran *et al.*, 2002).

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall

et al., 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaticorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous

predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals of cetaceans and pinnipeds. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). Please see Gomez *et al.*, 2016 for a review of studies involving marine mammal behavioral responses to sound.

The acoustic habitat in Coos Bay is regularly elevated by medium to large-sized boats. Site-specific ambient noise data were collected during a baseline survey by AECOM in Coos Bay in May 2017 and November and December 2018. Underwater sound levels for water transit vessels, which operate throughout the day in Coos Bay, ranged from 152 dB to 177 dB. The results suggested that the ambient noise level was approximately 120 dB, with high daily variability due to vessel traffic. We expect some level of habituation and/or sensitization, described in more detail below, to occur due to the existing acoustic environment in Coos Bay.

Habituation can occur when an animal's response to a stimulus wanes

with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial, rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.*, Barkaszi *et al.*, 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior,

alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.*, Kastelein *et al.*, 2001, 2005, 2006; Gailey *et al.*, 2007; Gailey *et al.*, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Frstrup *et al.*, 2003; Foote *et al.*, 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.*, Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.*, Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.*, directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived

predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.*, Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.*, decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.*, Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous

system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp,

wind, waves, precipitation) or anthropogenic (e.g., shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (e.g., Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (e.g., Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007; Di Iorio and Clark, 2009; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (e.g., Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine

mammals in the wild (e.g., Branstetter *et al.*, 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (e.g., from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of USACE's Activity—As described previously (see *Description of Active Acoustic Sound Sources* section), USACE proposes to conduct vibratory pile driving in Coos Bay. The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. It is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.*, 2007).

Sounds produced by vibratory driving or removal would be active for relatively short durations, with relation to potential for masking. The frequencies output by pile driving activity are lower than those used by most species expected to be regularly present for communication or foraging. We would expect any masking to occur concurrently within the zones of

behavioral harassment already estimated for vibratory pile driving and removal, and which have already been taken into account in the exposure analysis.

The biological significance of behavioral disturbance is difficult to predict, especially if the detected disturbances appear minor. While, generally speaking, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction, significant behavioral modifications that could lead to impacts on health or fitness, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are extremely unlikely to result from this activity.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the marine waters in the vicinity of the project areas. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this preamble. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.*, fish) near the MOF. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their

environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.*, Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.*, Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of

exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for pile driving or removal to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through these IHAs, which will inform both NMFS' consideration of "small numbers" and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Take of marine mammals incidental to USACE's pile driving and removal activities could occur by Level B harassment only, as pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. The proposed mitigation

and monitoring measures are expected to minimize the severity of such taking to the extent practicable. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates for each IHA.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μ Pa (rms) for continuous (*e.g.*, vibratory pile-driving, drilling) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (*e.g.*, impact pile driving seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. The USACE's proposed activities include the use of continuous, non-impulsive (vibratory pile driving) therefore, the 120 dB re 1 μ Pa (rms) is applicable.

Level A Harassment—NMFS' *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury

(Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.*, impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.*, sound pressure level (peak SPL) and sound exposure level (SEL) (also accounts for duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

These thresholds were developed by compiling and synthesizing the best available science, and are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technicalguidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area

ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a

source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

Where

B = transmission loss coefficient (assumed to be 15)

R₁ = the distance of the modeled SPL from the driven pile, and

R₂ = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source ($20 * \log(\text{range})$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10 * \log(\text{range})$). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each

doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are source level measurements available for certain pile types and sizes from the similar environments recorded from underwater pile driving projects (CALTRANS 2015, WSDOT 2010) that were used to determine reasonable sound source levels likely result from the USACE's pile driving and removal activities (Table 5).

TABLE 5—PREDICTED SOUND SOURCE LEVELS FOR BOTH INSTALLATION AND REMOVAL OF PILES

Pile type	Sound source level at 10 meters
12-inch steel H-pile ¹	150 dB _{RMS}
24-inch AZ steel sheet ¹	160 dB _{RMS}
30-inch steel pipe pile ²	164 dB _{RMS}

¹ Average typical sound pressure levels referenced from Caltrans (2015) and were either measured or standardized to 10 m from the pile.

² Average sound pressure levels measured at the Vashon Ferry Terminal (WSDOT, 2010).

Level A Harassment

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as from vibratory pile driving), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet (Table 6), and the resulting isopleths are reported below (Table 7).

TABLE 6—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR VIBRATORY PILE DRIVING

[User spreadsheet input—Vibratory Pile Driving Spreadsheet Tab A.1 Vibratory Pile Driving Used]

	12-in H piles (install/removal)	24-in sheet piles (install/removal)	30-in piles (install/remove)
Source Level (RMS SPL)	150	160	164
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5
Number of piles within 24-hr period	25	25	6
Duration to drive a single pile (min)	10	10	60
Propagation (xLogR)	15	15	15
Distance of source level measurement (meters)	10	10	10

TABLE 7—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS.

User spreadsheet output		PTS isopleths (meters)				
Activity	Sound source level at 10 m	Levl A harassment				
		Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal						
12-in H pile steel installation/removal	150 dB SPL	3.3	0.3	4.8	2.0	0.1

TABLE 7—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS.—Continued

User spreadsheet output		PTS isopleths (meters)				
Activity	Sound source level at 10 m	Level A harassment				
		Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
24-in sheet pile installation/removal.	160 dB SPL	15.2	1.3	22.4	9.2	0.6
30-in pile installation/removal.	164 dB SPL	35.7	3.2	52.8	21.7	1.5

Level B Harassment

Utilizing the practical spreading loss model, USACE determined underwater noise will fall below the behavioral effects threshold of 120 dB rms for marine mammals at the distances shown

in Table 8 for vibratory pile driving/removal. Table 8 below provides all Level B harassment radial distances (m) and their corresponding areas (km²) during the USACE's proposed activities. It is undetermined whether sheet piles, H-piles, or a combination of the two will

be used for MOF construction; therefore, the USACE estimated potential take based on the larger disturbance zone for Level B harassment (*i.e.*, for sheet pile—9.1 km²) for the 12-inch H pile Level B harassment zone.

TABLE 8—RADIAL DISTANCES (METERS) TO RELEVANT BEHAVIORAL ISOPLETHS AND ASSOCIATED ENSONIFIED AREAS (SQUARE KILOMETERS (KM²)) USING THE PRACTICAL SPREADING MODEL

Activity	Received level at 10 m	Level B harassment zone (m)*	Level B harassment zone (km ²)
Vibratory Pile Driving/Removal			
12-inch H piles installation/removal	150 dB SPL	1,000	9.1 (actual calculated zone is 2).
24-inch sheet pile installation/removal	160 dB SPL	4,642	9.1
30-inch pile installation/removal	164 dB SPL	8,577	11.5

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to vibratory pile driving/removal for each acoustic threshold were estimated using group size estimates and local observational data to create a density estimate. As previously stated, take by Level B harassment only will be considered for this action. Distances to Level A harassment thresholds are relatively small and mitigation is expected to avoid Level A harassment from these activities.

Harbor Seals

Over the last several decades, intermittent and independent surveys of harbor seal haul outs in Coos Bay have been conducted. The most recent aerial survey of haulouts occurred in 2014 by ODFW. Those surveys were conducted during a time when the highest number of animals would be expected to haul out (*i.e.*, the latter portion of the pupping season (May and June) and at

low tide). In 2014, 333 seals were observed at Coos Bay haulouts in June (Wright, pers comm., August 27, 2019).

AECOM conducted surveys vessel-based surveys in May/June 2017 and November 2018 from the Highway 101 Bridge to the seaward entrance to the Coos Bay estuary. In 2017, during the line transect surveys, there were an estimated 374 harbor seals counted in 19 groups with a relative density of 6.2 harbor seals/km. In 2018, because of the low number of harbor seals sightings during the line transect effort, reliable statistical estimates of species density could not be accurately calculated. However, for comparison with the May 2017 data, the number of seals observed/km yielded a sighting rate of 0.12 harbor seals/km.

AECOM also conducted three days of aerial (drone) flyovers at the Clam Island and Pigeon Point haulouts to capture aerial imagery during November and December 2018 to determine a fall/winter estimate for harbor seals. This aerial field effort observed a maximum of 167 harbor seals hauled out at Clam Island and 41 harbor seals hauled out at Pigeon Point on any one day. Based on these counts, an estimate of relative

density was determined for the study area and ranged from 8.5–11.1 harbor seals/km². Because the pile driving and removal for the MOF will likely occur over the winter season and to be conservative, USACE used the maximum density of 11.1 harbor seals/km² to calculate take.

The estimated take for each IHA was calculated using this density multiplied by the area ensonified above the threshold (9.1 km² for sheet piles and 11.5 km² for 30-in piles) multiplied by the number of days per activity (*e.g.*, 7 days of vibratory pile driving per pile type for a total of 14 days of pile driving activity each year). Therefore, a total of 1,601 instances of take by Level B harassment are proposed for harbor seals in both Year 1 for installation and in Year 2 for removal (Table 9). Because the Level A harassment zones are relatively small (21.7 m at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the Protected Species Observer (PSO) will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of harbor seals.

California Sea Lions and Steller Sea Lions

No data are available to calculate density estimates California sea lion and Steller sea lions; therefore, USACE considers likely occurrences in estimating take for California sea lions and Steller sea lions. As described in the *Description of Marine Mammals* section, no haulouts for California sea lions and Steller sea lions exist within Coos Bay where harassment from exposure to pile driving could occur, however, these species do haul out on the beaches adjacent to the entrance to Coos Bay. These animals forage individually and seasonal use of Coos Bay have been observed, primarily in the spring and summer when prey are present. The estimate for daily California sea lion and Steller sea lions abundance ($n = 1$) was based on recent marine mammal surveys in Coos Bay (AECOM 2017).

For this reason, USACE estimates one California and Steller sea lion may be present each day of pile driving. We multiplied 1 animal by the number of days per activity (e.g., 7 days of vibratory pile driving per pile type). Therefore, a total of 14 instances of take by Level B harassment are proposed for both California sea lions and Steller sea lions in both Year 1 for installation and in Year 2 for removal (Table 9). Because the Level A harassment zones are relatively small (Less than 2 m at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of California sea lions or Steller sea lions.

Northern Elephant Seals

The abundance estimate for Northern elephant seals was based on the maximum number of seals observed at Cape Arago, a prominent haulout site roughly 6 km south of Coos Bay jetties. Surveys were conducted between 2002 and 2005 (Scordino 2006) and the reference abundance ($n = 54$) was the maximum count observed. USACE applied a 3.8 percent annual population growth rate (NMFS 2014c) to approximate the relative abundance of elephant seals in 2019 (i.e., $n = 91$). Lastly, an estimated density of elephant seals was calculated across the project area extended to include Cape Arago (i.e., approximately 30 km²) as a basis for determining the number of animals that could be present in Level B harassment zones during vibratory pile driving activities. This calculated

density is 3.03 Northern elephant seals/km². The estimated take was calculated using this density (3.03 animals/km²) multiplied by the area ensnified above the threshold (9.1 km² for sheet piles and 11.5 km² for 30-in piles) multiplied by the number of days per activity (e.g., 7 days of vibratory pile driving per pile type). Therefore, a total of 437 instances of take by Level B harassment are proposed for Northern elephant seals in both Year 1 for installation and in Year 2 for removal (Table 9). Because the Level A harassment zones are relatively small (21.7-m isopleth at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of Northern elephant seals.

Killer Whales

It is not possible to calculate density for killer whales in Coos Bay as they are not present in great abundance; therefore, USACE estimates take based on likely occurrence and considers group size. During migration, the species typically travels singly or as a mother and calf pair. This species has been reported in Coos Bay only a few times in the last decade. The typical group size for transient killer whales is two to four, consisting of a mother and her offspring (Orca Network 2018). Males and young females also may form small groups of around three for hunting purposes (Orca Network 2018). Previous sightings in Coos Bay documented a group of five transient killer whales in May 2007 (as reported by the Seattle Times) and a pair of killer whales were observed during the 2017 May surveys. USACE assumes that a group of two killer whales come into Coos Bay and could enter a Level B harassment zone for one day in each year of pile driving activities. Therefore, a total of two instances of take by Level B harassment are proposed for killer whales in both Year 1 for installation and in Year 2 for removal (Table 9). Because the Level A harassment zones are relatively small (Less than a 4-m isopleth at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of killer whales.

Harbor Porpoise

It is not possible to calculate density for harbor porpoise in Coos Bay as they are not present in great abundance; therefore, USACE estimates take based

on likely occurrence and considers group size. Harbor porpoise are most often seen singly, in pairs, or in groups of up to 10, although there are reports of aggregations of up to 200 harbor porpoises. No harbor porpoises were detected during recent marine mammal surveys within the Coos Bay estuary (AECOM 2017, 2018). However, harbor porpoises were counted during aerial surveys of marine mammals off the coasts of California, Oregon, and Washington. The maximum estimated count of harbor porpoises within approximately 1,700 km² of Coos Bay ($n = 24$ in January 2011) was the basis for estimated abundance (Adams *et al.*, 2014). USACE applied a 4 percent annual population growth rate (NMFS 2013a) to approximate the relative abundance of harbor porpoises in 2019 (i.e., $n = 33$). Lastly, an estimated density of harbor porpoise was calculated across approximately 1,700 km² as a basis for determining the number of animals that could be present in Level B harassment zones during vibratory pile driving activities. This calculated density is 0.019 harbor porpoise/km². The estimated take was calculated using this density (0.019 animals/km²) multiplied by the area ensnified above the threshold (9.1 km² for sheet piles and 11.5 km² for 30-in piles) multiplied by the number of days per activity (e.g., 7 days of vibratory pile driving per pile type, 14 total days). Therefore, a total of four instances of take by Level B harassment are proposed for harbor porpoise in both Year 1 for installation and in Year 2 for removal (Table 9). Because the Level A harassment zones are relatively small (a 52.8-m isopleth at the largest for pile driving/removal of 30-in piles), and activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of harbor porpoise.

Gray Whales

It is not possible to calculate density for gray whales in Coos Bay as they are not present in great abundance; therefore, USACE estimates take based on likely occurrence and considers group size. Gray whales are frequently observed traveling alone or in small, unstable groups, although large aggregations may be seen in feeding and breeding grounds. The maximum estimated count of gray whales within approximately 1,700 km² of Coos Bay ($n = 10$) was the basis for estimated abundance (Adams *et al.*, 2014). USACE then applied a 6 percent population growth rate (NOAA 2014b) to derive the

current estimated abundance to approximate the relative abundance of gray whales in 2019 (*i.e.*, $n = 16$). Lastly, an estimated density of gray whales was calculated across approximately 1,700 km² as a basis for determining the number of animals that could be present in Level B harassment zones during vibratory pile driving activities. This calculated density is 0.0094 gray whales/km². The estimated take was calculated using this density (0.0094 animals/km²) multiplied by the area

encompassed above the threshold (9.1 km² for sheet piles and 11.5 km² for 30-in piles) multiplied by the number of days per activity (*e.g.*, 7 days of vibratory pile driving per pile type, 14 total days). Therefore, a total of two instances of take by Level B harassment are proposed for gray whales in both Year 1 for installation and in Year 2 for removal (Table 9). Because the Level A harassment zones are relatively small (a 35.7-m isopleth at the largest for pile driving/removal of 30-in piles), and

activities will occur over a small number of days, we believe the PSO will be able to effectively monitor the Level A harassment zones and we do not anticipate take by Level A harassment of gray whales.

For both year 1 and year 2, Table 9 below summarizes the proposed estimated take for all the species described above as a percentage of stock abundance.

TABLE 9—PROPOSED ESTIMATED TAKE BY LEVEL B HARASSMENT AND AS A PERCENTAGE OF STOCK ABUNDANCE

Marine mammal	Level B harassment AZ sheets (or H-piles)	Level B harassment 30-inch piles	Level B harassment AZ sheets (or H-piles)	Level B harassment 30-inch piles	Total take by Level B harassment (percent by stock)	Total take by Level B harassment (percent by stock)
	YR-1 installation	YR-1 installation	YR-2 removal	YR-2 removal	YR-1 installation	YR-2 removal
Harbor seal (<i>Phoca vitulina</i>)	707	894	707	894	1,601 (2.3 percent)	1,601 (2.3 percent).
Northern Elephant seal (<i>Mirounga angustirostris</i>)	193	244	193	244	437 (0.2 percent)	437 (0.2 percent).
Steller sea lion (<i>Eumetopias jubatus</i>)	7	7	7	7	14 (0.02 percent)	14 (0.02 percent).
California sea lion (<i>Zalophus californianus</i>)	7	7	7	7	14 (less than 0.001 percent)	14 (less than 0.001 percent).
Gray whale (<i>Eschrichtius robustus</i>)	1	1	1	1	2 (less than 0.001 percent)	2 (less than 0.001 percent).
Killer whale (<i>Orcinus orca</i>) ...	2		2		2 (0.5 percent)	2 (0.5 percent).
Harbor porpoise (<i>Phocoena phocoena</i>)	2	2	2	2	4 (0.008 percent)	4 (0.008 percent).

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are included in the proposed IHAs:

Timing Restrictions

All work will be conducted during daylight hours. If poor environmental conditions restrict visibility full

visibility of the shutdown zone, pile installation would be delayed.

Shutdown Zone for In-Water Heavy Machinery Work

For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Shutdown Zones

For all pile driving/removal activities, the USACE will establish shutdown zones for a marine mammal species that is greater than its corresponding Level A harassment zone. To be conservative, the USACE is proposing to implement one cetacean shutdown zone (55 m) and one pinniped shutdown zone (25 m) during any pile driving/removal activity (*i.e.*, during sheet piles, H-piles, and 30-in steel pile installation and removal) (Table 10) which exceeds the maximum calculated PTS isopleths as described in Table 7. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

TABLE 10—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Activity	Shutdown zones (radial distance in m, area in km ²)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
In-Water Construction Activities: Heavy machinery work (other than pile driving)	10 (0.00015)	10 (0.00015)	10 (0.00015)	10 (0.00015)	10 (0.00015)
Vibratory Pile Driving/Removal: 12-in H pile steel installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)
24-in sheet pile installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)
30-in pile installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)

* **Note:** km² were divided by two to account for land.

Non-Authorized Take Prohibited

If a species enters or approaches the Level B harassment zone and that species is either not authorized for take or its authorized takes are met, pile driving and removal activities must shut down immediately using delay and shutdown procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed for pinnipeds and small cetaceans and 30 minutes for large whales.

Based on our evaluation of the USACE's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which

take is anticipated (e.g., presence, abundance, distribution, density);

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 min or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 min. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-min period. If a marine mammal is observed within the shutdown zone, pile driving activities will not begin until the animal has left the shutdown zone or has not been observed for 15 min. If the Level B Harassment Monitoring Zone has been observed for 30 min and no marine mammals (for

which take has not been authorized) are present within the zone, work can continue even if visibility becomes impaired within the Monitoring Zone. When a marine mammal permitted for Level B harassment take has been permitted is present in the Monitoring zone, piling activities may begin and Level B harassment take will be recorded.

Monitoring Zones

The USACE will establish and observe monitoring zones for Level B harassment as presented in Table 8. The monitoring zones for this project are areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving/removal). These zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the Level B harassment zones enables observers to be aware of and communicate the presence of marine mammals in the project area, and thus prepare for potential shutdowns of activity. The USACE will also be gathering information to help better understand the impacts of their proposed activities on species and their behavioral responses.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all pile driving/removal activities. In addition, PSO shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven/removed. Pile driving/removal activities include the time to install, remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Monitoring will be conducted by PSOs from on land and boat. The number of PSOs will vary from one to three, depending on the type of pile driving, method of pile driving and size of pile, all of which determines the size of the harassment zones. Monitoring locations will be selected to provide an unobstructed view of all water within the shutdown zone and as much of the Level B harassment zone as possible for pile driving activities. During vibratory driving or removal of AZ-sheets or H-piles, two PSOs will be present. One PSO will be located on the shoreline adjacent to the MOF site or on the barge used for driving piles. The other PSO will be boat-based and detect animals in the water, along with monitoring the three haulout sites in the Level B harassment zone (*i.e.*, Pigeon Point, Clam Island/North Spit, and South Slough). During vibratory driving and removal of steel pipe piles (30-in), three PSOs will be present. As indicated above, one PSO will be on the shoreline or barge adjacent to the MOF site. A second PSO will be stationed near the South Slough haul out site, and the third PSO will be boat-based and make observations while actively monitoring at and between the two remaining haulout sites (*i.e.*, Pigeon Point and Clam Island).

In addition, PSOs will work in shifts lasting no longer than 4 hours with at least a 1-hour break between shifts, and will not perform duties as a PSO for more than 12 hours in a 24-hour period (to reduce PSO fatigue).

Monitoring of pile driving shall be conducted by qualified, NMFS-approved PSOs, who shall have no other assigned tasks during monitoring periods. The USACE shall adhere to the following conditions when selecting PSOs:

- Independent PSOs shall be used (*i.e.*, not construction personnel);
- At least one PSO must have prior experience working as a marine mammal observer during construction activities;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience working as a marine mammal observer during construction; and
- The USACE shall submit PSO CVs for approval by NMFS for all observers prior to monitoring. The USACE shall ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and
- Sufficient training, orientation, or experience with the construction operations to provide for personal safety during observations.

Reporting of Injured or Dead Marine Mammals

In the unanticipated event that the planned activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as serious injury, or mortality, the USACE must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources and the West Coast Region Stranding Coordinator. The report must include the following information:

- Time and date of the incident;
- Description of the incident;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with USACE to

determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USACE may not resume their activities until notified by NMFS.

In the event the USACE discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), the USACE must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS. The report must include the same information as the bullets described above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the USACE to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that the USACE discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USACE must report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

Final Report

The USACE shall submit a draft report to NMFS no later than 90 days following the end of construction activities or 60 days prior to the issuance of any subsequent IHA for the project. The USACE shall provide a final report within 30 days following resolution of NMFS' comments on the draft report. Reports shall contain, at minimum, the following:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Weather parameters in each monitoring period (*e.g.*, wind speed, percent cloud cover, visibility);
- Water conditions in each monitoring period (*e.g.*, sea state, tide state);
- For each marine mammal sighting:
 - Species, numbers, and, if possible, sex and age class of marine mammals;

- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zones, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Type of construction activity that was taking place at the time of sighting;
- Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- If shutdown was implemented, behavioral reactions noted and if they occurred before or after shutdown.
- Description of implementation of mitigation measures within each monitoring period (*e.g.*, shutdown or delay);
- Other human activity in the area within each monitoring period;
- A summary of the following:
 - Total number of individuals of each species detected within the Level B Harassment Zone, and estimated as taken if correction factor appropriate;
 - Total number of individuals of each species detected within the Level A Harassment Zone and the average amount of time that they remained in that zone; and
 - Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Harassment Zone, and estimated as taken, if appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects

on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses applies to all the species listed in Table 9, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. For harbor seals, because there is thought to be a potential resident population and potential repeat takes of individuals, we provide a supplemental analysis independent of the other species for which we propose to authorize take. Also, because both the number and nature of the estimated takes anticipated to occur are identical in years 1 and 2, the analysis below applies to each of the IHAs.

The USACE did not request, and NMFS is not proposing to authorize, take in the form of injury, serious injury, or mortality. The nature of the work precludes the likelihood of serious injury or mortality, and the mitigation is expected to ensure that no Level A harassment occurs. For all species and stocks, any take would occur within a limited, confined area of any given stock’s home range (Coos Bay). Take would be limited to Level B harassment only. Exposure to noise resulting in Level B harassment for all species is expected to be temporary and minor due to the general lack of use of Coos Bay by cetaceans and pinnipeds, as explained above. In general, cetacean and non-harbor seal pinnipeds are infrequent visitors with only occasional sightings within Coos Bay. Cetaceans such as transient killer whales may wander into Coos Bay; however, any behavioral harassment occurring during the project is highly unlikely to impact the health or fitness of any individuals, much less effect annual rates of recruitment or survival, given any exposure would be very brief with any harassment potential from the project decreasing to zero once the animals leave the bay. There are no habitat areas of particular importance for cetaceans (*e.g.*, biologically important area, critical habitat, primary foraging or calving

habitat) within Coos Bay. Further, the amount of take proposed to be authorized for any given stock is very small when compared to stock abundance, demonstrating that a very small percentage of the stock would be affected at all by the specified activity. Finally, while pile driving could occur year-round, pile driving would be intermittent (not occurring every day) and primarily limited to the MOF site, a very small portion of Coos Bay.

For harbor seals, the impact of harassment on the stock as a whole is negligible given the stocks very large size (70,151 seals). However, we are aware that it is likely a resident population of harbor seals resides year round within Coos Bay. While this has not been scientifically investigated through research strategies such as tagging/mark-recapture techniques, anecdotal evidence suggests some seals call Coos Bay home year-round, as suggested through AECOM’s winter surveys. The exact home range of this potential resident population is unknown but harbor seals, in general, tend to have limited home range sizes. Therefore, we can presume that some harbor seals will be repeatedly taken. Repeated, sequential exposure to pile driving noise over a longer duration could result in more severe impacts to individuals that could affect a population; however, the limited number of non-consecutive pile driving days for this project means that these types of impacts are not anticipated. Further, these animals are already exposed, and likely somewhat habituated, to industrial noises such as USACE maintenance dredging, commercial shipping and fishing vessel traffic (Coos Bay contains a major port), and coastal development.

In summary, although this potential small resident population is likely to be taken repeatedly, the impacts of that take are negligible to the stock because the number of repeated days of exposure is small (14 or fewer) and non-consecutive, the affected individuals represent a very small subset of the stock that is already exposed to regular higher levels of anthropogenic stressors, injurious noise levels are not proposed for authorization, and the pile driving/removal would not take place during the pupping season and during a time in which harbor seal density is greatest.

The following factors primarily support our preliminary determination that the impacts resulting from each of these two years of activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment is anticipated or authorized;
- The number and intensity of anticipated takes by Level B harassment is relatively low for all stocks;
- No biologically important areas have been identified for the effected species within Coos Bay;
- For all species, including the Oregon/Washington Coastal stock of harbor seals, Coos Bay is a very small part of their range; and
- No pile driving would occur during the harbor seal pupping season; therefore, no impacts to pups from this activity is likely to occur.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from each of the two years of proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The take of seven marine mammal stocks proposed for authorization comprises no more than 2.3 percent of any stock abundance.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, for each proposed IHA, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or

species implicated by this action. Therefore, for both proposed IHAs, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed marine mammal species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorizations

As a result of these preliminary determinations, NMFS proposes to issue two IHAs to USACE for pile driving and removal activities associated with the North Jetty maintenance and repairs project in Coos Bay, Oregon over the course of two non-consecutive years, beginning September 2020 through June 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHAs for the proposed pile driving and removal activities associated with the USACE's North Jetty maintenance and repairs project in Coos Bay, Oregon. We also request at this time comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: October 17, 2019.

Donna S. Wieting,

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

[FR Doc. 2019-23081 Filed 10-22-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2019-0012]

Updated Legal Framework for Patent Electronic System

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) published on its website an updated legal framework for its Patent Electronic System. The updated legal framework provides guidance on the background statutes, regulations and policies that support the USPTO's Patent Electronic System. The Patent Electronic System currently comprises EFS-Web, which is the USPTO's web-based patent application and document submission system; and the Patent Application Information Retrieval (PAIR) system, which is the USPTO's web-based means for electronically viewing the status of, and documents filed in or associated with, patent applications and proceedings. The updated legal framework also discusses the two-step authentication method now in place for accessing the Patent Electronic System. The updated legal framework serves as a reference for applicants, parties in reexamination proceedings, attorneys, and agents.

DATES: *Applicability Date:* October 23, 2019.

FOR FURTHER INFORMATION CONTACT:

Inquiries regarding the Patent Electronic System and other USPTO information technology (IT) systems may be directed to the Patent Electronic Business Center (Patent EBC), by telephone: (866) 217-9197 (toll-free) and (571) 272-4100, or by email: ebc@uspto.gov.

Inquiries regarding IT policy for U.S. national patent applications may be directed to Mark Polutta, Senior Legal Advisor (telephone (571) 272-7709; email at mark.polutta@uspto.gov), or Gena Jones, Senior Legal Advisor (telephone (571) 272-7727; email at eugenia.jones@uspto.gov), both with the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Inquiries regarding IT policy for international applications (PCT) may be directed to Tamara Graysay, Special Program Examiner (telephone (571) 272-6728; email at tamara.graysay@uspto.gov), and inquiries regarding IT policy for international design applications may be directed to Boris Milef, Senior Legal Examiner (telephone (571) 272-3288; email at boris.milef@uspto.gov), both with the Office of International Patent Legal Administration, Office of International Patent Cooperation.

SUPPLEMENTARY INFORMATION: On October 23, 2019, the USPTO published on its website an updated legal framework for its Patent Electronic System. The updated legal framework is

available at <https://www.uspto.gov/sites/default/files/documents/2019LegalFrameworkPES.pdf>. The updated legal framework supersedes all prior versions of the legal framework and Manual of Patent Examining Procedure (MPEP) section 502.05, Ninth Edition, Rev. 08.2017 (January 2018). The following is a brief summary of the major differences introduced by the updated legal framework:

1. Section B has been revised to further clarify that third-party papers are generally prohibited from being filed via EFS-Web unless specifically authorized.

2. Section D has been revised to clarify that providing an incorrect application number and confirmation number when filing a follow-on document will result in the follow-on document being entered in the wrong application. This may result in either the unintentional abandonment of the intended application for failure to reply to an Office action (or notice) or a reduction in patent term adjustment for failure to take reasonable steps to conclude processing or examination of an application. This may result in applicant having to file a petition to revive an unintentionally abandoned application.

3. Section E has been rewritten to discuss the two-step authentication method now being used to log into EFS-Web and Private PAIR.¹ The two-step authentication method replaced the prior use of Public Key Infrastructure (PKI) certificates to access the Patent Electronic System. PKI certificates were discontinued on July 2, 2019.

Dated: October 18, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019-23139 Filed 10-22-19; 8:45 am]

BILLING CODE 3510-16-P

¹ PAIR includes both Public PAIR and Private PAIR. Public PAIR provides access to all issued patents and published patent applications. Private PAIR allows registered users to access pending application information in addition to what is also available in Public PAIR. Two-step authentication is required for Private PAIR but not for Public PAIR.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 15006-000]

Owyhee Energy Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 17, 2019.

On September 4, 2019, Owyhee Energy Storage, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Owyhee Pumped Storage Project (Owyhee Project or project) to be located on Lake Owyhee, near Adrian, Malheur County, Oregon. 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 project would consist of the following: (1) A new 105-foot-high, 1,260-foot-long zoned earth and rockfill or concrete-face rockfill dam forming a lined upper reservoir with a surface area of 85 acres and a storage capacity of 3,410 acre-feet at a maximum surface elevation of 4,330 feet mean sea level (msl); (2) an existing 470-foot-high, 833-foot-long concrete arch dam forming the existing Lake Owyhee (lower reservoir) with a surface area of 13,900 acres and a storage capacity of 1,120,000 acre-feet at a maximum surface elevation of 2,650 feet msl; (3) a new 14,100-foot-long conduit connecting the upper and lower reservoirs consisting of a 2,200-foot-long, 17-foot-diameter concrete-lined low-pressure tunnel, a 7,100-foot-long, 17-foot-diameter concrete and steel lined pressure shaft, and a 4,800-foot-long, 20-foot-diameter concrete-lined tailrace; (4) a new 80-foot-long, 280-foot-wide, 120-foot-high underground powerhouse containing three reversible pump-turbine units rated at 200 megawatts (MW) each for a total capacity of 600 MW; (5) either 2.6 or 8 miles of double circuit 230-kilovolt transmission line interconnecting with either the Midpoint-Hemingway-Summer Line or the Boardman-Hemingway line, depending on the design of infrastructure; and (6) appurtenant facilities. The estimated annual generation of the Owyhee Project would be 946,080 megawatt-hours.

Applicant Contact: Mr. Luigi Resta, Owyhee Energy Storage, LLC, 201 S. Main St., Ste. 2000, Salt Lake City, Utah 84111; phone: (415) 602-2569.

FERC Contact: John Matkowski; phone: (202) 502-8576.

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 <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-15006-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-15006) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 17, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-23098 Filed 10-22-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20-1-000]

Commission Information Collection Activities (Ferc-549); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork

Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-549 (NGPA Title III Transaction and NGA Blanket Certificate Transactions).

DATES: Comments on the collection of information are due December 23, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC20-1-000) by either of the following methods:

- *eFiling at Commission's Website:*

<http://www.ferc.gov/docs-filing/efiling.asp>.

- *Mail/Hand Delivery/Courier:*

Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-8663, and fax at (202) 273-0873.

SUPPLEMENTARY INFORMATION:

Title: NGPA Title III Transactions and NGA Blanket Certificate Transactions.

OMB Control No.: 1902-0086.

Type of Request: Three-year extension of the FERC-549 information collection requirements with no changes to the current reporting requirements.

Abstract: FERC-549 is required to implement the statutory provisions governed by Sections 311 and 312 of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3371-3372) and Section 7 of the Natural Gas Act (NGA) (15 U.S.C. 717f). The reporting requirements for implementing these provisions are contained in 18 CFR part 284.

Transportation for Intrastate Pipelines

In 18 CFR 284.102(e), the Commission requires interstate pipelines to obtain proper certification in order to ship natural gas on behalf of intrastate pipelines and local distribution companies (LDC). This certification consists of a letter from the intrastate pipeline or LDC authorizing the interstate pipeline to ship gas on its behalf. In addition, interstate pipelines

must obtain from its shippers certifications including sufficient information to verify that their services qualify under this section.

18 CFR 284.123(b) provides that intrastate gas pipeline companies file for Commission approval of rates for services performed in the interstate transportation of gas. An intrastate gas pipeline company may elect to use rates contained in one of its then effective transportation rate schedules on file with an appropriate state regulatory agency for intrastate service comparable to the interstate service or file proposed rates and supporting information showing the rates are cost based and are fair and equitable. It is the Commission policy that each pipeline must file at least every five years to ensure its rates are fair and equitable. Depending on the business process used, either 60 or 150 days after the application is filed, the rate is deemed to be fair and equitable unless the Commission either extends the time for action, institutes a proceeding or issues an order providing for rates it deems to be fair and equitable.

18 CFR 284.123(e) requires that within 30 days of commencement of new service any intrastate pipeline engaging in the transportation of gas in interstate commerce must file a statement that includes the interstate rates and a description of how the pipeline will engage in the transportation services, including operating conditions. If an intrastate gas pipeline company changes its operations or rates it must amend the statement on file with the Commission. Such amendment is to be filed not later than 30 days after commencement of the change in operations or change in rate election.

Market-Based Rates for Storage

In 2006, the Commission amended its regulations to establish criteria for obtaining market-based rates for storage services offered under 18 CFR 284.501-505. First, the Commission modified its market-power analysis to better reflect the competitive alternatives to storage. Second, pursuant to the EPAct 2005, the Commission promulgated rules to implement section 4(f) of the Natural Gas Act, to permit underground natural gas storage service providers that are unable to show that they lack market power to negotiate market-based rates in circumstances where market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services, and where customers are adequately protected. The revisions were intended to facilitate the

development of new natural gas storage capacity while protecting customers.

Code of Conduct

The Commission's regulations at 18 CFR 284.288 and 284.403 provide that applicable sellers of natural gas adhere to a code of conduct when making gas sales in order to protect the integrity of the market. As part of this code, the Commission imposes a record retention requirement on applicable sellers to "retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices." FERC uses these records to monitor the

jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (regulations adopted in Order No. 670, implementing the Energy Policy Act of 2005 (EPA 2005) anti-manipulation provisions) and the generally applicable five-year statute of limitations where the

Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission is unable to perform its regulatory functions and to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders.

Type of Respondents: Jurisdictional interstate and intrastate natural gas pipelines.

*Estimate of Annual Burden:*¹ The Commission estimates the annual burden and cost for the information collection as follows.

FERC-549—NGPA TITLE III TRANSACTIONS AND NGA BLANKET CERTIFICATE TRANSACTION²

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost (\$) per response	Total annual burden hours & total annual cost (\$) (rounded)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Transportation by Pipelines ³	53	2	106	50 hrs.; \$5,331	5,300 hrs.; \$565,086 ...	10,662
Market-Based Rates ⁴ ..	1	1	1	350 hrs.; \$37,317	350 hrs.; \$37,317	37,317
Total			107		5,650 hrs.; \$602,403.	

RECORD RETENTION REQUIREMENTS FOR HOLDERS OF BLANKET MARKETING OR UNBUNDLED SALES CERTIFICATES

Labor burden and cost	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost (\$) per response	Total annual burden hours & total annual cost (\$) (rounded)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Code of Conduct (record-keeping) ^{5,6}	319	1	319	1 hr.; \$33.39	319 hrs.; \$10,651	33.39
Total			319		319; \$10,651.	

STORAGE COST FOR RECORD RETENTION REQUIREMENTS FOR HOLDERS OF BLANKET MARKETING OR UNBUNDLED SALES CERTIFICATES

	Total number of responses	Cost (\$) per respondent	Total annual burden hours & total annual cost (\$)
	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Paper Storage	319	80.75	25,759.25
Electronic Storage	319	3.18	1,014.42
Total Storage Burden	319		26,773.67

¹ The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or

provide information to or for a Federal agency. For further explanation of what is included in the

information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

*Storage Cost:*⁷ In addition to the burden and cost for labor, the table above reflects an additional cost for record retention and storage:

- Paper storage costs (using an estimate of 12.5 cubic feet × \$6.46 per cubic foot): \$80.75 per respondent annually. Total annual paper storage cost to industry (\$80.75 × 319 respondents): \$25,759.25. This estimate assumes that a respondent stores 12.5 cubic feet of paper. We expect that this estimate should trend downward over time as more companies move away from paper storage and rely more heavily on electronic storage.

- Electronic storage costs: \$3.18 per respondent annually. Total annual electronic storage cost to industry (\$3.18 × 319 respondents): \$1,014.42. This calculation estimates storage of approximately 200 MB per year cost of \$3.18. We expect that this estimate should trend downward over time as the cost of electronic storage technology, including cloud storage, continues to decrease. For example, external hard drives of approximately 500GB are available for approximately \$50. In addition, cloud storage plans from multiple providers for 1TB of storage (with a reasonable amount of requests and data transfers) are available for less than \$35 per month.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility

² The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * \$106.62 per Hour = Average Cost per Response. The hourly average of \$101.69 (for wages and benefits) assumes equal time is spent by an economist and lawyer. The average hourly cost (for wages plus benefits) is: \$70.38 for economists (occupation code 19-3011) and \$142.86 for lawyers (occupation code 23-0000). (The figures are taken from the Bureau of Labor Statistics, May 2018 figures at http://www.bls.gov/oes/current/naics2_22.htm).

³ The entities affected by 18 CFR 284.123(b) and (e) are intrastate pipelines. Interstate and intrastate pipelines are affected by 18 CFR 284.102(e). Since 2016, the Commission has not received any filings under 18 CFR 284.102(e).

⁴ 18 CFR 284.501–505.

⁵ 18 CFR 284.288 and 284.403.

⁶ For the Code of Conduct record-keeping, the \$33.39 hourly cost figure comes from the average cost (wages plus benefits) of a file clerk (Occupation Code 43-4071) as posted on the BLS website (http://www.bls.gov/oes/current/naics2_22.htm).

⁷ Each of the 319 entities is assumed to have both paper and electronic record retention. Internal analysis assumes 50% paper storage and 50% electronic storage.

and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 17, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-23095 Filed 10-22-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19-2643-002.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Amendment: DEF OATT Attachment G Amendment (FRCC Dissolution) to be effective 9/1/2019.

Filed Date: 10/17/19.

Accession Number: 20191017-5095.

Comments Due: 5 p.m. ET 11/7/19.

Docket Numbers: ER19-2828-002.

Applicants: AEP Ohio Transmission Company, Inc., Ohio Power Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: AEP submits an amendment to ILDSA, Service Agreement No. 1336 re: Attachment 1 to be effective 12/31/9998.

Filed Date: 10/17/19.

Accession Number: 20191017-5067.

Comments Due: 5 p.m. ET 11/7/19.

Docket Numbers: ER20-129-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-10-16_Resources with long-term planned outages filing to be effective 2/1/2020.

Filed Date: 10/16/19.

Accession Number: 20191016-5194.

Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: ER20-130-000.

Applicants: Buffalo Ridge II LLC.

Description: Tariff Cancellation: Notice of Cancellation of Reactive Power Rate Schedule to be effective 12/16/2019.

Filed Date: 10/16/19.

Accession Number: 20191016-5195.

Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: ER20-131-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-10-17_SA 3362 ATC-Quilt Block

Wind Farm II GIA (J807) to be effective 10/3/2019.

Filed Date: 10/17/19.

Accession Number: 20191017-5072.

Comments Due: 5 p.m. ET 11/7/19.

Docket Numbers: ER20-132-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-10-17_SA 3363 ATC-Marathon Wind Farm GIA (J821) to be effective 10/3/2019.

Filed Date: 10/17/19.

Accession Number: 20191017-5074.

Comments Due: 5 p.m. ET 11/7/19.

Docket Numbers: ER20-133-000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: BPA Construct Agmt for Green Springs BAA Move to be effective 12/17/2019.

Filed Date: 10/17/19.

Accession Number: 20191017-5133.

Comments Due: 5 p.m. ET 11/7/19.

Docket Numbers: ER20-134-000.

Applicants: Cardinal Point LLC.

Description: Baseline eTariff Filing: Cardinal Point LLC's Market-Based Rate Tariff to be effective 12/17/2019.

Filed Date: 10/17/19.

Accession Number: 20191017-5135.

Comments Due: 5 p.m. ET 11/7/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 17, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-23093 Filed 10-22-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. OR20–1–000]****ONEOK Arbuckle II Pipeline, L.L.C.;
Notice of Petition for Declaratory Order**

Take notice that on October 15, 2019, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), ONEOK Arbuckle II Pipeline, L.L.C. ("Arbuckle II"), filed a petition for declaratory order seeking approval of its overall tariff and service structure, proration policy, expansion rights, and open-season process for the approximately 530-miles long Arbuckle II pipeline system, which will transport demethanized mix from the STACK and SCOOP areas of Oklahoma to the Mont Belvieu, Texas area, with expansion capability in the future, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 14, 2019.

Dated: October 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23096 Filed 10–22–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1041–002.

Applicants: B–R Pipeline Company.

Description: Compliance filing Errata to Order No. 587–Y Second Compliance Filing to be effective 8/1/2019.

Filed Date: 10/16/19.

Accession Number: 20191016–5057.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP19–1523–002.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Compliance filing Compliance with RP19–1523 Rate Case to be effective 3/1/2020.

Filed Date: 10/16/19.

Accession Number: 20191016–5031.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–61–001.

Applicants: Rockies Express Pipeline LLC.

Description: Tariff Amendment: Supplement to RP20–61 to be effective 12/1/2019.

Filed Date: 10/16/19.

Accession Number: 20191016–5027.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–66–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing 10/16/19 to be effective 12/1/2019.

Filed Date: 10/16/19.

Accession Number: 20191016–5026.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–67–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: GT&C Section 37—Lateral Interconnect Flexibility to be effective 11/15/2019.

Filed Date: 10/16/19.

Accession Number: 20191016–5028.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–68–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—Piedmont 910473 eff 11–1–19 to be effective 11/1/2019.

Filed Date: 10/16/19.

Accession Number: 20191016–5045.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–69–000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing TETLP OFO November 2019 Penalty Disbursement Report to be effective N/A.

Filed Date: 10/16/19.

Accession Number: 20191016–5064.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–70–000.

Applicants: Spire STL Pipeline LLC.

Description: § 4(d) Rate Filing: Spire STL Non-Conforming and NRA Filing to be effective 11/15/2019.

Filed Date: 10/16/19.

Accession Number: 20191016–5092.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–71–000.

Applicants: Eastern Shore Natural Gas Company.

Description: § 4(d) Rate Filing: Revise Gas Quality Specs for RNG to be effective 11/1/2019.

Filed Date: 10/16/19.

Accession Number: 20191016–5196.

Comments Due: 5 p.m. ET 10/28/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23094 Filed 10–22–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2459–263]

Lake Lynn Generation, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Application:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2459–263.

c. *Date filed:* August 29, 2019.

d. *Submitted by:* Lake Lynn Generation, LLC (Lake Lynn).

e. *Name of Project:* Lake Lynn Hydroelectric Project.

f. *Location:* Located on the Cheat River near the City of Morgantown, West Virginia, in Monongalia County, West Virginia and Fayette County, Pennsylvania. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mrs. Jody Smet, Lake Lynn Generation, LLC, 2 Bethesda Metro Center, Suite 1330, Bethesda, MD 20814; Telephone: (804) 739-0654; Email: jsmet@cubehydro.com.

i. *FERC Contact:* Andy Bernick at (202) 502-8660; or email at andrew.bernick@ferc.gov.

j. Lake Lynn filed its request to use the Traditional Licensing Process on August 29, 2019. Lake Lynn provided public notice of its request on August 29, 2019. In a letter dated October 17, 2019, the Director of the Division of Hydropower Licensing approved Lake Lynn's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the West Virginia State Historic Preservation Officer and the Pennsylvania State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lake Lynn as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section

106 of the National Historic Preservation Act.

m. Lake Lynn filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCONlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2459. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2022.

p. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019-23097 Filed 10-22-19; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10001-33-Region 10]

Proposed Reissuance of NPDES General Permit for Concentrated Animal Feeding Operations Located in Idaho (IDG010000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The Director of the Water Division, EPA Region 10, proposes to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) in the State of Idaho (permit). As proposed, all animal

feeding operations (AFOs) that meet the regulatory definition of a CAFO and are subject to 40 CFR part 412 are eligible for coverage under the permit, excluding facilities in Indian Country. Eligible CAFOs may apply for authorization under the terms and conditions of the permit by submitting a Notice of Intent (NOI) and nutrient management plan (NMP). Upon receipt, EPA will review the NOI and NMP to ensure that all permit requirements are met. If EPA makes a preliminary determination that the NOI is complete, the NOI, NMP, and draft terms of the NMP to be incorporated into the permit will be made available for a thirty (30) day public review and comment period. If determined appropriate by EPA, CAFOs will be granted coverage under the permit upon written notification by EPA. EPA is accepting public comments on the draft permit.

DATES: Comments must be received by December 9, 2019.

ADDRESSES: You may send comments by any of the following methods:

Comments on the draft General Permit should be sent to the Director of the Water Division; USEPA Region 10; 1200 Sixth Avenue, Suite 155, WD 19-C04; Seattle, WA 98101-3188 and may also be submitted by fax to (206) 553-0165 or electronically to peak.nicholas@epa.gov.

FOR FURTHER INFORMATION CONTACT: Permit documents may be found on the EPA Region 10 website at: <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho> Copies of the draft general permit and fact sheet are also available upon request. Requests may be made to Audrey Washington at (206) 553-0523 or to Nick Peak at (208) 378-5765. Requests may also be electronically mailed to: washington.audrey@epa.gov, or peak.nicholas@epa.gov

SUPPLEMENTARY INFORMATION: Please see the draft general permit and Fact Sheet.

II. Other Legal Requirements

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866, *Regulatory Planning and Review*, and 13563, *Improving Regulation and Regulatory Review*, and was determined to be not significant. Compliance with Endangered Species Act, Essential Fish Habitat, Paperwork Reduction Act, and other requirements are discussed in the Fact Sheet to the proposed permit.

Dated: September 30, 2019.

Daniel D. Opalski,

Director, Water Division, Region 10.

[FR Doc. 2019-23128 Filed 10-22-19; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Amended Notice of Open Meeting the Advisory Committee of the Export-Import Bank of the United States (EXIM)

On October 11, 2019, the Export-Import Bank posted notice of an upcoming Advisory Committee meeting. This amendment announces the Sub-Saharan Africa Advisory Committee of the Export-Import Bank will participate in this meeting.

Time and Date: Wednesday, October 30, 2019 from 11:00 a.m. until 2:30 p.m. (EDT)

Place: 811 Vermont Avenue NW, Room 1126, Washington, DC 20571.

Agenda: Discussion of EXIM programs and comments for inclusion in the report on competitiveness of the Export-Import Bank of the United States to Congress. The Sub-Saharan Africa Advisory Committee of the Export-Import Bank will participate in this meeting.

Public Participation: The meeting will be open to public participation, and time will be allotted for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, you may contact India Walker at external@exim.gov to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please email India Walker at external@exim.gov no later than 5:00 p.m. EDT on Monday, October 28, 2019.

Members of the Press: For members of the Press planning to attend the meeting, a photo ID must be presented at the guard's desk as part of the clearance process into the building please email external@exim.gov to be placed on an attendee list.

Further Information: For further information, contact the External Engagement team, at external@exim.gov.

Joyce Stone,

Program Specialist, Office of the General Counsel.

[FR Doc. 2019-23125 Filed 10-22-19; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Renewal of Federal Accounting Standards Advisory Board Charter

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Comptroller General of the United States (the sponsors) have agreed to continue an advisory committee to consider and recommend accounting standards and principles for the federal government. Copies can be obtained by contacting FASAB at (202) 512-7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512-7350.

Authority: Federal Advisory Committee Act (5 U.S.C. App.), 31 U.S.C. 3511(d).

Dated: October 18, 2019.

Monica R. Valentine,

Executive Director.

[FR Doc. 2019-23135 Filed 10-22-19; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)-523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 012276-001.

Agreement Name: Hapag-Lloyd/Zim Mediterranean Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises Article 4 to add Canada, the Dominican Republic and Colombia to the geographic scope of the Agreement. It also revises Article 5.1(b) with respect to the use of space, and revises Article 5.3 based on recent changes to the Shipping Act.

Proposed Effective Date: 12/1/2019.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/135>.

Dated: October 18, 2019.

Rachel E. Dickon,

Secretary.

[FR Doc. 2019-23126 Filed 10-22-19; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551-0001, not later than November 25, 2019.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Mary Hyden Hunter, Canyon Lake, Texas and David Perry Mann, II, Denver, Colorado;* as a group acting in concert to acquire voting shares of RAM Security Holdings GP, Inc., Waco, Texas, and thereby indirectly acquire voting shares of RAM Security Holdings, Ltd. and Security Bancshares, Inc., both of Waco, Texas, and Citizens State Bank, Woodville, Texas.

Board of Governors of the Federal Reserve System, October 18, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019-23109 Filed 10-22-19; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in section 3 of the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551-0001, not later than November 25, 2019.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Community First Bancshares, MHC, and Community First Bancshares, Inc., both of Covington, Georgia*; a mutual savings and loan holding company and a mid-tier stock savings and loan holding company, respectively, to

become bank holding companies by acquiring ABB Financial Group, Inc., and thereby indirectly acquire Affinity Bank, both of Atlanta, Georgia, under section 3 of the BHC Act. In connection with this application, Community First Bancshares, MHC and Community First Bancshares, Inc. to retain ownership of Newton Federal Bank, Covington, Georgia, a savings association, for the time that they are bank holding companies and thereby engage in operating a savings association pursuant to section 4(c)(8) of the BHC Act. Finally, Community First Bancshares, MHC, and Community First Bancshares, Inc. to become a mutual savings and loan holding company and a mid-tier savings and loan holding company, respectively, pursuant to section 10(e) of the Home Owners' Loan Act, following the merger of Affinity Bank with and into Newton Federal Bank.

Board of Governors of the Federal Reserve System, October 18, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019-23110 Filed 10-22-19; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member Meeting

77 K Street NE, 10th Floor, Washington, DC 20002

October 28, 2019, 8:30 a.m., In-Person

Open Session

1. Approval of the September 16, 2019 Board Meeting Minutes
2. Investment Benchmark Update
3. Monthly Reports
 - (a) Participant Activity Report
 - (b) Legislative Report
4. Quarterly Reports
 - (c) Investment Policy
 - (d) Budget Review
 - (e) Audit Status
5. Office of Enterprise Planning Annual Report
6. Update on Implementation of Additional Withdrawal Options

Closed Session

Information covered under 5 U.S.C. 552b (c)(6) and (c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942-1640.

Dated: October 18, 2019.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2019-23108 Filed 10-22-19; 8:45 am]

BILLING CODE 6760-01-P

GENERAL SERVICES ADMINISTRATION

[Notice-MV-2019-01; Docket No. 2019-0002; Sequence No. 28]

Notice of Announcement of Industry Engagement Event

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: GSA is hosting an industry engagement event to highlight how section 889 of Title VII of the NDAA for FY 2019 (hereinafter Sec. 889) will affect GSA's business and supply chain. Toward that end, GSA invites industry partners and associations to join in a broad based dialogue.

DATES: This industry engagement event will be held on Wednesday, November 6, 2019, from 9:00 a.m. to 11:00 a.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held in the Department of Interior (DOI) Yates Auditorium at 1849 C St. NW, Washington, DC 20240. There is no virtual attendance for this meeting. Information about the industry event can be found under the heading

SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Swaby, GSA Procurement Ombudsman, 202-208-0291 or Mr. Michael Thompson, Senior Policy Advisor, 202-208-1568.

SUPPLEMENTARY INFORMATION:

Background

The National Defense Authorization Act (NDAA) for Fiscal Year 2019, Title VII, Section 889, Prohibition on certain telecommunications and video surveillance services or equipment, identifies sources of "covered telecommunications equipment or services" and, in paragraph (a)(1)(B), states that, as of August 13, 2020, "The head of an executive agency may not enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system."

GSA is seeking to build industry awareness of this statutory language and hear different perspectives on the business impact on GSA and its supply chain. This meeting is NOT part of the FAR Rule-Making process. Rather it is specifically focused on GSA contractors and on the GSA mission.

GSA invites industry representatives, including representatives from the

leasing, construction, IT, and professional services community, to share their thoughts. Attendees will also have the opportunity to share their thoughts.

GSA is particularly interested in the following questions:

- If (a)(1)(B) of Section 889 prohibits use by an entity of covered telecommunications equipment or services at any tier, including use that is unrelated to the performance of any GSA contract:
 - How would this impact your business, and therefore GSA's mission?
 - What are some of the challenges involved in identifying covered equipment?
 - How would your industry likely be impacted and how will this affect GSA's competition?
 - Would this impact your plans to do future business with the GSA?
 - What is your anticipated cost for compliance with this prohibition?
 - How long would it take to remove covered equipment from all levels of your supply chain on GSA contracts?
 - Are there specific use cases in the supply chain where it would not be feasible to remove the covered equipment?
 - How does GSA make industry more aware of the prohibition?

Registration

To ensure adequate room accommodations, individuals wishing to attend the public meeting must register by October 28, 2019. To register, please visit the GSA Interact web page at <https://interact.gsa.gov/GSA889Industryengagement> and utilize the registration link provided. It is free to attend this public meeting. Sign up early as space is limited, and registration will close once the capacity for the DOI Auditorium has been reached. Members of the press must also RSVP to press@gsa.gov by October 28, 2019.

GSA will share the agenda and list of presenters prior to the meeting on the GSA Interact web page at <https://interact.gsa.gov/GSA889Industryengagement>. Meeting attendees will also have the opportunity to speak during the engagement event.

Meeting Attendance

Registration check-in will begin at 8 a.m., EST, on November 6, 2019, with the meeting starting promptly at 9 a.m. EST. Information on getting to the DOI building can be found at <https://www.doi.gov/interiormuseum/Plan-a-Visit>. Attendees must present a valid form of government-issued photo identification. There is no food or drink

allowed in the DOI Yates Auditorium. There is no parking available at DOI; however, there is public parking available nearby.

Format

GSA intends to conduct a very brief overview of the Sec. 889 prohibition and the threat it is protecting against. This presentation will be followed by a discussion by a panel comprised of industry experts and a GSA moderator addressing, among other things, the questions in Section A above. Attendees will be provided an opportunity to engage in discussions at the end of the panel discussion. A copy of the agenda will be posted prior to the date of the meeting on the GSA Interact web page at <https://interact.gsa.gov/GSA889Industryengagement>.

Special Accommodations

The industry engagement event is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to zachary.marks@gsa.gov by Friday, October 25, 2019. Please see the GSA Interact web page at <https://interact.gsa.gov/GSA889Industryengagement> for additional information on this industry engagement event content and for a posting of the agenda (to be made available a few days prior to the event).

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019-23127 Filed 10-22-19; 8:45 am]

BILLING CODE 6820-61-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10463]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 23, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More

detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10463 Cooperative Agreement To Support Navigators in Federally-Facilitated Exchanges

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request*: Revision of a currently approved collection; *Title of Information Collection*: Cooperative Agreement to Support Navigators in Federally-facilitated Exchanges; *Use*: Section 1311(i) of the PPACA requires Exchanges to establish a Navigator grant program under which it awards grants to eligible individuals and entities (as described in Section 1311(i)(2) of the PPACA and 45 CFR 155.210(a) and (c)) applying to serve consumers in States with a FFE. Navigators assist consumers by providing education about and facilitating selection of qualified health plans (QHPs) within the Exchanges, as well as other required duties. Entities and individuals cannot serve as federally certified Navigators and carry out the required duties without receiving federal cooperative agreement funding.

As a condition of award, Navigator awardees must agree to cooperate with any Federal evaluation of the program and must provide required weekly, monthly, quarterly, annual, and final (at the end of the cooperative agreement period) reports in a form prescribed by CMS, as well as any additional reports as required. *Form Number*: CMS-10463 (OMB control number: 0938-1215); *Frequency*: Annually, Monthly, Quarterly, Weekly; *Affected Public*: Private sector; *Number of Respondents*: 50; *Total Annual Responses*: 50; *Total*

Annual Hours: 20,850. (For questions regarding this collection contact Gian Johnson at 301-492-4323.)

Dated: October 17, 2019.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019-23075 Filed 10-22-19; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Chronic Disease Self-Management Education Program; OMB# 0985-0036

AGENCY: Administration for Community Living (ACL), HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to ACL's Chronic Disease Self-Management Education grant program (Proposed Extension with Changes of a Currently Approved Collection [ICR Rev]).

DATES: Submit written comments on the collection of information by November 22, 2019.

ADDRESSES: Submit written comments on the collection of information by:

(a) Email to: OIRA_submission@omb.eop.gov, Attn: OMB Desk Officer for ACL;

(b) Fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT:

Kristie Kulinski (kristie.kulinski@acl.hhs.gov) or (202) 795-7379.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The “Empowering Older Adults and Adults with Disabilities through Chronic

Disease Self-Management Education (CDSME) Programs” cooperative agreement program has been financed through the Prevention and Public Health Fund (PPHF). The statutory authority for cooperative agreements under the most recent program announcement (FY 2019) is contained in the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Public Law 115-245; Public Health Service Act, 42 U.S.C. 300u-2 (Community Programs) and 300u-3 (Information Programs); and the Patient Protection and Affordable Care Act, 42 U.S.C. 300u-11 (Prevention and Public Health Fund). The Empowering Older Adults and Adults with Disabilities through CDSME Programs initiative supports a national resource center and awards competitive grants to deliver and sustain evidence-based CDSME interventions.

OMB approval of the existing set of data collection tools expires on October 31, 2019 (OMB Control Number 0985-0036). This data collection continues to be necessary for monitoring program operations and outcomes. ACL proposes to use the following tools: (1) Semi-annual program reports to monitor grantee progress; and (2) a set of tools used to collect information at each program completed by the program facilitators (Program Information Cover Sheet and Attendance Log) and a Participant Information Survey completed by each participant to document their demographic and health characteristics. ACL is not requesting renewal of Host/Implementation Organization Information Form. ACL intends to continue using an online data entry system for the program and participant survey data. In addition to non-substantive formatting edits, minor changes are being proposed to two of the four currently approved tools, as indicated below. All changes proposed are based on feedback from a focus group that included a sub-set of current grantees, as well as consultation with subject matter experts.

Comments in Response to the 60-Day Federal Register Notice

A notice was published in the **Federal Register** on July 9, 2019 (Vol. 84, Number 131; pp. 32746-32747). Thirteen emails were received with comments. Based on the comments, some minor modifications were made to the proposed survey instruments.

In addition to the public comments, feedback on the current forms was sought from the following:

• ACL Performance and Evaluation subject matter experts
 • National Chronic Disease Self-Management Education Resource Center

• One grantee focus group (fewer than nine participants)

Based on this collective feedback, the following modifications to the currently approved forms are being proposed:

PARTICIPANT INFORMATION SURVEY

Topic/issue	Comment	ACL response
Participant ID	More than one respondent indicated that the unique identifier is cumbersome and presents an opportunity for mistakes due to its length. Also a comment that the change may make it difficult to evaluate at the individual level across years.	Compared to previous versions, the Participant ID is now to be completed by onsite staff and/or program leaders. The National CDSME Resource Center will be providing training and technical assistance on the best strategies for documenting the Participant ID. The change is primarily driven by increased attention to the application of the highest standards for safeguarding data collected by our grantees. After extensive review of evidence-based program data collection processes, ACL and the Resource Center are working to elevate standards to ensure the privacy and security of all data collected from participants. As such, the use of the existing Participant ID, which includes components of the participants' names and year of birth, could potentially provide clues into the person's identity, especially if coupled with other demographic data.
Provider Referral	Specific to Question #1 (Did your health care provider suggest that you take this program?), replace the word "take" with "attend."	ACL will incorporate this suggested revision.
Sex/Gender	More than one respondent suggested the incorporation of a non-binary response option, in addition to male/female.	As a federal agency, ACL references the American Community Survey (implemented by the Census Bureau) as a benchmark for demographic questions. To remain consistent with the U.S. Census/American Community Survey, ACL will continue to use male/female response options.
	Suggestion to delineate either sex or gender (question currently reads, "Are you . . . male/female?")	This wording has been used for the past 6 years without issue and preserves data collection continuity.
LGBTQ Identification	Suggestion to incorporate a question to allow individuals to self-identify their sexual orientation.	As noted previously, ACL works to align our data collection with what is collected by the U.S. Census around demographic information. Census does not currently collect information on sexual orientation.
Chronic Conditions List	Suggestion to add HIV to chronic conditions list.	Collection of HIV/AIDS data requires additional special care in the collection and sharing of this data because persons with HIV/AIDS can face discrimination. In some states, added protections require providers to request additional permission from the patient to share information related to HIV/AIDS status. HIV/AIDS has not been asked in prior iterations of this survey. Centers for Medicare & Medicaid Services (CMS) data from 2017 shows that across all beneficiaries (age 65+), HIV/AIDS accounted for .1% of cases nationally. The goal is not to capture an exhaustive list of chronic conditions; rather, the most common based the public data and the experience of current/prior grantees. This question also allows participants to select 'Other' (without an open-ended response).
Social Isolation	Multiple comments received, as detailed below: Truncate Question #16 (How often do you feel lonely or isolated from those around you?) to remove "from those around you" at end. Question #16 (and corresponding post-test Question #3) adds to the survey length and may be perceived by some as intrusive. Additionally, wording may be off-putting for participants who are expecting a positive, strengths-based experience. Specific to post-test Question #3, comment that item is not likely to show change from pre- to post-, especially given the negative direction. Suggestion to ask at post-test only and frame as "After taking this class, how much more connected to others do you feel?" or something similar.	The item stems from validated tools in the National Institutes of Health's PROMIS item bank (v2.0)—Social Isolation. The original version is written in the first person. Loneliness was added to improve literacy (reduce grade level) It is also an adaptation from the UCLA Loneliness Scale (v3, #14). "How often do you feel isolated from others?" (Never to Always), which has been extensively used for decades (Russell, 1996). It continues to be validated with older adults (Ausin et al, 2019; Domenech-Abella, et al, 2017). The item has also been used successfully by CMS in social screening efforts (Accountable Health Communities Health-Related Social Needs Screening), as well as Kaiser Permanente.

PARTICIPANT INFORMATION SURVEY—Continued

Topic/issue	Comment	ACL response
Chronic Conditions Language.	Comment that a single social isolation question may not provide useful information. Suggestion to include sub-questions specific to companionship, worry about being alone, shared interests and ideas, and participation in social clubs or religious groups. Suggestion to replace “chronic” health condition(s) with “ongoing” health condition(s).	ACL appreciates the suggestion to collect more data but has decided in the interest of balancing data collection and burden to not include additional elements on the survey. ACL appreciates that “ongoing” may be considered synonymous with “chronic”; however, we will continue to use the term chronic, as this is the vernacular generally used within the U.S. Department of Health and Human Services (<i>e.g.</i>, Centers for Disease Control and Prevention, Centers for Medicare & Medicaid Services, <i>etc.</i>).
For Whom Attending Program.	Comment that Question #12 (For whom are you attending this program?) lengthens the questionnaire without substantial benefit (purpose is unclear).	ACL agrees with this comment; we will remove the question from the survey.
Disability Status	Proposed revision to Question #15 includes three sub-parts to independently assess various facets of disability status; the current version combines all three parts into a single item. Suggestion to keep question as is (single item). A comment was received that suggested using the Behavior Risk Factor Surveillance System (BRFSS) questions to assess disability.	The six-item set of questions used in the American Community Survey (ACS) are the minimum standard for disability survey questions. Questions and answers in this set cannot be changed. The six questions define disability from a functional perspective and are collectively a meaningful measure of disability for data collection and reporting. Edits initially proposed by ACL utilize five of the six BRFSS questions specific to disability status (hearing, vision, mobility, self-care, and independent living). ACL will add the question related to cognition (Because of a physical, mental, or emotional condition, do you have difficulty concentrating, remembering, or making decisions?).
Confidence Managing Chronic Conditions.	Suggestion to revise wording in Question #17 (How confident are you that you can manage your chronic conditions?) to reference both physical and emotional concerns. Positive comment received regarding inclusion of question at post-test (Question #2) to assist with evaluating change over time.	ACL appreciates this comment and proposes revising the language to read, “How sure are you that you can manage your condition so you can do the things you need and want to do?” to be inclusive of both physical and emotional health concerns.
Health Status	Specific to post-test Question #1 (In general, would you say that your health is), comment that this question seems unnecessary unless the underlying assumption is that CDSME changes self-perceived health. Positive comment received regarding inclusion of self-rated health at post-test (Question #1) to assist with evaluating change over time.	ACL is interested in utilizing this question to assess changes in self-rated health at pre/post intervention. If changes are not detected, we will consider removal of this item during the next data collection renewal.
Satisfaction Question	Request to add satisfaction question back into the post-survey.	A satisfaction question has not been part of the required data collection elements, though some grantees choose to collect this information voluntarily.
Additional Questions	Suggestion to incorporate questions specific to: Formal referral by physician, weight, exercise, medications, and health care utilization.	ACL appreciates the suggestion to collect more data but has decided in the interest of balancing data collection and burden to not include additional elements on the survey.

PROGRAM INFORMATION COVER SHEET

Topic/issue	Comment	ACL response
Funding Source	Specific to Question #7, program facilitators may not know the funding source (determined by other program staff). Another comment was received suggesting that ACL clarify that the intent of question is to capture direct sources of funding support (vs. indirect/global support). Another comment was received that it would be helpful to have a description of funding sources.	ACL suggests that local program coordinators complete this question prior to submitting form for data entry. ACL will incorporate this revision. ACL will work with the National CDSME Resource Center to develop a brief overview of the various funding sources listed. Grantee can distribute this information to their partners.

PROGRAM INFORMATION COVER SHEET—Continued

Topic/issue	Comment	ACL response
National Resource Center and National Database Language.	Suggestion to use a term other than “chronic disease”, as there are many programs in the menu of health promotion programs.	ACL awarded a five-year cooperative agreement in 2016 that specifically designates a National Chronic Disease Self-Management Education (CDSME) Resource Center. This resource center houses the National CDSME Database. ACL may consider modifying the name of the National CDSME Resource Center if/when it is re-competed in 2021; however, such a change is not appropriate at this time.
Consent to Receive Information from National CDSME Resources Center.	A comment was received that the addition of this question seems unnecessary to have as a standard question, since it should only be asked once of each leader. A suggestion was made to ask this question at leader trainings instead.	Requesting this consent through a standard data collection form is the most direct manner ACL can use to ensure that program facilitators can opt in to receiving technical assistance communications from our National CDSME Resource Center. ACL is unable to require grantees to share information collected via facilitator trainings.

ATTENDANCE LOG

Topic/issue	Comment	ACL response
Format	Suggestion to modify format from portrait to landscape to accommodate participant signature.	Participant signatures are not required by ACL with respect to this data collection effort (and ACL does not retain the names of CDSME participants). If other partners/funders require participant signature, grantee should modify the format accordingly.
Program Name	Suggestion to add program name to form	The very top of the form has an editable field (Your Program Name) that can be customized by the grantee.
Participant Phone/Email Address.	Suggestion to collect participant phone number and email address for facilitators to use for reminder follow-up.	ACL does not collect any personally identifiable information from participants. Grantees can independently request this information from participants as needed for programmatic reminders.

The proposed data collection forms may be found on the ACL website at

<https://www.acl.gov/about-acl/public-input>.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Program facilitators (Program Information Cover Sheet, Attendance Log).	1,350	Once per program	.33	445.5
Program participants (Participant Information Survey)	13,500	1	.20	2,700
Data entry staff (Program Information Cover Sheet, Attendance Log, Participant Information Survey).	65	Once per program times 1,350 programs.	.17	229.5
Total .....	.....	.....	.....	3,375

Dated: October 16, 2019.

Mary Lazare,
Principal Deputy Administrator.

[FR Doc. 2019–23121 Filed 10–22–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 of the NIH Clinical Center.

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 CLINICAL CENTER, 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 of the NIH Clinical Center.

Date: October 28–29, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 10 Rockville Pike, Bethesda, MD 20892.

Contact Person: Ronald Neumann, MD, Deputy Scientific Director, Office of Clinical

Research, NIH–Clinical Center, 10 Center Drive, Room 1C453, Bethesda, MD 20892, 301–496–6455.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: October 17, 2019.

Ronald J. Livingston, Jr.,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23042 Filed 10–22–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Government-Owned Inventions; Availability for Licensing**

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT:

Licensing information may be obtained by emailing Michael Shmilovich, shmilovm@mail.nih.gov, the licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive, Room 4A29, MSC2479, Bethesda, MD 20892-2479; telephone: 301-402-5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION:

Technology description follows.

Resolution Enhancement for Light Sheet Microscopy Systems and Methods

Available for licensing and commercial development is a system and technique for enhancing the resolution of images acquired through light sheet microscopy by adding additional enhanced depth-of-focus optical arrangements and high numerical aperture objective lenses. The technique employs an arrangement of three objective lenses and a processor for combining captured images. The first objective lens illuminates the sample and the second and third objective lenses collect the fluorescence emissions emitted by the sample. The second objective lens focuses a first portion of the fluorescence emissions for detection by a second detection component. The third objective lens focuses a second portion of the fluorescence emissions through a diffractive or refractive optic component. A processor combines the images resulting from first and second portions of the fluorescence emissions and generates a composite image with improved axial and lateral resolution.

Potential Commercial Applications:

- High speed imaging
- Fast single cell and cellular dynamics imaging

- Super-resolution and single molecule imaging
- 3D single particle tracking
- 3D super-resolution imaging in thick samples

Competitive Advantages:

- Resolution enhancement in light microscopy

Development Stage:

- In vitro data available

Inventors: Hari Shroff (NIBIB), Yicong Wu (NIBIB), and Sara Abrahamsson.

Intellectual Property: HHS Reference No. E-232-2014/0.

U.S. Provisional Patent Applications 62/

054,484 filed 24 September 2014

PCT Application No. PCT/US2015/

052047 filed 24 September 2015

European Patent Applications No.

15843742.6 filed 24 September 2017

U.S. Patent No. US 10,401,604 issued 3 September 2019

Related Technology: HHS Reference No. E-078-2011/0.

Licensing Contact: Michael Shmilovich, Esq., CLP; 301-435-5019; shmilovm@mail.nih.gov.

Collaborative Research Opportunity:

The National Institute of Biomedical Imaging and Bioengineering is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Resolution Enhancement Technique for Light Sheet Microscopy Systems and Methods. For collaboration opportunities, please contact Michael Shmilovich 301-435-5019 or shmilovm@nih.gov.

Dated: October 17, 2019.

Michael A. Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2019-23031 Filed 10-22-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Heart, Lung, and Blood Institute; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Short-Term Research Education to Increase Diversity.

Date: November 20, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301-827-7696, Pintuccig@nhlbi.nih.gov (Telephone Conference Call).

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Rare Disease Cohorts in Heart, Lung, Blood and Sleep Disorders.

Date: November 22, 2019.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301-827-7975, reillymp@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 17, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-23037 Filed 10-22-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Center for Complementary & Integrative Health; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Integrative Health.

Date: February 7, 2020.

Closed: 8:30 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of General Medical Science—Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Open: 10:00 a.m. to 4:00 p.m.

Agenda: A report from the Center Director and Other Staff.

Place: National Institutes of General Medical Science—Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Partap Singh Khalsa, Ph.D., DC Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892-5475, 301-594-3462, khalsap@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://nccih.nih.gov/about/nacchih>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: October 17, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-23041 Filed 10-22-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biophysics of Biological Macromolecules Fellowship Applications

Date: November 14, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Metro Center, 775 12th Street NW, Washington, DC 20005.

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; Small Business: Disease Prevention and Management, Risk Reduction and Health Behavior Change.

Date: November 14–15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Residence Inn, 1456 Duke Street, Alexandria, VA 22314.

Contact Person: Michael J. McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, Bethesda, MD 20892, 301-480-1276 mike.mcquestion@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small

Business: Aging and Development, Auditory, Vision and Low Vision Technologies.

Date: November 14–15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613-2064, leepg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17-094: NIGMS Maximizing Investigators' Research Award (R35).

Date: November 14–15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C-L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301-435-1016, wangca@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Microbial (non-HIV) Diagnostics and Detection of Infectious Agents, Food and Waterborne Pathogens, and Methods in Microbial Sterilization, Disinfection and Bioremediation.

Date: November 15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301-435-1167, pandya@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health Informatics: Decision Support Tools.

Date: November 15, 2019.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806-0009, brontetinkewjm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA-AI-19-036: Advancing Biomarker Discovery and Novel Point-of-Care Diagnostics for Active TB Disease Detection in HIV-1 Infected and Exposed Children.

Date: November 15, 2019.

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: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-0903, saadisoh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory Neuroscience and Learning and Memory.

Date: November 15, 2019.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451.4251, Armaz.aschrafi@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Endocrinology, Metabolism and Reproductive Biology.

Date: November 15, 2019.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301-435-1044, chenhui@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA-AI-19-036: Advancing Biomarker Discovery and Novel Point-of-Care Diagnostics for Active TB Disease Detection in HIV-1 Infected and Exposed Children.

Date: November 15, 2019.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240-519-7808, kostrikr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Commercialization Readiness Pilot.

Date: November 15, 2019.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center

for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301-480-9069, cbackman@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-18-796: Computational Approaches to Curation at Scale for Biomedical Research Assets.

Date: November 15, 2019.

Time: 12:00 p.m. to 2:00 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: Ross D. Shonat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6196, MSC 7804, Bethesda, MD 20892, 301-435-2786, ross.shonat@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 17, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-23040 Filed 10-22-19; 8:45 am]

BILLING CODE 4140-01-P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Advisory Council on Historic Preservation quarterly business meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will have its next quarterly meeting on Thursday, November 7, 2019. The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE, Washington, DC, starting at 1:00 p.m.

DATES: The quarterly meeting will take place on Thursday, November 7, 2019 starting at 1:00 p.m.

ADDRESSES: The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Tanya DeVonish, 202-517-0205, tdevonish@achp.gov.

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic

Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into their decision making. For more information on the ACHP, please visit our website at www.achp.gov.

The agenda for the upcoming quarterly meeting of the ACHP is the following:

- I. Chairman's Opening Remarks
- II. Strategic Planning
- III. ACHP Operating Procedures Amendments
- IV. Section 106 Issues
 - i. Digital Information Task Force
 - ii. Program Alternatives
 - iii. Federal Historic Buildings Workgroup
 - iv. Update on Prior Section 106 Issues
- V. Touching History Program
- VI. U.S. Semiquincentennial
- VII. Committee Reports
- VIII. New Business
- IX. Adjourn

The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact Tanya DeVonish, 202-517-0205 or tdevonish@achp.gov, at least seven (7) days prior to the meeting.

Authority: 54 U.S.C. 304102.

Dated: October 16, 2019.

Javier E. Marques,

General Counsel.

[FR Doc. 2019-23048 Filed 10-22-19; 8:45 am]

BILLING CODE 4310-K6-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2019-0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA)

boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the

floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Michael M. Grimm,

*Assistant Administrator for Risk Management
Department of Homeland Security, Federal
Emergency Management Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
California: Santa Barbara (FEMA Docket No.: B-1935).	Unincorporated areas of Santa Barbara County (18-09-1861P).	The Honorable Steve Lavagnino, Chairman, Santa Barbara County Board of Supervisors, 511 East Lakeside Parkway, Santa Barbara, CA 93454.	Santa Barbara County Public Works Department, 130 East Victoria Street, Suite 200, Santa Barbara, CA 93101.	Sep. 5, 2019	060331
Colorado:					
Douglas (FEMA Docket No.: B-1935).	Town of Parker (19-08-0222P).	The Honorable Mike Waid, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138.	Public Works Department, 20120 East Main Street, Parker, CO 80138.	Sep. 6, 2019	080310
El Paso (FEMA Docket No.: B-1939).	Town of Palmer Lake (18-08-1139P).	The Honorable John Cressman, Mayor, Town of Palmer Lake, P.O. Box 208, Palmer Lake, CO 80133.	Pikes Peak Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.	Sep. 19, 2019	080065
Larimer (FEMA Docket No.: B-1939).	Town of Johnstown (19-08-0211P).	The Honorable Gary Lebsack, Mayor, Town of Johnstown, 450 South Parish Avenue, Johnstown, CO 80534.	Town Hall, 450 South Parish Avenue, Johnstown, CO 80534.	Sep. 19, 2019	080250
Connecticut: Hartford (FEMA Docket No.: B-1952).	Town of West Hartford (19-01-0295P).	Mr. Matt Hart, Manager, Town of West Hartford, 50 South Main Street, West Hartford, CT 06107.	Planning and Zoning Department, 50 South Main Street, West Hartford, CT 06107.	Sep. 20, 2019	095081
Florida:					
Duval (FEMA Docket No.: B-1939).	City of Jacksonville (19-04-0422P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Department, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	Sep. 23, 2019	120077
Monroe (FEMA Docket No.: B-1939).	City of Marathon (19-04-2700P).	The Honorable John Bartus, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	Sep. 30, 2019	120681
Monroe (FEMA Docket No.: B-1935).	Unincorporated areas of Monroe County (19-04-2123P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Sep. 3, 2019	125129
Monroe (FEMA Docket No.: B-1935).	Unincorporated areas of Monroe County (19-04-2180P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Aug. 26, 2019	125129

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Monroe (FEMA Docket No.: B-1939).	Unincorporated areas of Monroe County (19-04-2598P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Key Largo, FL 33050.	Sep. 11, 2019	125129
Orange (FEMA Docket No.: B-1939).	City of Orlando (19-04-0400P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, Orlando, FL 32801.	Sep. 25, 2019	120186
Orange (FEMA Docket No.: B-1939).	Unincorporated areas of Orange County (19-04-0400P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th floor, Orlando, FL 32801.	Orange County Public Works Department, 4200 South John Young Parkway, Orlando, FL 32839.	Sep. 25, 2019	120179
Osceola (FEMA Docket No.: B-1935).	Unincorporated areas of Osceola County (18-04-7431P).	The Honorable Cheryl Grieb, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	Aug. 30, 2019	120189
Palm Beach (FEMA Docket No.: B-1935).	Unincorporated areas of Palm Beach County (19-04-2277P).	The Honorable Mack Bernard, Mayor, Palm Beach County, 360 South County Road, Palm Beach, FL 33480.	Palm Beach County Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, FL 33411.	Sep. 10, 2019	120192
Pasco (FEMA Docket No.: B-1935).	Unincorporated areas of Pasco County (19-04-0817P).	The Honorable Ron Oakley, Chairman, Pasco County Board of Commissioners, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Central Permitting Department, 8731 Citizens Drive, New Port Richey, FL 34654.	Sep. 3, 2019	120230
Pinellas (FEMA Docket No.: B-1943).	City of Clearwater (19-04-0745P).	The Honorable George N. Cretekos, Mayor, City of Clearwater, P.O. Box 4748, Clearwater, FL 33758.	Engineering Department, 100 South Myrtle Avenue, Suite 220, Clearwater, FL 33756.	Sep. 30, 2019	125096
Polk (FEMA Docket No.: B-1935).	Unincorporated areas of Polk County (18-04-1711P).	The Honorable George Lindsey III, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	Sep. 5, 2019	120261
Polk (FEMA Docket No.: B-1939).	Unincorporated areas of Polk County (19-04-0741P).	The Honorable George Lindsey III, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	Sep. 19, 2019	120261
Louisiana:					
Ascension (FEMA Docket No.: B-1939).	City of Gonzales (19-06-1893X).	The Honorable Barney Arceneaux, Mayor, City of Gonzales, 120 South Irma Boulevard, Gonzales, LA 70737.	City Hall, 120 South Irma Boulevard, Gonzales, LA 70737.	Sep. 20, 2019	220015
Ascension (FEMA Docket No.: B-1939).	Town of Sorrento (19-06-1893X).	The Honorable Michael Lambert, Mayor, Town of Sorrento, P.O. Box 65, Sorrento, LA 70778.	Town Hall, 8173 Main Street, Sorrento, LA 70778.	Sep. 20, 2019	220016
Ascension (FEMA Docket No.: B-1939).	Unincorporated areas of Ascension Parish (19-06-1893X).	The Honorable Kenny Matassa, Ascension Parish President, 615 East Worthy Road, Gonzales, LA 70737.	Ascension Parish Government Complex, 615 East Worthy Road, Gonzales, LA 70737.	Sep. 20, 2019	220013
North Carolina:					
Bladen (FEMA Docket No.: B-1948).	Town of Elizabethtown (18-04-5359P).	The Honorable Sylvia Campbell, Mayor, Town of Elizabethtown, 805 West Broad Street, P.O. Box 716, Elizabethtown, NC 28337.	Town Hall, 805 West Broad Street, Elizabethtown, NC 28337.	Sep. 25, 2019	370027
Edgecombe (FEMA Docket No.: B-1935).	Town of Tarboro (18-04-0633P).	The Honorable Joe W. Pitt, Mayor, Town of Tarboro, 500 Main Street, Tarboro, NC 27886.	Planning Department, 500 Main Street, Tarboro, NC 27886.	Sep. 5, 2019	370094
Edgecombe (FEMA Docket No.: B-1935).	Unincorporated areas of Edgecombe County (18-04-0633P).	The Honorable Leonard Wiggins, Chairman, Edgecombe County Board of Commissioners, 201 Saint Andrew Street, Tarboro, NC 27886.	Edgecombe County Planning Department, 201 Saint Andrew Street, Tarboro, NC 27886.	Sep. 5, 2019	370087
Pennsylvania: Chester (FEMA Docket No.: B-1935).	Township of West Whiteland (18-03-2192P).	Ms. Mimi Gleason, Manager, Township of West Whiteland, 101 Commerce Drive, Exton, PA 19341.	Township Hall, 101 Commerce Drive, Exton, PA 19341.	Sep. 5, 2019	420295
South Carolina:					
Charleston (FEMA Docket No.: B-1935).	Town of Sullivan's Island (19-04-1973P).	The Honorable Patrick M. O'Neil, Mayor, Town of Sullivan's Island, P.O. Box 427, Sullivan's Island, SC 29482.	Building Department, 2056 Middle Street, Sullivan's Island, SC 29482.	Aug. 28, 2019	455418
Charleston (FEMA Docket No.: B-1939).	Town of Sullivan's Island (19-04-2775P).	The Honorable Patrick M. O'Neil, Mayor, Town of Sullivan's Island, P.O. Box 427, Sullivan's Island, SC 29482.	Building Department, 2056 Middle Street, Sullivan's Island, SC 29482.	Sep. 25, 2019	455418
Lexington (FEMA Docket No.: B-1935).	Unincorporated areas of Lexington County (18-04-3635P).	The Honorable Scott Whetstone, Chairman, Lexington County Council, 212 South Lake Drive, Suite 601, Lexington, SC 29072.	Lexington County Administration Building, 212 South Lake Drive, Suite 401, Lexington, SC 29072.	Aug. 30, 2019	450129
Saluda (FEMA Docket No.: B-1948).	Unincorporated areas of Saluda County (19-04-0064P).	Ms. Sandra G. Padgett, Saluda County Director, 400 West Highland Street, Saluda, SC 29138.	Saluda County Building Codes Department, 400 West Highland Street, Saluda, SC 29138.	Sep. 6, 2019	450230
Tennessee: Wilson (FEMA Docket No.: B-1943).	City of Mt. Juliet (19-04-0964P).	The Honorable Ed Hagerty, Mayor, City of Mt. Juliet, 2425 North Mount Juliet Road, Mt. Juliet, TN 37122.	City Hall, 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.	Sep. 27, 2019	470290
Texas:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Bexar (FEMA Docket No.: B-1948).	City of San Antonio (18-06-3814P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Sep. 16, 2019	480045
Bexar (FEMA Docket No.: B-1948).	Unincorporated areas of Bexar County (18-06-2501P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	Sep. 30, 2019	480035
Dallas (FEMA Docket No.: B-1939).	City of Coppell (18-06-2208P).	The Honorable Karen Hunt, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	City Hall, 255 East Parkway Boulevard, Coppell, TX 75019.	Sep. 23, 2019	480170
Dallas (FEMA Docket No.: B-1948).	City of Dallas (18-06-3143P).	The Honorable Michael Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Oak Cliff Municipal Center, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.	Sep. 30, 2019	480171
Dallas (FEMA Docket No.: B-1948).	City of Garland (18-06-3143P).	The Honorable Lori Barnett Dodson, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	City Hall, 200 North 5th Street, Garland, TX 75040.	Sep. 30, 2019	485471
Dallas (FEMA Docket No.: B-1948).	City of Rowlett (18-06-3143P).	The Honorable Tammy Dana-Bashian, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	City Hall, 4000 Main Street, Rowlett, TX 75088.	Sep. 30, 2019	480185
Grayson (FEMA Docket No.: B-1939).	City of Sherman (19-06-0025P).	The Honorable David Plyler, Mayor, City of Sherman, 220 West Mulberry Street, Sherman, TX 75090.	Engineering Department, 220 West Mulberry Street, Sherman, TX 75090.	Sep. 30, 2019	485509
Kendall (FEMA Docket No.: B-1943).	Unincorporated areas of Kendall County (18-06-3773P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Engineering Department, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	Sep. 23, 2019	480417
Liberty (FEMA Docket No.: B-1939).	Unincorporated areas of Muskogee County (19-06-1218P).	The Honorable Jay H. Knight, Liberty County Judge, 1923 Sam Houston Street, Room 201, Liberty, TX 77575.	Liberty County Engineering Department, 624 Fannin Street, Liberty, TX 77575.	Sep. 20, 2019	480438
Rockwell (FEMA Docket No.: B-1939).	City of Fate (18-06-3709P).	The Honorable Lorne Megyesi, Mayor, City of Fate, P.O. Box 159, Fate, TX 75132.	City Hall, 1900 C.D. Boren Parkway, Fate, TX 75087.	Sep. 16, 2019	480544
Smith (FEMA Docket No.: B-1935).	City of Tyler (18-06-3790P).	The Honorable Martin Heines, Mayor, City of Tyler, P.O. Box 2039, Tyler, TX 75710.	Development Center, 423 West Ferguson Street, Tyler, TX 75710.	Sep. 3, 2019	480571
Smith (FEMA Docket No.: B-1935).	Unincorporated areas of Smith County (18-06-3790P).	The Honorable Nathaniel Moran, Smith County Judge, 200 East Ferguson Street, Suite 100, Tyler, TX 75702.	Smith County Road and Bridge Department, 1700 West Claude Street, Tyler, TX 75702.	Sep. 3, 2019	481185

[FR Doc. 2019-23114 Filed 10-22-19; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Docket ID FEMA-2019-0002; Internal Agency Docket No. FEMA-B-1915]****Proposed Flood Hazard Determinations for Livingston County, Kentucky and Incorporated Areas****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and,

where applicable, in the supporting Flood Insurance Study reports for Livingston County, Kentucky and Incorporated Areas.

DATES: This withdrawal is effective October 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. FEMA-B-1915 to Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: On April 5, 2019, FEMA published a proposed notice at 84 FR 13674, proposing flood hazard determinations for Livingston County, Kentucky and Incorporated Areas. FEMA is withdrawing the proposed notice for Livingston County, Kentucky and Incorporated Areas.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.**Michael M. Grimm,**

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019-23118 Filed 10-22-19; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Docket ID FEMA-2019-0002; Internal Agency Docket No. FEMA-B-1966]****Proposed Flood Hazard Determinations****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or

regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before January 21, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location https://www.fema.gov/preliminary_floodhazarddata and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-1966, to Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be

considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location https://www.fema.gov/preliminary_floodhazarddata and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Orange County, Florida and Incorporated Areas Project: 13-04-3149S Preliminary Date: January 30, 2019	
City of Apopka	City Engineer's Office, 120 East Main Street, Apopka, FL 32703.
City of Ocoee	Building and Zoning Department, 150 North Lakeshore Drive, Ocoee, FL 34761.
City of Winter Garden	Engineering Division, 300 West Plant Street, Winter Garden, FL 34787.
Town of Oakland	Town Hall, 220 North Tubb Street, Oakland, FL 34760.
Unincorporated Areas of Orange County	Orange County Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.
Livingston County, Kentucky and Incorporated Areas Project: 13-04-8739S Preliminary Date: September 30, 2016 and June 29, 2018	
City of Smithland	City Hall, 310 Wilson Avenue, Smithland, KY 42081.
Unincorporated Areas of Livingston County	Livingston County Judge Executive's Office, 321 Court Street, Smithland, KY 42081.

Community	Community map repository address
Greenville County, South Carolina and Incorporated Areas Project: 16-04-8535S Preliminary Date: August 31, 2018	
City of Greer	City Hall, 301 East Poinsett Street, Greer, SC 29651.
Unincorporated Areas of Greenville County	Code Compliance Division, Greenville County Square, 301 University Ridge, Suite 4100, Greenville, SC 29601.
Spartanburg County, South Carolina and Incorporated Areas Project: 16-04-8535S Preliminary Date: August 31, 2018	
City of Spartanburg	Building Inspections and Permits Department, 440 South Church Street, Spartanburg, SC 29306.
City of Wellford	City Hall, 127 Syphrit Road, Wellford, SC 29385.
Town of Duncan	Fire Department, 230 School Street, Duncan, SC 29334.
Unincorporated Areas of Spartanburg County	Spartanburg County Administration Building, 366 North Church Street, Spartanburg, SC 29303.
Union County, South Carolina and Incorporated Areas Project: 16-04-8535S Preliminary Date: August 31, 2018	
City of Union	City Hall, 101 Sharpe Avenue, Union, SC 29379.
Unincorporated Areas of Union County	Union County Court House, 210 West Main Street, Union, SC 29379.
Roger Mills County, Oklahoma and Incorporated Areas Project: 17-06-1170S Preliminary Date: May 29, 2019	
Town of Cheyenne	Town Hall, 414 East Broadway Avenue, Cheyenne, OK 73628.
Town of Hammon	Town Hall, 715 Main Street, Hammon, OK 73650.
Town of Reydon	Cheyenne Town Hall, 414 East Broadway Avenue, Cheyenne, OK 73628.
Town of Strong City	Roger Mills County Courthouse, 500 East Broadway Avenue, Cheyenne, OK 73628.
Unincorporated Areas of Roger Mills County	Roger Mills County Courthouse, 500 East Broadway Avenue, Cheyenne, OK 73628.

[FR Doc. 2019-23117 Filed 10-22-19; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2019-0002; Internal Agency Docket No. FEMA-B-1967]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The

FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood

hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard

determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below.

Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona: Mohave ...	City of Lake Havasu City (19-09-1104P).	The Honorable Cal S. Sheehy, Mayor, City of Lake Havasu City, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	City Hall, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	https://msc.fema.gov/portal/advanceSearch .	Dec. 31, 2019	040116
California: Calaveras.	Unincorporated areas of Calaveras County (19-09-0712P).	Mr. Albert Alt, Chief Administrative Officer, Calaveras County, 891 Mountain Ranch Road, San Andreas, CA 95249.	Calaveras County Planning Department, 891 Mountain Ranch Road, San Andreas, CA 95249.	https://msc.fema.gov/portal/advanceSearch .	Jan. 3, 2020	060633
Colorado: Adams	City of Thornton (18-08-1245P).	The Honorable Heidi Williams, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 12450 Washington Street, Thornton, CO 80241.	https://msc.fema.gov/portal/advanceSearch .	Jan. 3, 2020	080007
Adams	Unincorporated areas of Adams County (18-08-1245P).	The Honorable Steve O'Dorisio, Chairman, Adams County Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	Adams County Development and Engineering Services Department, 4430 South Adams County Parkway, Brighton, CO 80601.	https://msc.fema.gov/portal/advanceSearch .	Jan. 3, 2020	080001
Jefferson	City of Arvada (19-08-0295P).	The Honorable Marc Williams, Mayor, City of Arvada, 8101 Ralston Road, Arvada, CO 80002.	Engineering Department, 8101 Ralston Road, Arvada, CO 80002.	https://msc.fema.gov/portal/advanceSearch .	Dec. 20, 2019	085072
Jefferson	City of Lakewood (19-08-0656P).	The Honorable Adam Paul, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226.	Engineering Department, 480 South Allison Parkway, Lakewood, CO 80226.	https://msc.fema.gov/portal/advanceSearch .	Jan. 10, 2020	085075
Jefferson	Unincorporated areas of Jefferson County (19-08-0295P).	The Honorable Marc Szabo, The Honorable Libby Szabo, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	https://msc.fema.gov/portal/advanceSearch .	Dec. 20, 2019	080087
Delaware: Sussex	Unincorporated areas of Sussex County (19-03-0441P).	The Honorable Michael H. Vincent, President, Sussex County Council, P.O. Box 589, Georgetown, DE 19947.	Sussex County Planning and Zoning Department, 2 The Circle, Georgetown, DE 19947.	https://msc.fema.gov/portal/advanceSearch .	Jan. 3, 2020	100029
Florida: Bay	Unincorporated areas of Bay County (19-04-0600P).	The Honorable Philip Griffiths, Jr., Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Government Center, 840 West 11th Street, Panama City, FL 32401.	https://msc.fema.gov/portal/advanceSearch .	Dec. 23, 2019	120004

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Collier	City of Marco Island, (19-04-4346P).	Mr. Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	https://msc.fema.gov/portal/advanceSearch .	Dec. 18, 2019	120426
Collier	City of Naples (19-04-4530P).	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34112.	Building Department, 295 Riverside Circle, Naples, FL 34102.	https://msc.fema.gov/portal/advanceSearch .	Dec. 31, 2019	125130
Lee	Unincorporated areas of Lee County (19-04-2304P).	Mr. Rodger Desjarlais Lee County Manager, P.O. Box 398, Fort Myers, FL 33902.	Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, FL 33901.	https://msc.fema.gov/portal/advanceSearch .	Dec. 26, 2019	125124
Lee	Unincorporated areas of Lee County (19-04-4318P).	Mr. Rodger Desjarlais Lee County Manager, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	https://msc.fema.gov/portal/advanceSearch .	Dec. 16, 2019	125124
Marion	City of Ocala (19-04-1095P).	The Honorable Kent Guinn, Mayor, City of Ocala, 110 Southeast Watula Avenue, Ocala, FL 34471.	City Hall, 110 Southeast Watula Avenue, Ocala, FL 34471.	https://msc.fema.gov/portal/advanceSearch .	Dec. 27, 2019	120330
Monroe	Unincorporated areas of Monroe County (19-04-2961P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33037.	https://msc.fema.gov/portal/advanceSearch .	Dec. 18, 2019	125129
Monroe	Unincorporated areas of Monroe County (19-04-4407P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33037.	https://msc.fema.gov/portal/advanceSearch .	Dec. 23, 2019	125129
Monroe	Village of Islamorada (19-04-5066P).	The Honorable Deb Gillis Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	https://msc.fema.gov/portal/advanceSearch .	Dec. 30, 2019	120424
Seminole	Unincorporated areas of Seminole County (19-04-3092P).	The Honorable Brenda Carey, Chair, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771.	Seminole County Development Review Division, 1101 East 1st Street, Sanford, FL 32771.	https://msc.fema.gov/portal/advanceSearch .	Dec. 27, 2019	120289
Louisiana: Lafayette	City of Lafayette (19-06-0044P).	The Honorable Joel Robideaux, Mayor-President, Lafayette Consolidated Government, P.O. Box 4017-C, Lafayette, LA 70502.	Department of Development and Planning, 220 West Willow Street Building B, Lafayette, LA 70501.	https://msc.fema.gov/portal/advanceSearch .	Dec. 16, 2019	220105
Lafayette	Unincorporated areas of Lafayette Parish (19-06-0044P).	The Honorable Joel Robideaux, Mayor-President, Lafayette Consolidated Government, P.O. Box 4017-C, Lafayette, LA 70502.	Department of Development and Planning, 220 West Willow Street Building B, Lafayette, LA 70501.	https://msc.fema.gov/portal/advanceSearch .	Dec. 16, 2019	220101
Maryland: Baltimore.	Unincorporated areas of Baltimore County (19-03-1183P).	The Honorable John A. Olszewski, Jr., Baltimore County Executive, 400 Washington Avenue, Towson, MD 21204.	Baltimore County Department of Public Works, 111 West Chesapeake Avenue, Room 219, Towson, MD 21204.	https://msc.fema.gov/portal/advanceSearch .	Dec. 31, 2019	240010
Massachusetts: Plymouth	Town of Marion (19-01-0738P).	The Honorable Randy L. Parker, Chairman, Town of Marion Board of Selectmen, 2 Spring Street, Marion, MA 02738.	Town Hall, 2 Spring Street, Marion, MA 02738.	https://msc.fema.gov/portal/advanceSearch .	Jan. 10, 2020	255213

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Plymouth	Town of Marion (19-01-1162P).	The Honorable Randy L. Parker, Chairman, Town of Marion Board of Selectmen, 2 Spring Street, Marion, MA 02738.	Town Hall, 2 Spring Street, Marion, MA 02738.	https://msc.fema.gov/portal/advanceSearch .	Jan. 3, 2020	255213
Plymouth	Town of Mattapoisett (19-01-0738P).	The Honorable R. Tyler Macallister, Chairman, Town of Mattapoisett Board of Selectmen, P.O. Box 705, Mattapoisett, MA 02739.	Town Hall, 16 Main Street, Mattapoisett, MA 02739.	https://msc.fema.gov/portal/advanceSearch .	Jan. 10, 2020	255214
New Mexico: Bernalillo.	City of Albuquerque (19-06-0661P).	The Honorable Timothy M. Keller, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Planning Department, 600 2nd Street Northwest, Albuquerque, NM 87102.	https://msc.fema.gov/portal/advanceSearch .	Dec. 23, 2019	350002
North Carolina: Durham	City of Durham (18-04-7236P).	The Honorable Steve Schewel, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	Public Works Department, 101 City Hall Plaza, Durham, NC 27701.	https://msc.fema.gov/portal/advanceSearch .	Dec. 30, 2019	370086
Durham	Unincorporated areas of Durham County (18-04-7236P).	The Honorable Wendy Jacobs, Chair, Durham County Board of Commissioners, 200 East Main Street, 2nd Floor, Durham, NC 27701.	Durham County Register of Deeds Department, 201 East Main Street, Durham, NC 27701.	https://msc.fema.gov/portal/advanceSearch .	Dec. 30, 2019	370085
Pennsylvania: Chester	Township of West Pikeland (18-03-1853P).	The Honorable Charlie Humphreys, Chairman, Township of West Pikeland Board of Supervisors, 1645 Art School Road, Chester Springs, PA 19425.	Township Hall, 1645 Art School Road, Chester Springs, PA 19425.	https://msc.fema.gov/portal/advanceSearch .	Dec. 31, 2019	421151
Montgomery ...	Township of Whitpain (19-03-0500P).	The Honorable Frederick R. Conner, Jr., Chairman, Township of Whitpain Board of Supervisors, 960 Wentz Road, Blue Bell, PA 19422.	Code Enforcement Department, 960 Wentz Road, Blue Bell, PA 19422.	https://msc.fema.gov/portal/advanceSearch .	Jan. 3, 2020	420713
Texas: Bexar	City of San Antonio (18-06-3650P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	https://msc.fema.gov/portal/advanceSearch .	Nov. 12, 2019	480045
Denton	Town of Northlake (19-06-1881P).	The Honorable David Rettig, Mayor, Town of Northlake, 1500 Commons Circle, Suite 300, Northlake, TX 76226.	Public Works Department, 1400 FM 407, Northlake, TX 76247.	https://msc.fema.gov/portal/advanceSearch .	Dec. 23, 2019	480782
El Paso	City of El Paso (19-06-2306P).	Mr. Tommy Gonzalez, Manager, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Land Development Department, 801 Texas Avenue, El Paso, TX 79901.	https://msc.fema.gov/portal/advanceSearch .	Dec. 23, 2019	480214
Harris	City of Baytown (18-06-1537P).	The Honorable Brandon Capetillo, Mayor, City of Baytown, 2401 Market Street, Baytown, TX 77520.	Engineering Department, 2123 Market Street, Baytown, TX 77520.	https://msc.fema.gov/portal/advanceSearch .	Dec. 30, 2019	485456
Harris	Unincorporated areas of Harris County (18-06-1537P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permits Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	https://msc.fema.gov/portal/advanceSearch .	Dec. 30, 2019	480287
Tarrant	City of Fort Worth (19-06-2917P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Dec. 23, 2019	480596

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Travis	City of Lakeway (19-06-0745P).	Mr. Steven Jones, Manager, City of Lakeway, 1102 Lohmans Crossing Road, Lakeway, TX 78734.	City Hall, 1102 Lohmans Crossing Road, Lakeway, TX 78734.	https://msc.fema.gov/portal/advanceSearch .	Jan. 23, 2020	481303
Utah: Washington	City of Ivins (19-08-0375P).	The Honorable Chris Hart, Mayor, City of Ivins, 55 North Main Street, Ivins, UT 84738.	City Hall, 55 North Main Street, Ivins, UT 84738.	https://msc.fema.gov/portal/advanceSearch .	Dec. 31, 2019	490173
Washington	City of Santa Clara (19-08-0375P).	The Honorable Rick Rosenberg, Mayor, City of Santa Clara, 2603 Santa Clara Drive, Santa Clara, UT 84765.	City Hall, 2603 Santa Clara Drive, Santa Clara, UT 84765.	https://msc.fema.gov/portal/advanceSearch .	Dec. 31, 2019	490178

[FR Doc. 2019-23113 Filed 10-22-19; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2019-0040]

Homeland Security Advisory Council

AGENCY: The Department of Homeland Security (DHS), The Office of Partnership and Engagement (OPE).

ACTION: Notice of partially closed Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (“HSAC” or “Council”) will meet in person on Thursday, November 14, 2019. Members of the public may participate in person. The meeting will be partially closed to the public.

DATES: The Council will meet November 14, 2019, from 9:30 a.m. to 3:30 p.m. EDT. The meeting will be open to the public from 1:45 p.m. to 3:30 p.m. EDT. Please note the meeting may close early if the Council completes its business. The meeting will be closed to the public from 9:30 a.m. to 1:30 p.m. EDT.

ADDRESSES: The public meeting will be held in Town Hall at the Transportation Security Administration (TSA), 601 S 12th Street (East Building), in Arlington, VA 20598. Members of the public will meet in the Visitors Center, located to the left of the East Building entrance. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mike Miron at HSAC@hq.dhs.gov or (202) 447-3135 as soon as possible. Written public comments prior to the meeting must be received by 5:00 p.m. EDT on Tuesday, November 12, 2019, and must be identified by Docket No. DHS-2019-0040. Written public comments after the meeting must be identified by Docket No. DHS-2019-

0040 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** HSAC@hq.dhs.gov. Include Docket No. DHS-2019-0040 in the subject line of the message.

- **Fax:** (202) 282-9207. Include Mike Miron and the Docket No. DHS-2019-0040 in the subject line of the message.

- **Mail:** Mike Miron, Deputy Executive Director of Homeland Security Advisory Council, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528.

Instructions: All submissions received must include the words “Department of Homeland Security” and “DHS-2019-0040,” the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read comments received by the Council, go to <http://www.regulations.gov>, search “DHS-2019-0040,” “Open Docket Folder” and provide your comments.

FOR FURTHER INFORMATION CONTACT: Mike Miron at HSAC@hq.dhs.gov or at (202) 447-3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92-463 (5 U.S.C. Appendix), which requires each FACA committee meeting to be open to the public.

The Council provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, Federal,

State, and local government, the private sector, and academia.

The Council will meet in an open session between 1:45 p.m. to 3:30 p.m. EDT. The Council will swear in new members, and review and deliberate on reports from the Families and Children Care Panel, Emerging Technologies, Prevention of Targeted Violence Against Faith-based Communities, and State, Local, Tribal, and Territorial Cybersecurity subcommittees. Following this, there will be a break for public commentary.

The Council will meet in a closed session from 9:30 a.m. to 1:30 p.m. EDT to receive sensitive operational information from senior officials on current counterterrorism threats, border security, Arctic Strategy, and cybersecurity.

Basis for Partial Closure: In accordance with Section 10(d) of FACA, the Secretary of Homeland Security has determined this meeting requires partial closure. The disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The Council will receive closed session briefings at the For Official Use Only and Law Enforcement sensitive information from senior officials. These briefings will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7)(E) and 552b(c)(9)(B). The Council will receive operational counterterrorism updates on the current threat environment and security measures associated with countering such threats, including those related to the U.S. Coast Guards Arctic Strategy, border security, immigration enforcement, and cybersecurity.

The session is closed under 5 U.S.C. 552b(c)(7)(E) because disclosure of that information could reveal investigative techniques and procedures not generally available to the public, allowing terrorists and those with interests

against the United States to circumvent the law and thwart the Department's strategic initiatives.

Specifically, there will be material presented during the briefings regarding the latest viable threats against the United States and how DHS and other Federal agencies plan to address those threats. Disclosure of this information could frustrate the successful implementation of protective measures designed to keep our country safe. In addition, the session is closed pursuant to 5 U.S.C. 552b(c)(9)(B) because disclosure of these techniques and procedures could frustrate the successful implementation of protective measures designed to keep our country safe.

Participation: Members of the public will have until 5:00 p.m. EDT on Friday, November 8, 2019, to register to attend the Council meeting on Thursday, November 14, 2019. Due to limited availability of seating, admittance will be on a first-come first-serve basis. Participants interested in attending the meeting can contact Mike Miron at HSAC@hq.dhs.gov or (202) 447-3135. You are required to provide your full legal name, date of birth, social security number, and company/agency affiliation. The public may access the facility via public transportation or use the public parking garages located near the Fashion Centre at Pentagon City. Members of the public will meet at 1:00 p.m. EDT at TSA Headquarters Visitors Center for sign in and escorting to the meeting room for the public session. Late arrivals after 1:30 p.m. EDT will not be permitted access to the facility.

Facility Access: You are required to present a valid original government issued ID, to include a State Driver's License or Non-Driver's Identification Card, U.S. Government Common Access Card (CAC), Military Identification Card or Person Identification Verification Card; U.S. Passport, U.S. Border Crossing Card, Permanent Resident Card or Alien Registration Card; or Native American Tribal Document.

Dated: October 17, 2019.

Matthew Hayden,

Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2019-23024 Filed 10-22-19; 8:45 am]

BILLING CODE 9112-FN-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0018]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Permission To Reapply for Admission Into the United States After Deportation or Removal

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration

(USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 23, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0018 in the body of the letter, the agency name and Docket ID USCIS-2008-0068. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2008-0068;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529-2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529-2140, telephone number 202-272-8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this

notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2008-0068 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Permission To Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-212; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* **Primary:** Individuals or households. USCIS uses the data collected on Form I-212 to determine whether an alien is eligible for and should be granted the benefit of consent to reapply for admission into the United States. This form standardizes requests for consent to reapply and its data collection requirements ensure that, when filing the application, the alien provides the basic information that is required to assess eligibility for consent to reapply.

USCIS must review all documents that relate to the alien's exclusion, deportation, or removal proceedings, the alien's record of immigration violations, and the alien's criminal record, if applicable. Moreover, if the alien is inadmissible under section 212(a)(9)(C)(i) of the Act, evidence must be submitted to demonstrate that the alien has remained outside the United States for a period of at least 10 years since the date of his or her last departure.

In addition to USCIS, U.S. Customs and Border Protection (CBP) and the Executive Board for Immigration Review (EOIR) of the U.S. Department of Justice (DOJ) also rely Form I-212 to grant consent to reapply for admission. These agencies use the application in the same manner as USCIS. CBP has developed an electronic filing system, called Electronic Secured Adjudication Forms Environment (e-SAFE), through which Form I-212 can be submitted when filed with CBP.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-212 is 4,883 and the estimated hour burden per response is

9,766 hours; the estimated total number of respondents for the biometric services associated with information collection I-212 is 100 and the estimated hour burden per response is 117 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 9,883 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$613,854.

Dated: October 17, 2019.

Samantha L Deshommies,
Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2019-23026 Filed 10-22-19; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7011-N-40]

30-Day Notice of Proposed Information Collection: Application for Community Compass TA and Capacity Building Program NOFA and Awardee Reporting (OMB 2506-0197)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: Comments Due Date: November 22, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington,

DC 20503; fax: 202-395-5806, Email: OIRA.Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at Anna.P.Guido@hud.gov or telephone 202-402-5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 23, 2019.

A. Overview of Information Collection

Title of Information Collection: Application for Community Compass TA and Capacity Building Program NOFA and Awardee Reporting.

OMB Approval Number: 2506-0197.

Type of Request: Reinstatement of currently approved collection.

Form Number: SF-424, SF424CB, SF-424CBW, SF-425, SF-LLL, HUD-2880, HUD-50070, HUD-XXXX, HUD-XXXX, HUD-XXXX, HUD-XXXX, HUD-XXXX, and *Grants.gov* Lobbying Form Certification.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, *i.e.*, the technical assistance providers best able to develop efficient and effective programs and projects that increase the supply of affordable housing units, prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities. Additional information is needed during the life of the award from the competition winner, *i.e.*, the technical assistance providers to fulfill the administrative requirements of the award.

Information collection	Number of respondents	Frequency of response	Responses per NOFA	Burden hour per response	Total NOFA burden hours	Hourly cost per response **	Total cost
Pre-Award							
Application	60.00	1.00	60.00	100.00	6,000.00	60.74	364,440.00

Information collection	Number of respondents	Frequency of response	Responses per NOFA	Burden hour per response	Total NOFA burden hours	Hourly cost per response **	Total cost
Pre-Award							
HUD-424	60.00	1.00	60.00	1.00	60.00	60.74	3,644.40
Grants.gov Lobbying Form Certification	60.00	1.00	60.00	0.17	10.20	60.74	619.55
HUD-2880	60.00	1.00	60.00	2.00	120.00	60.74	7,288.80
HUD-50070	60.00	1.00	60.00	0.17	10.20	60.74	619.55
HUD-XXXX (Application Summary)	60.00	1.00	60.00	0.50	30.00	60.74	1,822.20
HUD-XXXX (Experience of Staff, Contractors, and Consultants)	60.00	1.00	60.00	8.00	480.00	60.74	29,155.20
HUD-XXXX (Capacity and Interest)	60.00	1.00	60.00	0.50	30.00	60.74	1,822.20
SF-LLL Disclosure of Lobbying Activities * ..							
Post-Award							
Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
SF-424—Key Contacts							
SF-425 Federal Financial Report (SF-425) OMB #: 4040-0014*							
HUD-XXXX Community Compass—Work Plan—Administration	30.00	1.00	30.00	1.00	30.00	\$60.74	\$1,822.20
HUD-XXXX Community Compass—Work Plan—Coordination	30.00	1.00	30.00	1.00	30.00	60.74	1,822.20
Community Compass—all other work plans	30.00	10.00	300.00	16.00	4,800.00	60.74	291,552.00
HUD-XXXX (Community Compass—Monthly Report)	30.00	12.00	360.00	30.00	10,800	60.74	655,992.00
HUD-XXXX (Community Compass—Property Statement)	30.00	1.00	30.00	0.50	15.00	60.74	911.10
HUD-XXXX (Community Compass—Close-out of Award Certification)	30.00	1.00	30.00	0.50	15.00	60.74	911.10
HUD-XXXX (Community Compass—High Wage Rate Worksheet)	30.00	1.00	30.00	8.00	240.00	60.74	14,577.60
Total					22,670.40	60.74	1,377,000.10

* Per OMB, Standard Form should be listed, but the burden does not need to be included as part of the collection.

** Estimated cost for respondents is calculated from the June 2018 Department of Labor Bureau of Labor Statistics report on Employer Costs for Employee Compensation determined that the hourly rate of management, professional and related wages and salaries averaged \$41.71 per hour plus \$19.03 per hour for fringe benefits for a total \$60.74 per hour.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 17, 2019.

Anna P. Guido,

*Department Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2019-23102 Filed 10-22-19; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-R1-ES-2019-N143;
FXES11130100000-201-FF01E00000]**

Endangered Species; Receipt of Recovery and Interstate Commerce Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these

applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before November 22, 2019.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (e.g., Dana Ross TE-08964A-2):

- *Email:* permitsR1ES@fws.gov.
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232-4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231-6131 (phone); permitsR1ES@fws.gov (email). Individuals who are

hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of "take" includes such

activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery or interstate commerce permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered

plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE-068803-3	Jerry Lynn Kinser, Conroe, TX.	Hawaiian goose or nene (<i>Branta sandvicensis</i>).	Texas	Captive propagation	Amend.
TE-798744-9	Kootenai Tribe of Idaho, Bonners Ferry, ID.	Kootenai River white sturgeon (<i>Acipenser transmontanus</i>).	Idaho, Montana	Harass by capture, hold, measure, mark, tag, collect biological samples, conduct research, captive propagate, cull, and release.	Renew.
TE-818627-11	Oregon Department of Fish and Wildlife, Corvallis, OR.	Borax Lake chub (<i>Gila boraxobius</i>).	Oregon	Harass by capture, measure, collect biological samples, photograph, release, conduct research, and sacrifice.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Katherine Norman,

Acting Assistant Regional Director—Ecological Services, Pacific Region.

[FR Doc. 2019-23122 Filed 10-22-19; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-HQ-FAC-2019-N107;
FXFR13360900000-FF09F14000-190]**

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Aquatic Nuisance Species (ANS) Task Force will hold a public meeting in accordance with the Federal Advisory Committee Act. The

ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic invasive species; to monitor, control, and study such species; and to disseminate related information.

DATES: *Meeting:* The ANS Task Force will meet Wednesday and Thursday, November 6-7, 2019, from 8 a.m. to 5 p.m. each day.

Comment submission: You may submit written comments in advance of the meeting by emailing them to the ANS Task Force Executive Secretary by close of business on November 1, 2019.

Requests for Accommodations: Please contact the ANS Task Force Secretary no later than October 28, 2019.

ADDRESSES: *Meeting location:* The ANS Task Force meeting will take place at the U.S. Department of Agriculture National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705 (telephone 301-504-5755).

FOR FURTHER INFORMATION CONTACT: Susan Pasko, ANS Task Force Executive Secretary, by telephone at 703-358-

2466, or by email at Susan_Pasko@fws.gov.

Accessibility: The U.S. Fish and Wildlife Service is committed to providing access to this meeting for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the ANS Task Force Executive Secretary, by using the contact information above or via TTY at 800-877-8339.

SUPPLEMENTARY INFORMATION: The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (NANPCA; 16 U.S.C. 4701 *et seq.*). The ANS Task Force is composed of 13 Federal and 13 ex-officio members, and is co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic invasive species; to monitor, control, and study such species; and to disseminate related information.

The meeting is open to the public; however, for security purposes, registration is required. For more information, contact the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**).

Meeting Agenda

- Update on new species occurrences in the United States.
- Review the role and responsibility of the ANS Task Force under the Vessel Incidental Discharge Act.
- Update from the working group meeting on genetic biocontrol of invasive species.
- Review of subcommittee work plans to advance the goals identified in the ANS Task Force Strategic Plan for 2020–2025.
- Review of management plans from other Federal interagency invasive species groups.
- Response to recommendations from the ANS Task Force regional panels.
- Public comment.

The final agenda and other related meeting information will be posted on the ANS Task Force website at <https://anstaskforce.gov> by October 23, 2019. Summary minutes of the meeting will be maintained by the Executive Secretary and will be available for public inspection within 90 days after the meeting at <https://anstaskforce.gov>.

Public Input

There will be an opportunity for public comment during the meeting. Depending on the number of people

interested in addressing the Task Force, a time limit on comments may be imposed.

If you provide a written comment, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Dated: October 16, 2019.

David W. Hoskins,

Assistant Director for Fish and Aquatic Conservation.

[FR Doc. 2019–23034 Filed 10–22–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/
AOA501010.999900 253G; OMB Control
Number 1076–0181]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Rights-of-Way on Indian Land

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before November 22, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at OIRA_Submission@omb.eop.gov; or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road, Northwest, Mailbox #44, Albuquerque, NM 87104; or by email to Sharlene.RoundFace@bia.gov. Please reference OMB Control Number 1076–0181 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Sharlene Round Face by email at Sharlene.RoundFace@bia.gov or by telephone at (505) 563–5258. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 24, 2019 (84 FR 17189). No comments were received.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection is necessary for the Bureau of Indian Affairs (BIA) to authorize rights-of-way to cross land held in trust or restricted status on behalf of individual Indians and tribes, for a specific purpose, including but not limited to building and operating a line or road. The statutory authority for this program is at 25 U.S.C. 323–328. The regulations at 25

CFR 169 implement the statutory authority. BIA uses the information it collects to determine whether or not to grant a right-of-way, the value of the right-of-way, the appropriate compensation due to landowners, the amount of administrative fees that must be levied, and the penalties, if any, that should be assessed for violations of the right-of-way provisions.

Title of Collection: Rights-of-Way on Indian Land.

OMB Control Number: 1076-0181.

Form Number: Right-of-Way Application.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Tribes, Indian landowners and the public.

Total Estimated Number of Annual Respondents: 3,200.

Total Estimated Number of Annual Responses: 3,200.

Estimated Completion Time per Response: Varies from 15 minutes to 35 hours (for the application).

Total Estimated Number of Annual Burden Hours: 39,050.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.
Total Estimated Annual Nonhour Burden Cost: \$1,100,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019-23090 Filed 10-22-19; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0029003; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Wupatki National Monument, Flagstaff, AZ

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Wupatki National Monument has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that

there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Wupatki National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Wupatki National Monument at the address in this notice by November 22, 2019.

ADDRESSES: Kayci Cook Collins, Superintendent, Wupatki National Monument, 6400 N Highway 89, Flagstaff, AZ 86004, telephone (928) 526-1157 ext. 227, email Kayci_Cook@nps.gov.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Wupatki National Monument, Flagstaff, AZ. The human remains were removed from within the boundaries of Wupatki National Monument, Coconino County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Wupatki National Monument.

Consultation

A detailed assessment of the human remains was made by Wupatki National Monument professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San

Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as "The Tribes").

History and Description of the Remains

Prior to 1950, human remains representing, at minimum, one individual were removed from an unknown location within Wupatki National Monument in Coconino County, AZ. The right calcaneus of a three-to-five year old individual was misidentified as faunal until 2018 when faunal analysts from Northern Arizona University correctly identified the bone as human, sex-indeterminate. The remains were found in a box labeled with several different archeological sites, making it difficult to determine exact provenience. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the U.S. Department of the Interior, National Park Service, Wupatki National Monument

Officials of the U.S. Department of the Interior, National Park Service, Wupatki National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the expert opinions of bio-archeologists at the Museum of Northern Arizona.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgements of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Fort McDowell Yavapai Nation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation,

Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and the Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona).

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Fort McDowell Yavapai Nation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and the Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona) hereafter referred to as “The Aboriginal Land Tribes.”

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Kayci Cook Collins, Superintendent, Wupatki National Monument, 6400 N Highway 89, Flagstaff, AZ 86004, telephone (928) 526–1157 ext. 227, email Kayci_Cook@nps.gov, by November 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The U.S. Department of the Interior, National Park Service, Wupatki National Monument is responsible for notifying The Tribes that this notice has been published.

Dated: September 26, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–23078 Filed 10–22–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1100]

Certain Microfluidic Systems and Components Thereof and Products Containing Same; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337 and To Extend the Target Date; Schedule for Filing Written Submissions

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 the Administrative Law Judge’s (“ALJ”) final initial determination (“ID”), issued on July 12, 2019, finding a violation of section 337 in the above-referenced investigation and to extend the target date for completion of the above-referenced investigation to December 19, 2019. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <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>. 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: On February 21, 2018, the Commission instituted this investigation based on a complaint filed by 10X Genomics, Inc. of Pleasanton, CA. 83 FR 7491 (Feb. 21,

2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microfluidic systems and components thereof and products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 9,644,204 (“the ‘204 patent”); 9,689,024 (“the ‘024 patent”); 9,695,468 (“the ‘468 patent”); and 9,856,530 (“the ‘530 patent”). *Id.* The Commission’s notice of investigation named as the sole respondent Bio-Rad Laboratories, Inc. of Hercules, CA. *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.*

On July 12, 2019, the ALJ issued the final ID. The ID found a violation of section 337 by virtue of Bio-Rad’s indirect infringement of the ‘024, the ‘468, and the ‘530 patents. The ID found that 10X had not established a violation with respect to the ‘204 patent. The ID also found that Bio-Rad failed to establish invalidity of any of the asserted claims of any patent. The ID further found that the domestic industry requirement was satisfied for each of the asserted patents. Finally, the ID found that Bio-Rad had not carried its burden with respect to various additional affirmative defenses, including improper inventorship and ownership.

On July 25, 2019, the ALJ issued her recommended determination on remedy and bonding. The ALJ recommended, upon a finding of violation, that the Commission issue a limited exclusion order, issue a cease and desist order, and impose a bond in the amount of twenty-five percent of the entered value of any covered products imported during the period of Presidential review.

On July 29, 2019, 10X, Bio-Rad, and OUII submitted petitions seeking review of the ID. On August 6, 2019, 10X, Bio-Rad, and OUII submitted responses to the others’ petitions. On August 26, 2019, 10X and Bio-Rad submitted comments on the public interest pursuant to Commission Rule 210.50(a)(4).

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID with respect to (1) all findings related to a violation based on the ‘024 patent; (2) all findings related to a violation based on the ‘468 patent; (3) noninfringement of the ‘204 patent; (4) all findings related to a violation based on the ‘530 patent; (5) Bio-Rad’s inventorship and ownership defenses; and (6) a typographical error on page 91.

The Commission has determined not to review the remainder of the ID.

The Commission has further determined to extend the target date in this investigation to December 19, 2019.

The parties are requested to brief their positions on only the following issues under review with reference to the applicable law and the evidentiary record:

1. With respect to Bio-Rad's ownership defense, would Drs. Hindson and Saxanov be considered inventors of the asserted patents based only on the "ideas" they developed at QuantaLife/Bio-Rad? Your response should address how, if at all, those "ideas" correspond to the particular inventions claimed in the asserted patents.

2. Was the ALJ correct to focus on the "inventive concept" of the asserted patents in determining whether Bio-Rad has ownership rights in the asserted patents? If not, what is the correct focus?

3. The ID construed the term "amplification" in the '024 and '468 patent claims to mean "increasing the number of copies of the target sequence to be detected, including by reverse transcription." Explain whether the ID's construction is supported by the Application No. PCT/US 99/01705 ("the '705 application"), U.S. Patent Application Publication No. 2011/0053798 ("the '798 application"), or the specifications of the '024 and '468 patents. Please cite and explain each section that supports or detracts from this construction as well as any expert testimony that interprets those sections.

4. If the Commission determined to construe "amplification" to exclude reverse transcription, consistent with OUII's petition, what effect, if any, would that have on the ID's finding of infringement of the asserted claims of the '024 and '468 patents?

5. In its response to OUII's petition on the construction of "amplification," Bio-Rad argues that, if the ID's construction of "amplification" is modified to exclude reverse transcription, then the ID's infringement findings with respect to the '024 patent should be reversed. Bio-Rad's argument focuses particularly on whether amplification occurs in a droplet. Explain how, if at all, modifying the ID's construction of "amplification" to exclude reverse transcription could give rise to a noninfringement finding based on the location where amplification occurs.

6. Has Bio-Rad waived its noninfringement argument for the '024 patent based on the location where amplification occurs, as described in question 5, by failing to raise the argument in its petition for review? If

you contend that the argument is not waived, provide citations to where this issue was raised in Bio-Rad's prehearing brief, posthearing brief, and petition for review.

7. Does the evidence of record support the conclusion that [[]] in the context of the products accused of infringing the '204 patent?

8. Claim 1 of the '530 patent includes the clause "wherein said barcode molecules become detached from said gel bead." Is this clause part of step (c) of the claimed method such that barcode molecules must become detached from the gel bead during that step, or does the clause modify the entire method such that the barcode molecules may become detached during any step of the method? Address the significance of the separate indentation of the "wherein" clause and the punctuation setting it off from the rest of the claim.

9. If claim 1 of the '530 patent is construed such that the barcode molecules must become detached from the gel bead during step (c) of the claimed method, does a preponderance of the evidence show that Bio-Rad's accused products and/or 10X's domestic industry products practice step (c) of claim 1? Please identify all evidence supporting your position.

10. Did any party argue in its pre- or post-hearing briefing that the ALJ's construction of claim 1 of the '530 patent, as laid out in orders 22 and 35, was indefinite? If they did, identify where in the briefing those arguments were made.

The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may issue: (1) An exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease-and-desist order that could result in the respondent 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 (Dec. 1994).

If the Commission contemplates some form of remedy, it must 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 or disapprove the Commission's action. 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 this investigation are requested to file written submissions on the issues identified in this Notice and on the issues of remedy, the public interest, and bonding. Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainant is further requested to supply the names of known importers of the Respondent's products at issue in this investigation.

The parties' written submissions and proposed remedial orders must be filed no later than the close of business on October 31, 2019. Reply submissions must be filed no later than the close of business on November 7, 2019. Opening submissions are limited to 75 pages. Reply submissions are limited to 60 pages. Such submissions should address the ALJ's recommended determination on remedy and bonding. Interested government agencies and any other interested parties are also encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Third-party submissions should be filed no later than the close

of business on October 31, 2019, 2019. No further submissions on any of 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 and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1100") 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 unless the information has already been granted such treatment during the proceedings. 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 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,¹ solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 210).

By order of the Commission.

Issued: October 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-23072 Filed 10-22-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-747 (Final)]

Fresh Tomatoes From Mexico; Continuation of the Final Phase of an Antidumping Duty Investigation and Revised Schedule

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the continuation of the final phase of antidumping investigation No. 731-TA-747 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fresh tomatoes from Mexico preliminarily determined by the Department of Commerce ("Commerce") to be sold at less than fair value ("LTFV"). This notice also provides the revised schedule for the final phase.

DATES: October 17, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher W. Robinson (202) 205-2542), 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:

Background

On February 1, 2018, Commerce initiated and the Commission instituted their fourth five-year reviews of the suspended investigation (83 FR 4641, 83 FR 4676). On May 7, 2019, Commerce terminated the suspension agreement and resumed its antidumping investigation (84 FR 20858, May 13,

2019). Effective May 7, 2019, the Commission terminated its fourth review (84 FR 21360, May 14, 2019) and resumed its antidumping investigation (84 FR 27805, June 14, 2019). On August 7, 2019, the Commission published a schedule for the conduct of the final phase of the subject investigation (84 FR 38643). On September 24, 2019, Commerce published notice in the **Federal Register** suspending its antidumping investigation on the basis of a suspension agreement between Commerce and signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico (84 FR 49987). Effective September 24, 2019, the Commission suspended its antidumping investigation (84 FR 54639, October 10, 2019).

On October 11 and 15, 2019, Commerce received timely requests, pursuant to section 734(g) of the Tariff Act of 1930 (19 U.S.C. 1673c(g)), to continue its antidumping investigation on fresh tomatoes from Mexico and therefore resumed its final investigation. The Commission, therefore, is continuing its antidumping investigation and gives notice of its revised schedule.

The Commission's new schedule for its final investigation is as follows: The hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 24, 2019; the deadline for filing posthearing briefs is October 31, 2019; the Commission will make its final release of information on November 18, 2019; and final party comments are due on November 20, 2019. (Requests to appear at the hearing and the deadline for prehearing briefs already occurred under the prior schedule for this final investigation.) For further information concerning this proceeding, see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, C, and D (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-23073 Filed 10-22-19; 8:45 am]

BILLING CODE 7020-02-P

¹ All contract personnel will sign appropriate nondisclosure agreements.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1149]

Certain Semiconductor Devices, Integrated Circuits, and Consumer Products Containing the Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement and a Withdrawal of the Complaint; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 33) issued by the presiding administrative law judge (“ALJ”) granting a motion to terminate the investigation based on a settlement agreement and a withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT:

Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (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>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 3, 2019, based on a complaint filed by Innovative Foundry Technologies LLC of Portsmouth, New Hampshire (“IFT”). 84 FR 13065. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 semiconductor devices, integrated circuits, and consumer products containing the same

by reason of infringement of certain claims of U.S. Patent Nos. 6,583,012; 6,797,572; 7,009,226; 7,880,236; and 9,373,548. *Id.* The Commission’s notice of investigation named as respondents BBK Communication Technology Co., Ltd., of Dongguan, China; Vivo Mobile Communication Co., Ltd., of Dongguan, China; OnePlus Technology (Shenzhen) Co., Ltd., of Shenzhen, China; Guangdong OPPO Mobile Telecommunications Co., Ltd., of Dongguan, China; Hisense Electric Co., Ltd. of Qingdao, China; Hisense USA Corporation of Suwanee, Georgia; Hisense USA Multimedia R & D Center Inc. of Suwanee, Georgia; TCL Corporation of Huizhou City, China; TCL Communication, Inc. of Irvine, California; TTE Technology, Inc. (d/b/a TCL America) of Wilmington, Delaware; TCT Mobile (US) Inc. of Irvine, California; VIZIO, Inc. of Irvine, California; MediaTek Inc. of Hsinchu City, Taiwan, MediaTek USA Inc. of San Jose, California, and Mstar Semiconductor, Inc. of Chupei City, Taiwan (collectively, “MediaTek”); Qualcomm Incorporated of San Diego, California, and Qualcomm Technologies, Inc. of San Diego, California (collectively, “Qualcomm”); and Taiwan Semiconductor Manufacturing Company Limited of Hsinchu City, Taiwan, TSMC North America of San Jose, California, and TSMC Technology, Inc. of San Jose, California (collectively, “TSMC”). *Id.* at 13066. The complaint and notice of investigation were amended to add as respondents Dongguan OPPO Precision Electronic Corp., Ltd.; TCL Mobile Communication (HK) Co., Ltd.; and Huizhou TCL Mobile Communication Co. Ltd. Order No. 15 (Jun. 13, 2019), *not reviewed* Notice (Jul. 7, 2019); Order No. 24 (Jul. 22, 2019), *not reviewed* Notice (Aug. 13, 2019). The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. 84 FR 13066.

On September 4, 2019, IFT filed an unopposed motion to terminate the investigation with respect to TSMC, MediaTek, and Qualcomm based on a settlement agreement, and to terminate the investigation with respect to all other respondents based on a withdrawal of the complaint. On September 6, 2019, OUII filed a response in support of the motion.

On September 27, 2019, the ALJ issued the subject ID, granting the motion to terminate the investigation based on a settlement agreement and the withdrawal of the complaint. The ALJ found that the motion complied with the Commission Rules and that there was no evidence that termination was

contrary to the public interest. No petitions for review of the ID were received.

The Commission has determined not to review the subject ID. The investigation is terminated.

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 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-23071 Filed 10-22-19; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Analysis of Publicly Available Court Data (APACD)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Suzanne Strong, Statistician, Prosecution and Judicial Statistics Unit, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: Suzanne.M.Strong@usdoj.gov; telephone: 202-616-3666).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary

- for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
 - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Analysis of Publicly Available Court Data (APACD).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Data Extraction Guide is APACD-001. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be court administrators or their information technology (IT) staff within state or county courts. *Abstract:* Among other responsibilities, the Bureau of Justice Statistics is charged with collecting data regarding the prosecution of crimes by state and federal offices. This effort is directed towards state and county courts regarding the processing of criminal felony and misdemeanor cases in courts of limited and general jurisdiction. The APACD will collect information from state and county courts by requesting data extracts of court case management systems. Thirty-one states and the District of Columbia have statewide court case management systems. An additional five states have a majority of counties included, with one to four counties missing from the statewide case management systems, for a total of 10 additional counties needed to complete the almost-statewide systems. The remaining fourteen states and Puerto Rico do not have statewide case management systems, or at least not statewide systems that cover most of the state.

BJS will request complete records from the statewide and mostly-statewide systems, with separate requests to the counties not included in the mostly statewide systems. BJS will also sample counties from the states unable to provide statewide extracts. The requests will sample with certainty any county with a total resident population exceeding one million persons.

This is BJS's first collection from state courts since the Survey of Juveniles Charged in Adult Criminal Courts effort in 2014. BJS is requesting that the extracts include all felony and misdemeanor criminal cases disposed of by December 31, 2019. BJS is also requesting that the extracts include defendant demographics; information about charges, hearings, disposition, and sentences; attorney information; diversion and problem-solving court information; and whether a bench warrant was issued during the case. State and local courts can provide the data extract or extracts in any format.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS will send a data extraction guide to a total of 150 jurisdictions. The 150 jurisdictions include 36 states (including 10 counties that are not included in the statewide case management systems) and the District of Columbia, 23 counties with total populations exceeding 1,000,000 residents, and 80 sampled counties representing the 14 states and Puerto Rico that cannot provide statewide data. The expected burden placed on these jurisdictions is about 30 hours per jurisdiction, with an additional 10 hours to explain any data inconsistencies or questions of the data collection team.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 6,000 burden hours for the 150 jurisdictions.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-23092 Filed 10-22-19; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

[OMB Number 1103-0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; COPS Application Package

AGENCY: Community Oriented Policing Services, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment December 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE, Washington, DC 20530, (202) 514-6563.

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms

of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency Form Number:* 1103-0098 U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law Enforcement Agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents is 5,000. The estimated hourly burden to the applicant is 11 hours for each respondent to review the instructions and complete the application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 55,000 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Room 3E.405A, Washington, DC 20530.

Dated: October 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-23091 Filed 10-22-19; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of the American Apprenticeship Initiative

AGENCY: Department of Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Policy, Chief Evaluation Office (CEO) sponsored information collection request (ICR) proposal titled, "Evaluation of the American Apprenticeship Initiative," to

the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 22, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201903-1290-003 (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202-693-8073, TTY 202-693-8064, (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-CEO, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Frederick Licari by telephone at 202-693-8073, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Evaluation of the American Apprenticeship Initiative information collection. The American Apprenticeship Initiative (AAI) awarded funds to multiple grantees to support the expansion of quality and innovative apprenticeship training programs, and the Department of Labor is sponsoring an evaluation of this initiative. The AAI is a significant DOL investment to expand apprenticeship in the U.S., and the evaluation will provide a wealth of information on apprenticeship outcomes and ROI for businesses that invest in apprenticeship. The American Apprenticeship Initiative is authorized by Section 414(c) of the American Competitiveness and Workforce

Improvement Act of 1998 (ACWIA), as amended (codified at 29 U.S.C. 2916a).

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on August 27, 2018 (83 FR 43708).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201903-1290-003. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL-CEO.

Title of Collection: Evaluation of the American Apprenticeship Initiative.

OMB ICR Reference Number: 201903-1290-003.

Affected Public: Private Sector; Individuals or Households.

Total Estimated Number of Respondents: 709.

Total Estimated Number of Responses: 709.

Total Estimated Annual Time Burden: 355 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 1, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–23066 Filed 10–22–19; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Cascades Job Corps College and Career Academy Pilot Evaluation, Continuing Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the Cascades Job Corps College and Career Academy Pilot Evaluation. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 23, 2019.

ADDRESSES: You may submit comments by either one of the following methods: *Email:* ChiefEvaluationOffice@dol.gov; Deborah Martierrez, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT:

Deborah Martierrez by email at ChiefEvaluationOffice@dol.gov or by phone at (202) 693–5091.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Chief Evaluation Office (CEO), U.S. Department of Labor (DOL), was approved under OMB number 1290–0012 for a data collection activity as part of the Cascades Job Corps College and Career Academy Evaluation Pilot Evaluation. The goal of the evaluation is to determine the effectiveness of the Pilot program in improving employment and educational outcomes for youth ages 21 and under. The impact study randomly assigns individuals to receive program services or to a group that cannot access these services but who can participate in other similar programs. The impact study will compare the employment and educational outcomes of the groups to determine the effectiveness of the pilot program. The evaluation also includes an implementation study that will describe the services participants receive through the pilot program as well as provide operational lessons.

This **Federal Register** Notice provides the opportunity to comment on two proposed changes to information collection activities for the Cascades Job Corps College and Career Academy Evaluation Pilot Evaluation:

1. Extension of data collection through the follow-up tracking form; and

2. A modest increase in burden for the implementation site visits.

The extension of the follow-up data collection and additional burden for the implementation site visits will provide vital data for the evaluation.

II. *Desired Focus of Comments:*

Currently, the Department of Labor is soliciting comments concerning the above data collection for the Cascades Job Corps College and Career Academy Evaluation Pilot Evaluation. DOL is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology—for example, permitting electronic submissions of responses.

III. *Current Actions:* At this time, the Department of Labor is requesting clearance for extending ongoing tracking of participants, and an expansion of site visits.

Type of Review: Continuing information collection request.

OMB Control Number: 1290–0012.

Affected Public: Cascades Job Corps College and Career Academy Evaluation Pilot Evaluation grantees, partners and participants.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated Burden Hours
Interview Protocol—Center Director (Center Overview)	1	1	1	1	1
Interview Protocol—Community Culture, Student Support Systems, Student Rewards & Recognitions, and Disciplinary Policies	1	1	1	1	1

ESTIMATED ANNUAL BURDEN HOURS—Continued

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated Burden Hours
Interview Protocol—Education & Training Services Overview	¹ 1	1	1	1	1
Interview Protocol—Education & Training <i>Planning & Counseling</i> Services Overview	¹ 1	1	1	1	1
Interview Protocol—High School, High School Equivalency, Basic Education, and Education & Training Support Services Overview	¹ 1	1	1	1	1
Interview Protocol—Trade/Pathway Managers or Supervisors (IT and Healthcare Trade/Pathway Overview)	² 2	1	2	1	2
Interview Protocol—College Services Overview	¹ 1	1	1	1	1
Interview Protocol—Non-Cognitive Social and Workplace Skills Development Services Overview	¹ 1	1	1	1	1
Interview Protocol—Recruitment, Admissions, and Intake Services Overview	¹ 1	1	1	1	1
Interview Protocol—Career Transition Readiness, Career Transition Services, Internship, and/or other Placement Services Overview	³ 3	1	3	1	3
Interview Protocol—Employer/Service Provider Partners ...	⁴ 2	1	2	0.5	1
Interview Protocol—Traditional Center Student Focus Groups	⁵ 20	1	20	1	20
Follow-up Tracking Form	⁶ 207	1.5	310	0.1	31
Total	242	.....	345	.....	65

¹ Assumes 1 interview at CCCA and 1 interview at each of 2 different Traditional JC Centers (for a total of 3 interviews) of one hour each, over the three-year clearance period.

² Assumes approximately 2 interviews at CCCA and 2 interviews at 2 different Traditional JC Centers (for a total of 6 interviews) of one hour each, over the three-year clearance period.

³ Assumes approximately 3 interviews at CCCA and 3 interviews at 2 different Traditional JC Centers (for a total of 9 interviews) of one hour each, over the three-year clearance period.

⁴ Assumes approximately 2 interviews at CCCA and 2 interviews at 2 different Traditional JC Centers (for a total of 6 interviews) of a half-hour each, over the three-year clearance period.

⁵ Assumes 10 students per focus group, with 2 focus groups (one group of 10 for Health track and one group of 10 for IT track) at each of 3 sites (CCCA and 2 different Traditional JC Centers) for a total of 60 students over the three-year clearance period.

⁶ Total sample size for follow-up tracking is 620 study participants over the three-year clearance period.

Christina Yancey,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2019-23069 Filed 10-22-19; 8:45 am]

BILLING CODE 4510-HX-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; TechHire and Strengthening Working Families Initiative Grant Programs Evaluation—18-Month Follow-Up Survey

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Policy, Chief Evaluation Office (CEO) sponsored information collection request (ICR) proposal titled, “TechHire and Strengthening Working Families Initiative Grant Programs Evaluation—18-Month Follow-Up,” to the Office of

Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 22, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201905-1290-001 (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202-693-8073, TTY 202-693-8064, (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL—CEO, Office of Management and Budget, Room 10235,

725 17th Street NW, Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202-693-8073, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the TechHire and Strengthening Working Families Initiative Grant Programs Evaluation—18-Month Follow-Up Survey information collection. The U.S. Department of Labor’s Chief Evaluation Office (CEO) is undertaking the Evaluation of Strategies Used in the TechHire and Strengthening Working

Families Initiative (SWFI) Grant Programs. The evaluation includes both implementation and impact components. The purpose of the evaluation is to identify whether the grants help low wage workers obtain employment in, and advance in, H-1B industries and occupations and, if so, which strategies are most helpful. This is for an 18-month participant follow-up survey. The Consolidated Appropriations Act of 2016 authorizes this information collection. *See* Public Law 114-113.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on March 6, 2019 (84 FR 8119).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201905-1290-001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-CEO.

Title of Collection: TechHire and Strengthening Working Families Initiative Grant Programs Evaluation—18-Month Follow-Up Survey.

OMB ICR Reference Number: 201905-1290-001.

Affected Public: Private Sector: Businesses, other for-profits, and not-for-profits.

Total Estimated Number of Respondents: 454.

Total Estimated Number of Responses: 454.

Total Estimated Annual Time Burden: 227 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 2, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019-23067 Filed 10-22-19; 8:45 am]

BILLING CODE 4510-HX-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Report on Occupational Employment and Wages." A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before December 23, 2019.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division

of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202-691-5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT:

Carol Rowan, BLS Clearance Officer, at 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Employment Statistics (OES) survey is a Federal/State establishment survey of wage and salary workers designed to produce data on current detailed occupational employment and wages for each Metropolitan Statistical Area and Metropolitan Division as well as by detailed industry classification. OES survey data assist in the development of employment and training programs established by the Perkins Vocational Education Act of 1998 and the Wagner-Peyser Act.

The OES program operates a periodic mail survey of a sample of non-farm establishments conducted by all fifty States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Over three-year periods, data on occupational employment and wages are collected by industry at the four- and five-digit North American Industry Classification System (NAICS) levels. The Department of Labor uses OES data in the administration of the Foreign Labor Certification process under the Immigration Act of 1990.

II. Current Action

Office of Management and Budget clearance is being sought for the OES program. Occupational employment data obtained by the OES survey are used to develop information regarding current and projected employment needs and job opportunities. These data assist in the development of State vocational education plans. OES wage data provide a significant source of information to support a number of different Federal, State, and local efforts.

As part of an ongoing effort to reduce respondent burden, OES has several electronic submission options which are available to respondents. Respondents have the ability to submit data by email, or fillable online forms. In many cases, a respondent can submit existing payroll records and would not need to submit a survey form.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: Report on Occupational Employment and Wages.

OMB Number: 1220-0042.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government.

Total Respondents: 266,489.

Frequency: Semi-annually.

Total Responses: 266,489.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 133,245.

Total Burden Cost (capital/startup): \$00.00.

Total Burden Cost (operating/maintenance): \$00.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on October 16, 2019.

Mark Staniorski,

Division Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2019-23068 Filed 10-22-19; 8:45 am]

BILLING CODE 4510-24-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19-072)]

Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, November 14, 2019, 3:30 p.m.–4:30 p.m., Eastern Time.

ADDRESSES: This meeting will take place telephonically. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1-800-475-0212 or toll number 1-517-308-9094, passcode 6749647.

FOR FURTHER INFORMATION CONTACT:

KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-2355, fax (202) 358-2779, or khenderson@nasa.gov.

The agenda for the meeting includes the following topic:

—Earth Science program annual performance review according to the Government Performance and Results Act Modernization Act (GPRAMA).

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019-23101 Filed 10-22-19; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19-071)]

Name of Information Collection: NASA Astronaut Candidate Selection (ASCAN) Qualifications Inquiry

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—renewal of existing information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by December 23, 2019.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email claire.a.little@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports the National Aeronautics and Space Act of 1958, as amended, to create opportunities to improve processes associated with the evaluation and selection of individuals to participate in the NASA Astronaut Candidate Selection Program. The NASA Astronaut Selection Office (ASO) located at the Lyndon B. Johnson Space Center (JSC) in Houston, Texas is responsible for selecting astronauts for the various United States Space Exploration programs. In evaluating an applicant for the Astronaut Candidate Program, it is important that the ASO have the benefit of qualitative and quantitative information and recommendations from persons who have been directly associated with the applicant over the course of their career.

This information will be used by the NASA ASO and Human Resources (HR) personnel, during the candidate selection process (approx. 2 year duration), to gain insight into the candidates' work ethic and

professionalism as demonstrated in previous related employment activities. Respondents may include the astronaut candidate's previous employer(s)/direct-reporting manager, as well as co-workers and other references provided by the candidate.

II. Methods of Collection

Electronic and optionally by paper.

III. Data

Title: NASA Astronaut Candidate Selection (ASCAN) Qualifications Inquiry.

OMB Number: 2700-0156.

Type of Review: Renewal of Existing Information Collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 2,000.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 2,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 669.

Estimated Total Annual Cost: \$50,905.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,
Federal Liaison Officer.

[FR Doc. 2019-23027 Filed 10-22-19; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities will hold twenty-two meetings of the Humanities Panel, a federal advisory committee, during November 2019. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates.

ADDRESSES: The meetings will be held at Constitution Center, 400 7th Street SW, Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. DATE: November 1, 2019

This meeting will discuss applications on the topics of Arts and Culture, for the Media Projects: Development Grants, submitted to the Division of Public Programs.

2. DATE: November 4, 2019

This meeting will discuss applications on the topic of Cultural History, for the Media Projects: Production Grants, submitted to the Division of Public Programs.

3. DATE: November 6, 2019

This meeting will discuss applications on the topics of Music and Performing Arts, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

4. DATE: November 7, 2019

This meeting will discuss applications on the topic of U.S. History (Political and Military), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

5. DATE: November 12, 2019

This meeting will discuss applications on the topic of Art History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

6. DATE: November 14, 2019

This meeting will discuss applications on the topics of Asia, Africa, and Europe, for the Kluge Fellowships, submitted to the Division of Research Programs.

7. DATE: November 14, 2019

This meeting will discuss applications on the topic of History, for the Media Projects: Production Grants, submitted to the Division of Public Programs.

8. DATE: November 14, 2019

This meeting will discuss applications on the topic of U.S. History (African-American), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

9. DATE: November 15, 2019

This meeting will discuss applications on for the Public Humanities Projects: Humanities Discussions Grants, submitted to the Division of Public Programs.

10. DATE: November 15, 2019

This meeting will discuss applications on the topic of the Americas, for the Kluge Fellowships, submitted to the Division of Research Programs.

11. DATE: November 18, 2019

This meeting will discuss applications on the topics of Arts and Culture, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

12. DATE: November 18, 2019

This meeting will discuss applications for the Humanities Connections Implementation Grants, submitted to the Division of Education Programs.

13. DATE: November 19, 2019

This meeting will discuss applications for the Humanities Connections Implementation Grants, submitted to the Division of Education Programs.

14. DATE: November 19, 2019

This meeting will discuss applications on the topics of American

History and Culture, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

15. DATE: November 19, 2019

This meeting will discuss applications on the topic of Indigenous Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

16. DATE: November 20, 2019

This meeting will discuss applications for the Humanities Connections Planning Grants, submitted to the Division of Education Programs.

17. DATE: November 21, 2019

This meeting will discuss applications for the Humanities Connections Planning Grants, submitted to the Division of Education Programs.

18. DATE: November 21, 2019

This meeting will discuss applications on the topic of World Studies (Modern), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

19. DATE: November 21, 2019

This meeting will discuss applications for the Humanities Connections Planning Grants, submitted to the Division of Education Programs.

20. DATE: November 22, 2019

This meeting will discuss applications for the Humanities Connections Planning Grants, submitted to the Division of Education Programs.

21. DATE: November 22, 2019

This meeting will discuss applications on the topic of U.S. History (Pre-1900), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

22. DATE: November 25, 2019

This meeting will discuss applications for the Humanities Connections Planning Grants, submitted to the Division of Education Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's

Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: October 17, 2019.

Caitlin Cater,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2019-23045 Filed 10-22-19; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289; NRC-2019-0199]

Exelon Generation Company LLC; Three Mile Island Nuclear Station Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued exemptions in response to an April 12, 2019, request from Exelon Generation Company, LLC (Exelon, the licensee). One exemption permits the use of the Three Mile Island Nuclear Station, Unit 1 (TMI-1) Decommissioning Trust Fund (DTF) for spent fuel management activities based on the TMI-1 post-shutdown decommissioning activities report (PSDAR) and site-specific decommissioning cost estimate (DCE). The other exemption permits the licensee to make withdrawals from the DTF for spent fuel management activities without prior notification of the NRC.

DATES: The exemptions were issued on October 16, 2019.

ADDRESSES: Please refer to Docket ID NRC-2019-0199 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0199. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For

problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Justin C. Poole, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2048; email: Justin.Poole@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemptions are attached.

Dated at Rockville, Maryland, this 17th day of October, 2019.

For the Nuclear Regulatory Commission.

Justin C. Poole,

Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemptions

NUCLEAR REGULATORY COMMISSION

Docket No. 50-289

Exelon Generation Company, LLC

Three Mile Island Nuclear Station, Unit 1

Exemptions

I. Background

Exelon Generation Company, LLC (Exelon, the licensee) is the holder of Renewed Facility Operating License No. DPR-50 for the Three Mile Island Nuclear Station, Unit 1 (TMI-1). The facility is located in Dauphin County, Pennsylvania.

By letter dated June 20, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17171A151), Exelon submitted a certification in accordance with Section 50.82(a)(1)(i) of Title 10 of the *Code of Federal Regulations* (10 CFR), stating its determination to permanently cease operations at TMI-1 no later than September 30, 2019. By letter dated September 26, 2019 (ADAMS Accession No. ML19269E480), Exelon submitted to the NRC a certification in accordance with 10 CFR 50.82(a)(1)(ii), stating that as of September 26, 2019, all fuel had been permanently removed from the TMI-1 reactor vessel. By separate letters dated April 5, 2019 (ADAMS Accession Nos. ML19095A009, ML19095A010, and

ML19095A041), Exelon submitted the TMI-1 spent fuel management plan (SFMP), site-specific decommissioning cost estimate (DCE), and post-shutdown decommissioning activities report (PSDAR), respectively.

II. Request/Action

By letter dated April 12, 2019 (ADAMS Accession No. ML19102A085), Exelon submitted a request for exemptions from 10 CFR

50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). The requested exemption from 10 CFR 50.82(a)(8)(i)(A) would permit Exelon to use funds from the TMI-1 Decommissioning Trust Fund (DTF) for spent fuel management activities in accordance with the TMI-1 site-specific DCE. The exemption from 10 CFR 50.75(h)(1)(iv) would also permit Exelon to make these withdrawals without prior notification of the NRC, similar to withdrawals for decommissioning activities made in accordance with 10 CFR 50.82(a)(8).

The 10 CFR 50.82(a)(8)(i)(A) requirement restricts the use of DTF withdrawals to expenses for legitimate decommissioning activities consistent with the definition of decommissioning that appears in 10 CFR 50.2. The definition of “decommission” in 10 CFR 50.2 reads as follows:

To remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

This definition does not include activities associated with spent fuel management activities. Therefore, an exemption from 10 CFR 50.82(a)(8)(i)(A) is needed to allow Exelon to use funds from the DTF for spent fuel management activities. The requirements of 10 CFR 50.75(h)(1)(iv) also restrict the use of DTF disbursements (other than for ordinary and incidental expenses) to decommissioning expenses until final radiological decommissioning is completed. Therefore, partial exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) are needed to allow Exelon to use funds from the TMI-1 DTF for spent fuel management activities in accordance with the TMI-1 site-specific DCE.

The requirements of 10 CFR 50.75(h)(1)(iv) further provide that, except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of

the fund in connection with the operation of the fund, no disbursement may be made from the DTF without written notice to the NRC at least 30 working days in advance. Therefore, an exemption from 10 CFR 50.75(h)(1)(iv) is also needed to allow Exelon to use funds from the TMI-1 DTF for spent fuel management activities at TMI-1 without prior NRC notification.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50: (1) When the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

(a) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; and

(b) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

The requested exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would allow Exelon to use a portion of the funds from the TMI-1 DTF for spent fuel management activities at TMI-1 without prior notice to the NRC, in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law. The NRC staff has determined, as explained below, that there is reasonable assurance of adequate funding for radiological decommissioning because the licensee's use of the DTF for activities associated with spent fuel management will not negatively impact the availability of funding for radiological decommissioning. Accordingly, the exemptions are authorized by law because granting the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations.

B. No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is to provide reasonable assurance that adequate funds will be available for the radiological decommissioning of power reactors. As explained in further detail in Section D below, based on the NRC staff's review of Exelon's site-specific DCE and the staff's independent cash flow analysis provided in the enclosed Table 1, “NRC Cash Flow Analysis of TMI-1 Decommissioning Trust Funds and Associated Costs, including Spent Fuel Management,” the NRC staff finds that the use of the TMI-1 DTF for spent fuel management activities at TMI-1 will not adversely impact Exelon's ability to terminate the TMI-1 license (*i.e.*, complete radiological decommissioning) as planned, consistent with the schedule and costs contained in the PSDAR.

Furthermore, an exemption from 10 CFR 50.75(h)(1)(iv) to allow the licensee to make withdrawals from the DTF for spent fuel management activities without prior written notification to the NRC will not affect the sufficiency of funds in the DTF to accomplish radiological decommissioning because such withdrawals are still constrained by the provisions of 10 CFR 50.82(a)(8)(i)(B)–(C) and are reviewable under the annual reporting requirements of 10 CFR 50.82(a)(8)(v)–(vii).

There are no new accident precursors created by using the DTF in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the requested exemptions will not present an undue risk to the public health and safety.

C. Consistent With the Common Defense and Security

The requested exemptions would allow Exelon to use funds from the TMI-1 DTF for spent fuel management activities at TMI-1. Spent fuel management under 10 CFR 50.54(bb) is an integral part of the planned decommissioning and license termination process and will not adversely affect Exelon's ability to physically secure the site or protect special nuclear material. This change to enable the use of a portion of the funds

from the DTF for spent fuel management activities has no relation to security issues. Therefore, the common defense and security is not impacted by the requested exemptions.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), which restricts withdrawals from DTFs to expenses for radiological decommissioning activities, is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors and license termination. Strict application of these requirements would prohibit the withdrawal of funds from the TMI-1 DTF for spent fuel management activities, until final radiological decommissioning at TMI-1 has been completed.

The April 1, 2019, annual report on the status of decommissioning funding for TMI-1 (ADAMS Accession No. ML19091A140), and the PSDAR both report a DTF balance of \$669.6 million as of December 31, 2018. The cash flow analysis in Table 2 of the April 12, 2019, application is based on a beginning DTF balance of \$662.9 million as of December 31, 2018. The licensee stated that the beginning DTF balance was adjusted to account for 2017 and 2018 site radiological decommissioning planning and 2018 spent fuel management planning costs that would be reimbursed if the exemptions were granted. The Exelon analysis in the TMI-1 site-specific DCE, PSDAR, and exemption requests project the total radiological decommissioning cost of TMI-1 to be approximately \$1 billion in 2018 dollars and the spent fuel management costs to be \$158.6 million in 2018 dollars. This amounts to total estimated costs of approximately \$1.16 billion for decommissioning and spent fuel management, with license termination occurring in 2081.

The NRC staff performed an independent cash flow analysis of the DTF over the 60 year SAFSTOR period (assuming an annual real rate of return of two percent, as allowed by 10 CFR 50.75(e)(1)(ii)) and determined the projected earnings of the DTF. The results of the staff's analysis are presented in the enclosed Table 1. In its analysis, the NRC staff used the lesser opening DTF balance of \$662.9 million as a conservative estimate that reflects less money available to cover

radiological decommissioning and spent fuel management costs.

As shown in the enclosed Table 1, the NRC staff confirmed that the current funds in the DTF and projected earnings are expected to be available and sufficient to complete all NRC required radiological decommissioning activities at TMI-1, and also to pay for spent fuel management activities. Therefore, the NRC staff finds that Exelon has provided reasonable assurance that adequate funds will be available for the radiological decommissioning of TMI-1, even with the disbursement of funds from the DTF for spent fuel management activities. Consequently, the NRC staff concludes that application of the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), that funds from the DTF only be used for radiological decommissioning activities and not for spent fuel management activities, is not necessary to achieve the underlying purpose of the rule; thus, special circumstances are present supporting approval of the exemption requests.

In its submittal, Exelon also requested exemption from the requirement of 10 CFR 50.75(h)(1)(iv) concerning prior written notification to the NRC of withdrawals from the DTF to fund activities other than radiological decommissioning. The underlying purpose of notifying the NRC prior to withdrawal of funds from the DTF is to provide opportunity for NRC intervention, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(1)(iv) and 10 CFR 50.82(a)(8) that could result in there being insufficient funds in the DTF to accomplish radiological decommissioning.

By granting the exemptions to 10 CFR 50.75(h)(1)(iv) and 10 CFR 50.82(a)(8)(i)(A), the NRC staff considers that withdrawals consistent with the licensee's submittal dated April 12, 2019, are authorized. As stated previously, the NRC staff has determined that there are sufficient funds in the DTF to complete radiological decommissioning activities as well as to conduct spent fuel management activities consistent with the PSDAR, site-specific DCE, and the April 12, 2019, exemption requests. Pursuant to the requirements in 10 CFR 50.82(a)(8)(v) and (vii), licensees are required to monitor and annually report to the NRC the status of the DTF and the licensee's funding for managing spent fuel. These reports provide the NRC staff with awareness of, and the ability to take action on, any actual or potential funding deficiencies. Additionally, 10

CFR 50.82(a)(8)(vi) requires that the annual financial assurance status report must include additional financial assurance to cover the estimated cost of completion if the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a two-percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning. The requested exemption would not allow the withdrawal of funds from the DTF for any other purpose that is not currently authorized in the regulations without prior notification to the NRC. Therefore, the granting of this exemption to 10 CFR 50.75(h)(1)(iv) to allow the licensee to make withdrawals from the DTF to cover authorized expenses for spent fuel management activities without prior written notification to the NRC will still meet the underlying purpose of the regulation.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. The licensee stated that the DTF contains funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for spent fuel management activities. Preventing access to those excess funds in the DTF because spent fuel management activities are not associated with radiological decommissioning would create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the DTF to cover the cost of activities associated with radiological decommissioning and pay for costs associated with spent fuel management is supported by the staff's independent cash flow analysis in the enclosed Table 1. If the licensee cannot use its DTF for spent fuel management, it would need to obtain additional funding that would not be recoverable from the DTF, or the licensee would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) were adopted.

Since the underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would be achieved by allowing Exelon to use a portion of the

TMI-1 DTF for spent fuel management activities without prior NRC notification, and since compliance with the regulations would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulations were adopted, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist and support the approval of the requested exemptions.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of the exemptions will not have a significant effect on the quality of the human environment (see Environmental Assessment and Finding of No

Significant Impact published in the **Federal Register** on October 16, 2019 (84 FR 55342).

IV. Conclusions

In consideration of the above, the NRC staff finds that the proposed exemptions confirm the adequacy of funding in the TMI-1 DTF to complete radiological decommissioning of the site and to terminate the license and also to cover estimated spent fuel management activities.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore,

the Commission hereby grants Exelon exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) to allow them to use a portion of the funds from the TMI-1 DTF for spent fuel management activities, without prior NRC notification, consistent with the PSDAR and site-specific DCE dated April 5, 2019.

The exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 16th day of October, 2019.

For the Nuclear Regulatory Commission.
/RA/

Craig G. Erlanger,

Director, Division of Operating Reactor
Licensing, Office of Nuclear Reactor
Regulation.

TABLE 1—NRC CASH FLOW ANALYSIS OF TMI-1 DECOMMISSIONING TRUST FUNDS AND ASSOCIATED COSTS, INCLUDING SPENT FUEL MANAGEMENT
[thousands of constant 2018 dollars]

Year	Opening DTF balance	License termination costs	Spent fuel management costs	Interest 2%	EOY trust fund value
2019	\$662,953	\$20,490	\$27,477	\$12,300	\$627,286
2020	627,286	66,516	30,973	10,596	540,393
2021	540,393	45,645	25,395	9,387	478,740
2022	478,740	38,025	14,963	8,515	434,267
2023	434,267	10,088	123	8,481	432,537
2024	432,537	9,099	1,139	8,446	430,745
2025	430,745	6,057	4,152	8,411	428,947
2026	428,947	6,057	4,152	8,375	427,112
2027	427,112	6,057	4,152	8,338	425,241
2028	425,241	6,073	4,163	8,300	423,305
2029	423,305	6,057	4,152	8,262	421,358
2030	421,358	6,057	4,152	8,223	419,372
2031	419,372	6,057	4,152	8,183	417,347
2032	417,347	6,073	4,163	8,142	415,253
2033	415,253	6,057	4,152	8,101	413,145
2034	413,145	6,052	7,385	7,994	407,702
2035	407,702	6,040	13,784	7,758	395,635
2036	395,635	5,702	0	7,799	397,732
2037	397,732	5,686	0	7,841	399,887
2038	399,887	5,686	0	7,884	402,085
2039	402,085	5,686	0	7,928	404,327
2040	404,327	5,702	0	7,973	406,598
2041	406,598	5,686	0	8,018	408,930
2042	408,930	5,686	0	8,065	411,309
2043	411,309	5,686	0	8,112	413,735
2044	413,735	5,702	0	8,161	416,194
2045	416,194	5,686	0	8,210	418,718
2046	418,718	5,686	0	8,261	421,293
2047	421,293	5,686	0	8,312	423,919
2048	423,919	5,702	0	8,364	426,581
2049	426,581	5,686	0	8,418	429,313
2050	429,313	5,686	0	8,473	432,099
2051	432,099	5,686	0	8,528	434,942
2052	434,942	5,702	0	8,585	437,825
2053	437,825	5,686	0	8,643	440,781
2054	440,781	5,686	0	8,702	443,797
2055	443,797	5,686	0	8,762	446,873
2056	446,873	5,702	0	8,823	449,995
2057	449,995	5,686	0	8,886	453,195
2058	453,195	5,686	0	8,950	456,459
2059	456,459	5,686	0	9,015	459,789
2060	459,789	5,702	0	9,082	463,168
2061	463,168	5,686	0	9,150	466,632
2062	466,632	5,686	0	9,219	470,165

TABLE 1—NRC CASH FLOW ANALYSIS OF TMI-1 DECOMMISSIONING TRUST FUNDS AND ASSOCIATED COSTS, INCLUDING SPENT FUEL MANAGEMENT—Continued
[thousands of constant 2018 dollars]

Year	Opening DTF balance	License termination costs	Spent fuel management costs	Interest 2%	EOY trust fund value
2063	470,165	5,886	0	9,286	473,565
2064	473,565	5,702	0	9,357	477,220
2065	477,220	5,686	0	9,431	480,965
2066	480,965	5,686	0	9,506	484,784
2067	484,784	5,686	0	9,582	488,680
2068	488,680	5,702	0	9,660	492,638
2069	492,638	5,686	0	9,739	496,691
2070	496,691	5,886	0	9,816	500,621
2071	500,621	5,686	0	9,899	504,833
2072	504,833	5,702	0	9,983	509,114
2073	509,114	24,709	0	9,688	494,093
2074	494,093	61,226	0	8,657	441,524
2075	441,524	150,301	0	5,824	297,048
2076	297,048	113,681	0	3,667	187,034
2077	187,034	75,862	0	2,223	113,396
2078	113,396	75,687	0	754	38,463
2079	38,463	32,813	0	113	5,763
2080	5,763	133	0	113	5,743
2081	5,743	95	0	113	5,760
Total		1,001,949	158,629		

[FR Doc. 2019-23029 Filed 10-22-19; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from May 1, 2019 to May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202-606-2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at

www.gpo.gov/fdsys/. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during May 2019.

Schedule B

No Schedule B Authorities to report during May 2019.

Schedule C

The following Schedule C appointing authorities were approved during May 2019.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Food and Nutrition Service.	Confidential Assistant	DA190121	05/02/2019
		Senior Policy Advisor	DA190141	05/17/2019
	Office of Foreign Agricultural Service.	Policy Analyst	DA190109	05/14/2019
	Office of the Assistant Secretary for Congressional Relations.	Legislative Analyst	DA190134	05/03/2019
	Office of the Assistant to the Secretary for Rural Development.	Congressional and Policy Advisor	DA190144	05/23/2019
	Office of the Secretary	Senior Advisor	DA190123	05/10/2019
	Office of the Under Secretary for Research, Education, and Economics.	Senior Advisor	DA190146	05/24/2019
		Chief of Staff	DA190140	05/17/2019
		Staff Assistant	DA190142	05/23/2019
DEPARTMENT OF COMMERCE ...	Office of the Assistant Secretary and Director General for United States and Foreign Commercial Service.	Senior Advisor	DC190097	05/17/2019
	Office of Executive Secretariat	Confidential Assistant	DC190101	05/23/2019
	Office of the Assistant Secretary for Economic Development.	Director of External Affairs	DC190098	05/10/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF DEFENSE	Office of the Chief of Staff	Confidential Assistant	DC190094	05/10/2019
	Office of the General Counsel	Special Advisor (2)	DC190088	05/14/2019
			DC190082	05/23/2019
		Senior Counsel for Special Projects (2).	DC190095	05/10/2019
		Deputy Chief Communications Officer.	DC190076	05/03/2019
	Patent and Trademark Office	Deputy Chief Communications Officer.	DC190080	05/20/2019
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD190120	05/17/2019
	Office of the Deputy Under Secretary for Policy.	Special Assistant	DD190076	05/10/2019
	Office of the Secretary of Defense	Special Assistant	DD190119	05/14/2019
		Protocol Officer	DD190118	05/15/2019
DEPARTMENT OF THE ARMY	Washington Headquarters Services	Defense Fellow	DD190112	05/10/2019
	Office of the Assistant Secretary Army (Civil Works).	Special Assistant (Civil Works)	DW190042	05/23/2019
DEPARTMENT OF EDUCATION ...	Office of Communications and Outreach.	Special Assistant	DB190085	05/02/2019
		Confidential Assistant (2)	DB190086	05/02/2019
			DB190092	05/08/2019
		Confidential Assistant (Digital)	DB190087	05/08/2019
	Office of Planning, Evaluation and Policy Development.	Deputy Director, Office of Educational Technology.	DB190101	05/30/2019
	Office of Special Education and Rehabilitative Services.	Confidential Assistant	DB190098	05/20/2019
	Office of the General Counsel	Attorney Adviser	DB190099	05/22/2019
	Office of the Under Secretary	Confidential Assistant (Policy)	DB190088	05/08/2019
	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Chief of Staff	DE190119	05/02/2019
		Deputy Assistant Secretary for House Affairs.	DE190087	05/07/2019
ENVIRONMENTAL PROTECTION AGENCY.		Legislative Affairs Advisor	DE190109	05/07/2019
		Special Assistant	DE190112	05/03/2019
	Office of Cybersecurity, Energy Security and Emergency Response.			
	Office of General Counsel	Deputy Chief of Staff	DE190122	05/10/2019
	Office of Small and Disadvantaged Business Utilization.	Senior Advisor	DE190088	05/03/2019
	Office of the Secretary	Special Assistant	DE190113	05/02/2019
	Office of the Associate Administrator for Policy.	Policy Advisor	EP190071	05/10/2019
	Office of Public Affairs	Writer	EP190068	05/15/2019
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Advisor for Intergovernmental Relations.	EP190079	05/17/2019
	Office of the Administrator	Special Advisor	EP190076	05/23/2019
FEDERAL HOUSING FINANCE AGENCY.	Office of Director	Director of Legislative Affairs	HA190004	05/15/2019
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Staff Assistant	GS190029	05/30/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Food and Drug Administration.	Advisor	DH190116	05/06/2019
	Office of Health Resources and Services Administration.	Senior Director, Communications ..	DH190155	05/21/2019
	Office of the Assistant Secretary for Health.	Advisor	DH190117	05/22/2019
DEPARTMENT OF HOMELAND SECURITY.	Office of Countering Weapons of Mass Destruction.	Special Assistant	DM180285	05/23/2019
	Office of Partnership and Engagement.	Special Assistant	DM190201	05/10/2019
	Office of the Assistant Secretary for Policy.	Senior Policy Advisor	DM190199	05/22/2019
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary (2)	DM190194	05/10/2019
			DM190202	05/10/2019
		Strategic Communications Advisor	DM190206	05/10/2019
		Deputy Speechwriter	DM190216	05/30/2019
	Office of the Chief of Staff	Scheduler	DM190191	05/07/2019
		Special Assistant	DM190210	05/20/2019
		Director of Advance, Scheduling and Chief of Protocol.	DM190141	05/30/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Executive Assistant	DU190069	05/07/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF THE INTERIOR	Office of Community Planning and Development.	Senior Advisor	DU190071	05/17/2019
	Office of the Administration	Director of Scheduling	DU190067	05/23/2019
	Office of the General Counsel	Senior Counsel	DU190072	05/23/2019
	Secretary's Immediate Office	Deputy Press Secretary	DI190045	05/02/2019
	Bureau of Land Management	Senior Advisor	DI190051	05/02/2019
DEPARTMENT OF JUSTICE	Bureau of Reclamation	Senior Advisor	DI190057	05/14/2019
	Office of Justice Programs	Policy Advisor	DJ190063	05/03/2019
DEPARTMENT OF LABOR	Office of Legal Policy	Senior Counsel	DJ190081	05/22/2019
	Civil Rights Division	Senior Counsel	DJ190073	05/30/2019
	Office of Employee Benefits Security Administration.	Special Assistant	DL190064	05/15/2019
NATIONAL CREDIT UNION ADMINISTRATION. OFFICE OF MANAGEMENT AND BUDGET.	Office of Employment and Training Administration.	Special Assistant (Events and Operations).	DL190062	05/02/2019
	Office of Congressional and Intergovernmental Affairs.	Case Officer	DL190065	05/03/2019
	Office of Labor-Management Standards.	Special Assistant	DL190054	05/02/2019
	Office of Public Affairs	Press Assistant	DL190056	05/02/2019
	Office of the Deputy Secretary	Chief of Staff	DL190069	05/23/2019
		Director of Operations	DL190059	05/14/2019
		Senior Counselor	DL190037	05/22/2019
	Office of the Secretary	Advance Representative	DL190057	05/14/2019
		Director of Scheduling and Operations.	DL190060	05/14/2019
	OFFICE OF PERSONNEL MANAGEMENT. SMALL BUSINESS ADMINISTRATION. DEPARTMENT OF STATE	Deputy Chief of Staff	DL190070	05/20/2019
Office of Public and Congressional Affairs.		Assistant, Director of External Affairs.	CU190004	05/08/2019
Office of the Director		Deputy Chief of Staff	BO190021	05/10/2019
Office of General Government Programs.		Confidential Assistant	BO190024	05/30/2019
		Confidential Assistant	PM190036	05/30/2019
Office of Communications and Public Liaison.		Deputy Press Secretary	SB190013	05/02/2019
Bureau of Economic and Business Affairs.		Special Representative	DS190099	05/20/2019
Bureau of Legislative Affairs		Legislative Management Officer	DS190100	05/22/2019
Bureau of Near Eastern Affairs		Senior Advisor	DS190102	05/23/2019
Bureau of Public Affairs		Senior Advisor (2)	DS190090	05/06/2019
DEPARTMENT OF TRANSPORTATION.	DS190017	05/30/2019		
	Office of the Chief of Protocol	Assistant Chief of Protocol (Visits)	DS190082	05/02/2019
	Office of the Counselor	Staff Assistant	DS190092	05/20/2019
	Office of the Legal Advisor	Senior Advisor	DS190101	05/23/2019
	Office of the Secretary	Deputy Special Envoy to Combat Anti-Semitism.	DS190083	05/07/2019
	Office of the United States Global Aids Coordinator.	Senior Advisor for Strategy	DS190098	05/17/2019
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Economic Advisor	DS190068	05/07/2019
	Office of the Under Secretary for Management.	Staff Assistant	DS190084	05/02/2019
	Office of the Assistant Secretary for Research and Technology.	Senior Advisor for Economic Policy	DT190072	05/03/2019
	DEPARTMENT OF THE TREASURY.	Senior Advisor for Research and Technology.	DT190068	05/10/2019
Senior Advisor		DT190083	05/23/2019	
Office of the Assistant Secretary for Transportation Policy.		Public Liaison Officer	DT190084	05/10/2019
Office of the Chief Information Officer.		Special Assistant	DT190080	05/07/2019
Office of Government and Industry		Special Assistant for Governmental Affairs.	DT190069	05/14/2019
Office of the Secretary		Senior Advisor	DT190078	05/06/2019
Office of Public Affairs		Deputy Press Secretary	DT190073	05/06/2019
Office of the Assistant Secretary (Economic Policy).		Special Assistant	DY190062	05/15/2019
Secretary of the Treasury		Deputy Chief of Staff (2)	DY190067	05/14/2019
			DY190068	05/14/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
UNITED STATES INTERNATIONAL TRADE COMMISSION. DEPARTMENT OF VETERANS AFFAIRS.	Office of the Under Secretary for International Affairs. Office of the Under Secretary for Terrorism and Financial Intelligence. Office of Commissioner Kearns Board of Veterans' Appeals	Special Assistant (3)	DY190065 DY190066 DY190055 DY190072	05/15/2019 05/15/2019 05/22/2019 05/30/2019
		Special Assistant for International Affairs. Special Assistant	DY190061	05/14/2019
		Staff Assistant	TC190002	05/03/2019
		Attorney (Advisor)	DV190059	05/06/2019

The following Schedule C appointing authorities were revoked during May 2019.

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF AGRICULTURE	Office of Under Secretary for Natural Resources and Environment. Foreign Agricultural Service	Staff Assistant	DA190041	05/03/2019
		Senior Policy Advisor	DA180190	05/25/2019
		Associate Director	DA180159	05/25/2019
		Confidential Assistant	DA190013	05/24/2019
		Rural Housing Service		
DEPARTMENT OF COMMERCE ...	Office of the Assistant Secretary for Enforcement and Compliance. Bureau of Industry and Security Office of Policy and Strategic Planning. Office of the Chief of Staff	State Director—Arizona	DA180052	05/03/2019
		State Director—North Carolina	DA180072	05/24/2019
		Senior Advisor	DC190009	05/11/2019
		Senior Advisor	DC170129	05/24/2019
		Policy Assistant	DC190036	05/25/2019
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Assistant Secretary of Defense (Legislative Affairs). Office of the Secretary of Defense Office of the Under Secretary of Defense (Comptroller). Office of the Under Secretary of Defense (Policy). Office of Career Technical and Adult Education. Office of Communications and Outreach.	Confidential Assistant	DC180104	05/24/2019
		Senior Counsel to the General Counsel.	DC180130	05/25/2019
		Senior Advisor	DC180100	05/03/2019
		Special Assistant for Legislative Affairs.	DD180091	05/25/2019
		Special Assistant to the White House Liaison.	DD180115	05/18/2019
DEPARTMENT OF EDUCATION ...	Office of the Under Secretary of Defense (Policy). Office of Career Technical and Adult Education. Office of Communications and Outreach.	Special Assistant to the Under Secretary of Defense (Comptroller).	DD180039	05/25/2019
		Special Assistant	DD190030	05/11/2019
		Confidential Assistant	DB180064	05/11/2019
		Confidential Assistant (3)	DB180042 DB180046 DB190064	05/11/2019 05/11/2019 05/11/2019
		Special Assistant	DB180014	05/11/2019
DEPARTMENT OF ENERGY	Office of Legislation and Congressional Affairs. Office of Postsecondary Education Office of the Under Secretary	Confidential Assistant	DB180054	05/11/2019
		Special Assistant	DB180062	05/11/2019
		Special Assistant (Supervisory)	DB180063	05/11/2019
		Confidential Assistant	DB180055	05/11/2019
		Confidential Assistant	DB180069	05/11/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Deputy Secretary	Senior Advisor	DE190014	05/29/2019
		Regional Director, Denver, Colorado, Region VIII.	DH170247	05/03/2019
		Policy Advisor	DH180193	05/11/2019
		Trip Coordinator	DH170271	05/11/2019
		Senior Advisor	DH180180	05/30/2019
DEPARTMENT OF HOMELAND SECURITY.	Office of the Assistant Secretary for Public Affairs.	Deputy Assistant Secretary	DM180112	05/11/2019

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Public and Indian Housing	Senior Advisor	DU180031	05/04/2019
DEPARTMENT OF STATE	Office of the Secretary	Senior Advisor	DU170100	05/11/2019
	Bureau of Public Affairs	Deputy Assistant Secretary for Strategic Communication.	DS180012	05/11/2019
	Office of the Chief of Protocol	Protocol Officer	DS180023	05/11/2019
	Office of the Secretary	Special Assistant	DS170192	05/11/2019
	Office of the Under Secretary for Arms Control and International Security Affairs.	Special Assistant	DS170133	05/11/2019
DEPARTMENT OF TRANSPORTATION.	Immediate Office of the Administrator.	Director of Governmental, International and Public Affairs.	DT180048	05/11/2019
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Congressional Liaison Specialist ...	NL150007	05/23/2019
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Occupational Safety and Health Review Commission.	Confidential Assistant to the Chairman.	SH170006	05/31/2019
OFFICE OF PERSONNEL MANAGEMENT.	Office of Communications	Speech Writer	PM180061	05/25/2019

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Stephen Hickman,
Regulatory Affairs Analyst.

[FR Doc. 2019–23061 Filed 10–22–19; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing

authorities applicable to a single agency that were established or revoked from June 1, 2019 to June 30, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific

authorities established or revoked each month in the **Federal Register** at www.gpo.gov/fdsys/. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during June 2019.

Schedule B

No Schedule B Authorities to report during June 2019.

Schedule C

The following Schedule C appointing authorities were approved during June 2019.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Communications	Press Secretary	DA190150	06/11/2019
	Farm Service Agency	State Executive Director—California.	DA190161	06/20/2019
	Office of Foreign Agricultural Service.	Confidential Assistant	DA190157	06/28/2019
	Office of the General Counsel	Senior Advisor	DA190155	06/18/2019
	Office of the Secretary	Advisor	DA190156	06/18/2019
	Office of the Under Secretary for Farm Production and Conservation.	Senior Advisor	DA190165	06/28/2019
	Office of Rural Housing Service	Policy Advisor	DA190163	06/28/2019
DEPARTMENT OF COMMERCE ...	Office of the Assistant Secretary for Enforcement and Compliance.	State Director—Arizona	DA190147	06/13/2019
	Office of Legislative and Intergovernmental Affairs.	Special Assistant	DC190109	06/25/2019
	Office of Public Affairs	Deputy Director of Legislative Affairs.	DC190106	06/25/2019
	Office of the Under Secretary	Congressional and Intergovernmental Affairs Specialist.	DC190108	06/25/2019
	Office of White House Liaison	Director of Speechwriting and Senior Advisor.	DC190114	06/25/2019
	Patent and Trademark Office	Senior Advisor	DC190112	06/25/2019
		Confidential Assistant	DC190104	06/25/2019
		Deputy Chief Communications Officer.	DC190113	06/28/2019
COMMISSION ON CIVIL RIGHTS	Office of Staff Members	Special Assistant	CC190001	06/18/2019
	Office of Commissioners	Special Assistant	CC180002	06/25/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF DEFENSE	Office of the Chief Management Officer.	Special Assistant	DD190144	06/13/2019
	Office of the Deputy Under Secretary for Policy.	Special Assistant	DD190111	06/05/2019
	Office of the Secretary of Defense	Speechwriter	DD190123	06/03/2019
	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD190143	06/11/2019
	Office of the Under Secretary of Defense (Policy).	Special Assistant (2)	DD190139 DD190140	06/19/2019 06/20/2019
DEPARTMENT OF THE ARMY	Office Deputy Under Secretary of Army.	Special Assistant	DW190045	06/26/2019
DEPARTMENT OF EDUCATION ...	Office of the Secretary	Confidential Assistant for Policy	DB190102	06/05/2019
	Office of Elementary and Secondary Education.	Confidential Assistant	DB190105	06/13/2019
DEPARTMENT OF ENERGY	Office of the General Counsel	Attorney Adviser	DB190107	06/19/2019
	Office of the Assistant Secretary for Electricity Delivery and Energy Reliability.	Special Advisor	DE190135	06/25/2019
		Special Assistant	DE190134	06/28/2019
	Office of National Nuclear Security Administration.	Special Advisor	DE190131	06/25/2019
	Office of Cybersecurity, Energy Security and Emergency Response.	Special Advisor	DE190137	06/26/2019
	Office of Management	Senior Advisor	DE190129	06/06/2019
		Special Advisor	DE190126	06/20/2019
	Office of Policy	Special Assistant	DE190125	06/05/2019
	Office of Public Affairs	Special Advisor	DE190132	06/25/2019
		Writer-Editor (Chief Speechwriter)	DE190140	06/26/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of Science	Chief of Staff	DE190144	06/26/2019
	Office of the Assistant Administrator for International and Tribal Affairs.	Director, American Indian Environmental Office.	EP190082	06/05/2019
EXPORT-IMPORT BANK	Office of Public Affairs	Special Advisor	EP190102	06/19/2019
	Office of the Chief of Staff	Executive Secretary	EB190007	06/05/2019
	Office of the Chairman	Director of Scheduling	EB190008	06/05/2019
	Office of Communications	Press Secretary	EB190010	06/17/2019
	Office of External Engagement	Senior Vice President for External Engagement.	EB190011	06/18/2019
GENERAL SERVICES ADMINISTRATION.	Office of General Counsel	Senior Counsel	GS190034	06/25/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Administration for Children and Families.	Communications Director	DH190203	06/25/2019
	Centers for Medicare and Medicaid Services.	Senior Advisor for External Affairs	DH190172	06/05/2019
		Senior Advisor	DH190086	06/07/2019
	Office of Food and Drug Administration.	Counselor	DH190101	06/07/2019
	Office of Intergovernmental and External Affairs.	Special Assistant	DH190187	06/26/2019
	Office of Refugee Resettlement/Office of the Director.	Policy Advisor	DH190096	06/07/2019
	Office of the Assistant Secretary for Financial Resources.	Director—Appropriations Liaison	DH190111	06/07/2019
	Office of the Assistant Secretary for Legislation.	Special Assistant (2)	DH190184	06/25/2019
	Office of the Assistant Secretary for Public Affairs.	Senior Advisor and National Spokesperson.	DH190185 DH190198	06/25/2019 06/25/2019
	Office of the General Counsel	Associate Deputy General Counsel	DH190175	06/06/2019
		Assistant Deputy General Counsel	DH190178	06/13/2019
	Office of the Secretary	Special Advisor	DH190118	06/05/2019
		Special Assistant	DH190164	06/11/2019
		White House Liaison for Political Personnel, Boards and Commissions.	DH190200	06/21/2019
		Director of Drug Pricing Reform	DH190205	06/25/2019
DEPARTMENT OF HOMELAND SECURITY.	Office of the Chief of Staff	Special Assistant	DM190227	06/10/2019
		Advance Representative	DM190230	06/13/2019
	Office of the Assistant Secretary for Policy.	Confidential Assistant, Border, Immigration and Trade Policy.	DM190234	06/28/2019
	Office of the United States Citizenship and Immigration Services.	Senior Advisor	DM190236	06/28/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Countering Weapons of Mass Destruction.	Special Assistant	DM190239	06/28/2019
	Office of Administration	Briefing Book Coordinator	DU190083	06/26/2019
DEPARTMENT OF THE INTERIOR	Office of Surface Mining	Senior Advisor	DI190060	06/05/2019
DEPARTMENT OF JUSTICE	Secretary's Immediate Office	Writer	DI190071	06/19/2019
	Office of Legal Policy	Counsel	DJ190090	06/13/2019
DEPARTMENT OF LABOR	Office of Civil Rights Division	Special Assistant	DJ190084	06/18/2019
	Office of Employment and Training Administration.	Senior Policy Advisor	DL190074	06/05/2019
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Mine Safety and Health Administration.	Senior Counsel	DL190104	06/25/2019
		Deputy Chief of Staff	DL190110	06/25/2019
		Senior Policy Advisor	DL190082	06/10/2019
	Office of Congressional and Intergovernmental Affairs.	Case Officer	DL190094	06/10/2019
		Legislative Officer	DL190083	06/18/2019
		Intergovernmental Officer	DL190096	06/19/2019
	Office of the Assistant Secretary for Policy.	Senior Counsel and Policy Advisor	DL190118	06/25/2019
	Office of the Deputy Secretary	Special Assistant and Policy Advisor.	DL190117	06/25/2019
	Office of the Secretary	Special Assistant and Policy Advisor.	DL190113	06/25/2019
	Office of Workers Compensation Programs.	Special Assistant	DL190119	06/28/2019
		Chief of Staff	DL190076	06/06/2019
	Office of Wage and Hour Division	Senior Policy Advisor (2)	DL190075	06/07/2019
	Office of Communications	Speechwriter	DL190095	06/13/2019
		Confidential Assistant	NN190032	06/05/2019
	National Endowment for the Arts ...	Confidential Assistant	NA190008	06/13/2019
OFFICE OF MANAGEMENT AND BUDGET.	Office of Communications	Director of Congressional Affairs ...	NA190010	06/20/2019
		Press Assistant	BO190026	06/13/2019
		Press Secretary (2)	BO190032	06/19/2019
	Office of General Counsel	Associate General Counsel	BO190031	06/27/2019
		Deputy for Legislative Affairs (Appropriations).	BO190028	06/27/2019
OFFICE OF PERSONNEL MANAGEMENT.	Office of Legislative Affairs	Deputy for Legislative Affairs (Appropriations).	BO190025	06/13/2019
SECURITIES AND EXCHANGE COMMISSION.	Office of Congressional, Legislative, and Intergovernmental Affairs.	Legislative Analyst	PM190040	06/30/2019
	Office of the Chairman	Confidential Assistant	SE190005	06/13/2019
SMALL BUSINESS ADMINISTRATION.	Office of Public Affairs	Deputy Director, Office of Public Affairs.	SE190007	06/24/2019
	Office of Capital Access	Special Assistant	SB190025	06/26/2019
DEPARTMENT OF STATE	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Advisor	DS190065	06/05/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Chief of Protocol	Protocol Officer (Gifts)	DS190110	06/25/2019
	Office of the Administrator	Special Assistant for Policy, Governmental and Public Affairs (2).	DT190093	06/13/2019
		Director of Governmental Affairs ...	DT190094	06/14/2019
		Governmental Affairs Officer	DT190090	06/18/2019
		Special Assistant for Research and Technology.	DT190099	06/28/2019
	Office of the Assistant Secretary for Research and Technology.	Special Assistant for Research and Technology.	DT190105	06/28/2019
	Office of Public Affairs	Digital Media Manager	DT190107	06/28/2019
	Office of the Secretary	Special Assistant	DT190089	06/18/2019
		Special Assistant for Advance	DT190098	06/28/2019
		Director of Scheduling and Advance.	DT190101	06/28/2019
DEPARTMENT OF THE TREASURY.	Office of the Under Secretary of Transportation for Policy.	Senior Policy Advisor	DT190104	06/20/2019
	Office of the Assistant Secretary (Public Affairs).	Special Assistant	DY190073	06/06/2019
		Public Affairs Specialist	DY190077	06/13/2019
		Director, Public Affairs	DY190082	06/25/2019
	Secretary of the Treasury	Director of Scheduling and Advance.	DY190085	06/25/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of Commissioner Kearns	Confidential Assistant	TC190004	06/10/2019

The following Schedule C appointing authorities were revoked during June 2019.

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF COMMERCE ...	Office of Advance, Scheduling and Protocol.	Advance Assistant	DC180180	06/08/2019
	Office of Executive Secretariat	Deputy Director, Office of Executive Secretariat.	DC180190	06/08/2019
	Office of the Director	Special Advisor	DC170169	06/08/2019
	Office of Minority Business Development Agency.	Special Advisor for Strategic Initiatives.	DC190018	06/13/2019
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Secretary of Defense	Special Assistant	DD190119	06/01/2019
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant to the Deputy Assistant Secretary of Defense for African Affairs.	DD180002	06/08/2019
	Office of the Secretary of Defense	Speechwriter	DD180085	06/08/2019
	Office of the Under Secretary of Defense (Policy).	Special Assistant (2)	DD180089	06/22/2019
			DD180088	06/08/2019
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant to Deputy Assistant of Defense (South and Southeast Asia).	DD170219	06/15/2019
DEPARTMENT OF EDUCATION ...	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB180058	06/08/2019
	Office of the Secretary	Confidential Assistant	DB190003	06/08/2019
	Office of Elementary and Secondary Education.	Confidential Assistant	DB190037	06/15/2019
	Office of Postsecondary Education	Special Assistant	DB190005	06/15/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the General Counsel	Attorney Advisor	DB190033	06/22/2019
	Office of the Assistant Secretary for Legislation.	Senior Deputy Director of Oversight and Investigations.	DH180253	06/10/2019
	Office of Intergovernmental and External Affairs.	Special Assistant	DH180162	06/11/2019
	Office of the Assistant Secretary for Public Affairs.	Senior Advisor and National Spokesperson.	DH180108	06/12/2019
	Office of the Secretary	White House Liaison for Political Personnel, Boards and Commissions.	DH180198	06/14/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Policy Advisor	DH180176	06/17/2019
DEPARTMENT OF STATE	Office of the Chief of Protocol	Deputy Assistant Secretary for Congressional Relations.	DU180051	06/22/2019
DEPARTMENT OF TRANSPORTATION.	Office of Civil Rights	Protocol Officer (Ceremonials)	DS170178	06/14/2019
		Senior Advisor	DT180064	06/08/2019
	Office of the Secretary	Special Assistant for Strategic Initiatives.	DT190009	06/08/2019
EXPORT-IMPORT BANK	Office of the Chief of Staff	Executive Secretary	EB180009	06/08/2019
	Office of the Executive Vice President and Chief Operating Officer.	Advisor to the Chief Operating Officer.	EB180008	06/08/2019
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Special Assistant	GS190007	06/18/2019
OFFICE OF PERSONNEL MANAGEMENT.	Office of Communications	Assistant Director of Communications for Policy and Operations.	PM190022	06/08/2019
	Office of the Director	Confidential Assistant to the Deputy Director.	PM180046	06/08/2019
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Confidential Assistant (2)	SE180003	06/07/2019
			SE170001	06/08/2019
SMALL BUSINESS ADMINISTRATION.	Office of the General Counsel	Deputy General Counsel	SB170064	06/08/2019

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Stephen Hickman,
Regulatory Affairs Analyst.

[FR Doc. 2019–23062 Filed 10–22–19; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 23, 2019.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2019, it filed with the Postal Regulatory Commission a USPS Request to Add Priority Mail Express & Priority Mail Contract 101 to Competitive Product List. Documents are available at www.prc.gov, Docket Nos. MC2020–11, CP2020–10.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–23120 Filed 10–22–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87335; File No. SR–CboeEDGA–2019–016]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; 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

October 17, 2019.

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 15, 2019, Cboe EDGA Exchange, Inc.

(the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II, 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 Act³ 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 EDGA Exchange, Inc. (“EDGA” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposal to extend the pilot related to the market-wide circuit breaker in Rule 11.16. The text of the proposed rule change is enclosed as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), 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

EDGA Rules 11.16(a) through (d), (f) and (g) describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, *i.e.*, market-wide circuit breakers. The market-wide circuit breaker (“MWCB”) mechanism was approved by 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. The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁶ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.16 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, 2019.⁷

The Exchange now proposes to amend Rule 11.16 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 11.16. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

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 (“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. 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),

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 See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

⁷ See Securities Exchange Act Release No. 85668 (April 16, 2019), 84 FR 16743 (April 22, 2019) (SR–CboeEDGA–2019–006).

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).

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 until the primary listing market opens the next trading day.

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 Section 6(b)(5) of the Act,⁹ 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, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCb mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCb processes such as modifications to the Level 3 process.

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.

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, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCb mechanism. In addition, as noted above, the extension will permit the exchanges to consider enhancements to the MWCb processes such as modifications to the Level 3 process. 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

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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 Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 to halt trading across the U.S. markets. 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.¹⁴

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-CboeEDGA-2019-016 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-CboeEDGA-2019-016. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ 17 CFR 240.19b-4(f)(6)(iii).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁴ 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).

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-CboeEDGA-2019-016 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87330; File No. SR-NYSE-2019-53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Add an Additional Step Up Credit Tier

October 17, 2019.

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 October 1, 2019, 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 adopt a new pricing tier, the Step Up Tier 2 Adding Credit, in Tape A securities. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to adopt a new pricing tier, the Step Up Tier 2 Adding Credit, in Tape A securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective October 1, 2019.

Competitive Environment

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its

broader forms that are most important to investors and listed companies."⁴

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."⁵ Indeed, equity trading is currently dispersed across 13 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).⁸ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, for the month of August 2019, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) in Tapes A, B and C securities was only 9.3%.⁹

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by offering a new pricing tier to incentivize member organizations to step up their liquidity-providing orders on the Exchange on all tapes.

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

⁵ 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").

⁶ 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>.

⁷ 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/atlist.htm>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

¹⁵ 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.

Proposed Rule Change

The Exchange proposes to adopt a “Step Up Tier 2 Adding Credit” that would offer a higher credit to member organizations that qualify for the tier. The proposed tier would also offer an additional credit for member organizations providing displayed liquidity in Tapes B and C securities.¹⁰

As proposed, a member organization that sends orders, except Mid-Point Liquidity Orders (“MPL”) and Non-Displayed Limit Orders, that add liquidity (“Adding ADV”) in Tape A securities would receive a credit of \$0.0029 if:

- The member organization quotes at least 15% of the National Best Bid or Offer (“NBBO”) ¹¹ in 300 or more Tape A securities on a monthly basis, and
- The member organization’s Adding ADV as a percentage of NYSE consolidated average daily volume (“CADV”),¹² excluding any orders by a Designated Market Maker (“DMM”), is at least two times more than the member organization’s July 2019 Adding ADV as a percentage of NYSE CADV, and
- the member organization’s Adding ADV as a percentage of NYSE CADV, excluding any liquidity added by a DMM, exceeds that member organization’s Adding ADV in July 2019 taken as a percentage of NYSE CADV as follows:
 - For the billing month of October 2019, an Adding ADV, excluding any liquidity added by a DMM, that is at least 0.35% of NYSE CADV over that member organization’s July 2019 Adding ADV taken as a percentage of NYSE CADV.
 - For the billing month of November 2019, an Adding ADV, excluding any liquidity added by a DMM, that is at least 0.70% of NYSE CADV over that member organization’s July 2019 Adding ADV taken as a percentage of NYSE CADV.

¹⁰ The Exchange proposes several non-substantive conforming changes to the existing Step Up Tier Adding Credit. First, the existing tier would be re-numbered “Step Up Tier 1 Adding Credit.” Second, romanette (i) would be moved so as to make the phrase “has Adding ADV, excluding any liquidity added by a DMM, that is” in romanette (ii) redundant, and the phrase would accordingly be deleted. Third, the outdated reference to “Non-Display Reserve order” would be replaced with “Non-Displayed Limit Orders,” which is the current usage in Rule 7.31(d)(2). Finally, the outdated phrase “traded pursuant to Unlisted Trading Privileges (Tapes B and C) on the Pillar Trading Platform” would be replaced with “Tapes B and C Securities,” and the “s” in securities would be capitalized. These last two changes would be reflected in the proposed Step Up Tier 2 Adding Credit.

¹¹ See Rule 1.1(q) (defining “NBBO” to mean the national best bid or offer).

¹² The terms “ADV” and “CADV” are defined in footnote * of the Price List.

- For the billing month of December 2019 and for every month thereafter, an Adding ADV, excluding any liquidity added by a DMM, that is at least 1.05% of NYSE CADV over that member organization’s July 2019 Adding ADV taken as a percentage of NYSE CADV.

In addition, a member organization that meets these requirements, and thus qualifies for the \$0.0029 credit in Tape A securities, would be eligible to receive an additional \$0.00005 per share if trades in Tapes B and C securities against the member organization’s orders that add liquidity, excluding orders as a Supplemental Liquidity Provider (“SLP”), equal to at least 0.20% of Tape B and Tape C CADV combined. The proposed additional credit mirrors the additional credits offered in current Tier 1, Tier 2, Tier 3 and Tier 4 for trades in Tapes B and C securities against a member organization’s orders that add liquidity, excluding orders as an SLP, equal to at least a specified percentage of Tape B and Tape C CADV combined.

For example, member organization A has an Adding ADV of 12 million shares when NYSE CADV (Tape A) was 3.0 billion, or 0.40% of NYSE CADV in all Tape A securities, in the baseline month of July 2019 (the “Baseline Month”). Member organization A also has an Adding ADV of 0.75% of US CADV in Tape A securities in October 2019.

Based on the foregoing, member organization A would meet the 0.35% step up requirement for October 2019 but fall short of the two times Adding ADV as a percentage of NYSE CADV requirement in order to qualify for the proposed tier. In order to qualify for the proposed rate in October 2019, member organization A would need two times its 0.40% of NYSE CADV in the Baseline Month or at least 0.80% of NYSE CADV. In order to qualify for the proposed rate in November 2019, member organization A would need at least 1.10% share of NYSE CADV. In order to qualify for December 2019 and subsequent months, member organization A would need at least 1.45% share.

If member organization B had an Adding ADV of 0.05% of NYSE CADV in the Baseline Month, that firm would need an Adding ADV share of NYSE CADV of at least 0.40% in October 2019, 0.75% in November 2019, and 1.10% in December 2019 and onward in order to qualify for the proposed rate. By meeting the percentage CADV step up requirement in the respective billing months, member organization B with a smaller Adding ADV would also meet the two times Adding ADV as a percent of NYSE requirement.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in Tape A securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange’s fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange proposes a higher credit under the proposed Step Up Tier 2 compared with the current Step Up Tier to provide an incentive for member organizations to send more orders because they would then qualify for the credit. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because, as proposed, the tier requires a member organization to increase the volume of its trades against orders that add liquidity over that member organization’s July 2019 baseline at increasing levels in October 2019, November 2019, December 2019 and thereafter at the December 2019 level, the Exchange believes that the proposed higher credit would provide an incentive for member organizations to route additional liquidity to the Exchange in order to qualify for it.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently no firms that could qualify for the proposed higher Step Up Tier 2 Adding Credit based on their current trading profile on the Exchange, but believes that at least 8 member organizations could qualify for the tier if they so choose. However, without having a view of member organization’s activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Each of 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 Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. As noted, the Exchange’s market share of intraday trading (*i.e.*, excluding auctions) for the month of August 2019, in Tapes A, B and C securities was only 9.3%.¹⁶

Specifically, the Exchange believes that the proposed Step Up Tier 2 would provide an incentive for member organizations to route additional

liquidity-providing orders to the Exchange in Tape A securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide a higher credit for orders that provide additional liquidity. The Exchange believes that requiring member organizations to quote at least 15% of the NBBO in 300 or more securities on a monthly basis in order to qualify for the proposed Step Up Tier 2 Adding Credit is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange. Similarly, the Exchange believes that it is reasonable to provide an incremental credit to member organizations that meet the requirements of the Step Up Tier that add additional liquidity in UTP securities on Pillar.

Since the proposed Step Up Tier 2 would be new with a requirement for increased Adding ADV over the baseline month, no member organization currently qualifies for the proposed pricing tier. As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed Step Up Tier 2 is equitable because the magnitude of the additional credit is not unreasonably high relative to the other adding tier credits, which noted above range from \$0.0015 to \$0.0022, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.¹⁷

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. The Exchange believes that requiring member organizations to quote at least 15% of the NBBO in 300 or more securities on a monthly basis in order to qualify for the proposed credit would also encourage additional displayed liquidity on the Exchange.

Since the proposed Step Up Tier 2 would be new, no member organization currently qualifies for it. As noted, there are currently no member organizations that could qualify for the proposed higher credit, but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations would be eligible to qualify for the higher credit proposed in Step Up Tier 2 if they increase their Adding ADV over their own baseline of order flow. The Exchange believes that offering a higher step up credit for providing liquidity if the step up requirements for Tape A securities are met, will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange’s pricing if

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) & (5).

¹⁵ See Regulation NMS, 70 FR at 37499.

¹⁶ See notes 8–9 *supra*.

¹⁷ See Cboe BZX Fee Schedule, which has adding credits ranging from \$0.0025 to \$0.0032, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to provide a higher per share step up credit, as the proposed credit would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up 2 Tier's requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide an additional incremental credit to member organizations that satisfy the Step Up Tier 2 requirements and add liquidity in UTP securities. Further, the Exchange believes the proposed Step Up Tier 2 credit would incentivize member organizations that meet the current tiered requirements to send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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,¹⁸ 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 submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. 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."¹⁹

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

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. As noted, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) for the month of August 2019, in Tapes A, B and C securities was only 9.3%.²⁰ In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² 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)²³ 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-2019-53 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-2019-53. 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

¹⁸ 15 U.S.C. 78f(b)(8).

¹⁹ Regulation NMS, 70 FR at 37498-99.

²⁰ See notes 8-9 *supra*.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 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-2019-53 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2019-23052 Filed 10-22-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87329; File No. SR-NYSE-2019-54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Permit the Exchange To List and Trade Exchange Traded Products

October 17, 2019.

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 October 3, 2019, 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 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 permit the Exchange to list and trade Exchange Traded Products that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. 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 permit the Exchange to list and trade Exchange Traded Products ("ETPs")⁴ that have a component NMS Stock⁵ listed on the

Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange.

Background

Currently, the Exchange trades securities, including ETPs, on its Pillar trading platform on an unlisted trading privileges ("UTP") basis, subject to Pillar Platform Rules 1P-13P.⁶ ETPs traded on a UTP basis on the Exchange are not assigned to a Designated Market Maker ("DMM") but are available for Floor brokers to trade in Floor-based crossing transactions.⁷

The Exchange's rules also permit it to list ETPs under Rules 5P and 8P. Specifically, Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange Traded Products) provide for the listing of certain ETPs on the Exchange that (1) meet the applicable requirements set forth in those rules, and (2) do not have any component NMS Stock that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. ETPs listed under Rules 5P and 8P would be "Tape A" listings and would be traded pursuant to the rules applicable to NYSE-listed securities.

Accordingly, once an ETP is listed, it will be assigned to a DMM pursuant to Rule 103B and the assigned DMM will have obligations vis-à-vis such securities as specified in Rule 104, including facilitating the opening, reopening, and closing of such securities.⁸

Proposed Rule Change

The Exchange proposes to expand the ETPs that would be eligible to list and trade on the Exchange to include ETPs that have a component NMS Stock or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS

⁴ Rule 1.1P(k) defines "Exchange Traded Product" as a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Act. ETPs include, for example, securities listed and traded on the Exchange pursuant to the following Exchange rules: Rule 5.2(j)(3) (Investment Company Units); Rule 5.2(j)(5) (Equity Gold Shares); Rule 5.2(j)(6) (Index-Linked Securities); Rule 8.100 (Portfolio Depositary Receipts); Rule 8.200 (Trust Issued Receipts); Rule 8.201 (Commodity-Based Trust Shares); Rule 8.202-E (Currency Trust Shares); Rule 8.203 (Commodity Index Trust Shares); Rule 8.204 (Commodity Futures Trust Shares); Rule 8.600 (Managed Fund Shares); and Rule 8.700 (Managed Trust Securities).

⁵ NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(48) as "any NMS security other than an option." "NMS Security" means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." See 17 CFR 242.600(b)(47). As the Commission has explained, the term "NMS Security" refers to "exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan." See

Question 1.1 in the "Responses to Frequently Asked Questions Concerning Large Trader Reporting," available at <https://www.sec.gov/divisions/marketreg/large-trader-faqs.htm>.

⁶ "UTP Security" is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. See Rule 1.1.

⁷ See Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13568 (March 29, 2018) (SR-NYSE-2017-36) (approving Exchange rules to trade securities on a UTP basis on the Pillar trading platform).

⁸ See Securities Exchange Act Release No. 87056 (September 23, 2019), 84 FR 51205 (September 27, 2019) (SR-NYSE-2019-34) (order approving amendments to Rule 104 to specify DMM requirements for ETPs listed on the Exchange pursuant to Rules 5P and 8P).

²⁴ 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.

Stock listed on the Exchange. To effectuate this change, the Exchange proposes to delete the preambles to Rules 5P and 8P currently providing that the Exchange will not list such ETPs.

The proposal would permit the Exchange to list and trade on the NYSE Trading Floor⁹ both ETPs and one or more component NMS Stocks forming part of the underlying ETP index or portfolio (“side-by-side trading”¹⁰). Because listed securities are assigned to DMMs, the proposed elimination of the current restriction could result in DMMs being assigned ETPs that may have one or more component NMS Stocks forming part of the underlying ETP index or portfolio that are also assigned to the DMM (“integrated market making”¹¹). The Commission has approved integrated market making and side-by-side trading for “broad-based” ETPs and related options.¹² The test for whether a product is “broad-based”, and therefore is not readily susceptible to manipulation, is whether the individual components of the ETP are sufficiently liquid and well-capitalized and the product is not over-concentrated.¹³ When an ETP meets

both criteria, and therefore can be considered “broad-based,” the Commission has explicitly permitted integrated market making and side-by-side trading in both the ETP and related options, with no requirement for information barriers or physical or organizational separation.¹⁴

In making a determination of whether an ETP is broad-based, the Commission has relied on an exchange’s listing standards. For instance, in permitting integrated market making and side-by-side trading for two types of ETPs and their related options, the Commission looked to the American Stock Exchange LLC’s listing standards that, as described below, are very similar to the Exchange’s current listing standards.

Specifically, the Commission observed that the ETPs at issue, an ETF and a TIR, were securities based on “groups of stocks” whose prices were based on the prices of their component securities. As such, the Commission was of the view that a market participant’s ability to manipulate the price of ETPs or the related options would be “limited.”¹⁵ Moreover, the Commission noted that the listing standards required (1) each product to have a minimum of 13 securities in the underlying portfolio, (2) that the most heavily weighted component securities could not exceed 25% of the weight of the portfolio, and (3) that the five most heavily weighted component securities could not exceed 65% of the weight of the portfolio. As the Commission concluded,

[b]y limiting the proposal to broad-based ETFs and TIRs, concerns regarding informational advantages about individual securities are lessened.¹⁶

Finally, the Commission noted that the capitalization and liquidity requirements imposed by the listing standards—for example, the component securities that in the aggregate account

for at least 90% of the weight of the portfolio must have a minimum market value of at least \$75 million and the component securities representing 90% of the weight of the portfolio each must have a minimum trading volume during each of the last six month of at least 250,000 shares—“should reduce the likelihood that any market participant has an unfair information advantage about the ETF, TIR, its related options, or its component securities, or that a market participant would not be able to manipulate the prices of the ETFs, TIRs, or their related options.”¹⁷ The Exchange believes that the same conclusions are warranted here for all ETPs with underlying NMS Stock components listed under the Exchange’s generic listing standards.

The Exchange notes that the relationship between an ETP and its underlying listed NMS Stock component or components is fundamentally different than that between an ETP and its related option. In the latter case, a small move in the price of the listed security can trigger a large move in the price of the related option, increasing the incentive for a market maker or specialist to manipulate the security or coordinate trading with the options market maker or specialist. Here, there is no similar outsized correlation between a move in the price of a listed ETP and one or more of its underlying NMS Stock components. Indeed, as discussed below, the potential for manipulation or coordinated trading is significantly attenuated for listed ETPs and their underlying NMS Stock components because the Exchange’s generic listed standards are designed to ensure that the Exchange will only list ETPs that are “broad-based”—that is, the ETP’s underlying component securities must be sufficiently liquid and well-capitalized, and the ETP must not be unduly concentrated.

As set forth in Supplementary Material .01 of Rule 5.2(j)(3), the index components for investment company units (“Units”) consisting solely of US Component Stocks¹⁸ or US Component Stocks and cash must meet the following criteria initially and on a continuing basis:

- Component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account

⁹ The term “Trading Floor” is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room” and the “Buttonwood Room.”

¹⁰ “Side-by-side trading” refers to the trading of an equity security and its related derivative product at the same physical location, though “not necessarily by the same specialist or specialist firm.” Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233 (July 23, 2002) (SR-Amex-002-21) (“Release No. 46213”) (order approving side-by-side trading and integrated market making of broad index-based ETFs and related options); see also Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567, 8568 n. 7 (February 25, 2002) (SR-NYSE-2001-43) (“Release No. 45454”) (order approving approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the NYSE specialist is registered on the Exchange).

¹¹ “Integrated market making” refers to the practice of the same person or firm making markets in an equity security and its related option. See Release No. 45454, 67 FR at 8568 n. 7.

¹² See Release No. 46213, 67 FR at 48232 (approving side-by-side trading and integrated market making for certain Exchange Traded Funds (“ETF”) and Trust Issued Receipts (“TIR”) and related options); see also Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-Amex-2010-31) (“Release No. 62479”) (order approving side-by-side trading and integrated market making in the QQQ ETF and certain of its component securities where the QQQs met the composition and concentration measures to be classified as a broad-based ETF).

¹³ See Release No. 62479, *id.*, 75 FR at 41272. The Commission has expressed its belief “that, when the securities underlying an ETF consist of a number of liquid and well-capitalized stocks, the likelihood that a market participant will be able to manipulate the price of the ETF is reduced.” See *id.* See generally Securities Exchange Act Release

Nos. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR-ISE-2007-60) (order approving generic listing standards for ETFs based on both U.S. and international indices, noting they are “sufficiently broad-based in scope to minimize potential manipulation.”); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (same); 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78) (same); 57365 (February 21, 2008), 73 FR 10839 (February 28, 2008) (SR-CBOE-2007-109) (order approving generic listing standards for ETFs based on international indices, noting they are “sufficiently broad-based in scope to minimize potential manipulation.”); 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR-Phlx-2007-20) (same); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101) (same); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-Nasdaq-2006-50) (same).

¹⁴ See note 12, *supra*.

¹⁵ Release No. 46213, 67 FR at 48235.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ The term “US Component Stock” means an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934. See Rule 5.2(j)(3).

for at least 90% of the equity weight of the portfolio (excluding Units and securities defined in Section 2 of Rule 8P) each must have a minimum market value of at least \$75 million;¹⁹

- Component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding Units and securities defined in Section 2 of Rule 8P) each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;²⁰

- The most heavily weighted component stock (excluding Units and securities defined in Section 2 of Rule 8P) cannot exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Units and securities defined in Section 2 of Rule 8P) cannot exceed 65% of the equity weight of the portfolio;²¹

- Where the equity portion of the portfolio does not include Non-US Component Stocks,²² the equity portion of the portfolio must include a minimum of 13 component stocks;²³ and

- All securities in the index or portfolio will be US Component Stocks listed on a listed on a national securities exchange and be NMS Stocks as defined in Rule 6000 of Regulation NMS.²⁴

The listing standards for Units based on an index of both US Component Stocks and Non-US Component Stocks;²⁵ Equity-Index Linked securities (commonly referred to as Exchange Traded Notes or “ETNs”);²⁶ Portfolio Depositary Receipts under Rule 8.100 with underlying component

stocks consisting of an index or portfolio of US Component Stocks;²⁷ and actively managed funds under Rule 8.600²⁸ are all broadly similar. The Exchange could not list an ETP that does not meet these generic listing requirements without a proposed rule change being filed with the Commission.

By virtue of the numerous restrictions in the Exchange’s generic listing standards relating to market cap, trading volume, and diversity requirements, among others, that the underlying components must meet to list on the Exchange, the generic listing standards are, among other things,

intended to reduce the potential for manipulation by assuring that the ETP is sufficiently broad-based, and that the components of an index or portfolio underlying an ETP are adequately capitalized, sufficiently liquid, and that no one stock dominates the index.²⁹

The Exchange believes that listed ETPs meeting these composition and concentration measures would be sufficiently broad-based to allow integrated market making and side-by-side trading in both the ETP and the component NMS securities with no requirement for information barriers or physical or organizational separation.

As noted, equity-based ETPs that do not meet the applicable generic listing standards would require a rule filing with the Commission prior to commencement of Exchange listing or trading. The rule filing would set forth the initial and continued listing requirements in order for such a product to be listed and traded on the Exchange. In order for a rule proposal to be consistent with the Act, it must, among other things, further the objectives of Section 6(b)(5) of the Act³⁰ in that it is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that equity-based ETPs whose underlying component composition varies greatly from the generic listing standards, *i.e.*, an ETP whose components are insufficiently liquid or well-capitalized or unduly concentrated, would be unlikely to meet this requirement.³¹ Accordingly, the

Exchange believes that ETPs listed and traded via the rule filing process would also be sufficiently broad-based in order to minimize potential manipulation, thus justifying integrated market making and side-by-side trading in both the ETP and the component NMS securities.

While the “broad-based” nature of listed ETPs under either the generic listing standards or via a rule filing makes manipulation less likely, the Exchange also believes that the potential for manipulation of listed ETPs is minimal because ETP pricing is based on an “arbitrage function” performed by market participants that affects the supply of and demand for ETP shares and, thus, ETP prices. This “arbitrage function” is effectuated by creating new ETP shares and redeeming existing ETP shares based on investor demand; thus, ETP supply is open-ended. As the Commission has acknowledged, the arbitrage function helps to keep an ETP’s price in line with the value of its underlying portfolio, *i.e.*, it minimizes deviation from NAV.³² Generally, the higher the liquidity and trading volume

required, *see, e.g.*, Securities Exchange Act Release No. 56987 (December 18, 2007), 72 FR 73397 (December 27, 2007) (SR–NYSEArca–2007–119) (proposal to list and trade the BearLinkSM Alerian master limited partnership (“MLP”) Select Index ETNs linked to the performance of the Alerian MLP Select Index); Securities Exchange Act Release No. 58437 (August 28, 2008), 73 FR 51684 (September 4, 2008) (SR–NYSEArca–2008–77) (proposal to list and trade shares of the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes Due 2038, which are linked to the MSCI Gulf Cooperation Council (GCC) Countries ex-Saudi Arabia Net Total Return Index, and index comprised of all of the equity securities included in the five individual Middle Eastern country indices); Securities Exchange Act Release No. 57320 (February 13, 2008), 73 FR 9395 (February 20, 2008) (SR–NYSEArca–2008–15) (proposal to continue to list a and trade the iShares MSCI Mexico Index Fund that corresponds to the price and yield performance of publicly traded securities in the aggregate in the Mexican market as represented by the MSCI Mexico Investable Market Index); Securities Exchange Act Release No. 60137 (June 18, 2009), 74 FR 30340 (June 25, 2009) (SR–NYSEArca–2009–54) (proposal to list and trade the iShares MSCI All Peru Capped Index Fund that corresponds to the MSCI All Peru Capped Index, which measures the performance of the “Broad Peru Equity Universe” which includes Peruvian equity securities classified in Peru according to the MSCI Global Investable Market Indices Methodology and securities of companies headquartered in Peru and that have the majority of their operations based in Peru).

³² *See* Securities Exchange Act Release No. 75165, 80 FR 34729, 34733 (June 17, 2015) (S7–11–15) (arbitrage “generally helps to prevent the market price of ETP Securities from diverging significantly from the value of the ETP’s underlying or reference assets”). *See also generally id.*, 80 FR at 34739 (“In the Commission’s experience, the deviation between the daily closing price of ETP Securities and their NAV, averaged across broad categories of ETP investment strategies and over time periods of several months, has been relatively small[.]” although it had been “somewhat higher” in the case of ETPs based on international indices.).

¹⁹ *See* Rule 5.2(j)(3), Supp. Material .01(a)(A)(1).

²⁰ *See id.* at (a)(A)(2).

²¹ *See id.* at (a)(A)(3).

²² The term “Non-US Component Stock” means an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). *See* Rule 5.2(j)(3).

²³ *See id.* at (a)(A)(4). There is no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts (as defined in Section 2 of Rule 8P) constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of such ETPs account for 100% of the US Component Stocks portion of the weight of the index or portfolio. *See id.*

²⁴ *See id.* at (a)(A)(5).

²⁵ *See* Rule 5.2(j)(3), Supp. Material .01(a)(B)(1)–(5). The index or portfolio must include a minimum of 20 component stocks.

²⁶ *See* Rule 5.2(j)(6)(B)(I).

²⁷ *See* Rule 8.100.

²⁸ *See* Rule 8.600.

²⁹ *See* Securities Exchange Act Release No. 80189 (March 9, 2017), 82 FR 13889, 13892 (March 15, 2017) (SR–NYSEArca–2017–01) (order approving amendment of NYSE Arca, Inc. (“NYSE Arca”) Rule 5 and 8 Series to add specific continued listing standards for ETPs and to specify the delisting procedures for these products). *See generally id.* n. 28 & authorities cited therein.

³⁰ 15 U.S.C. 78f(b)(5).

³¹ For examples of equity-based ETPs that did not meet the generic listing standards on the Exchange’s affiliate NYSE Arca and for which a rule filing was

of an ETP, the more likely the ETP's price will not deviate from the value of its underlying portfolio. Market makers registered in ETPs play a key role in this arbitrage function and DMMs, along with other market participants, would perform this role for ETPs listed on the Exchange. In short, the Exchange believes that the arbitrage mechanism is an effective and efficient means of ensuring that intraday pricing in ETPs closely tracks the value of the underlying portfolio or reference assets.³³

The Exchange believes that the price regulating function played by the arbitrage mechanism renders attempts to influence or manipulate the price of an ETP more difficult and more susceptible to immediate detection and correction. The fact that an ETP and one or more of its underlying components are traded in the same physical space on the Exchange or by the same DMM on the Exchange does not alter this dynamic in the slightest, nor does it make price manipulation more likely. Rather, the Exchange believes the arbitrage mechanism would make price manipulation more difficult and, thus, less likely. Attempts by Floor-based market participants to influence the price of an ETP by, for instance, manipulating or [sic] one or more of component securities would be reflected in the deviation of the price from the NAV just as similar attempts today by upstairs traders would be reflected in the deviation of the price from the NAV. Moreover, a broad-based ETP would, as shown above, be even less susceptible to price manipulation. The Exchange thus believes that the type of broad-based equity ETPs eligible for listing under the generic listing standards, coupled with the arbitrage mechanism, sufficiently minimize the potential for manipulation of ETPs listed and traded on the Trading Floor.

With respect to integrated market making, the Commission has approved changes to Rule 98 that permit a DMM unit to engage in integrated market making with off-Floor market making units in related products.³⁴ Rule 98(c)(6) prohibits DMM units from operating as a specialist or market maker on the Exchange in related products, unless specifically permitted in Exchange rules. Rule 98(b)(7) defines "related products" as "any derivative instrument

that is related to a DMM security."³⁵ Accordingly, consistent with the proposal, the Exchange proposes to amend Rule 98(b)(7) to specifically exclude ETPs from the definition of "related products." As discussed above, the Exchange believes that ETPs are different from other types of related products such as single-stock options or futures and that, given the broad-based nature of listed ETPs, integrated market making and side-by-side trading in both the ETP and underlying NMS stock components is appropriate with no requirement for information barriers or physical or organizational separation.

Finally, trading on the Exchange is subject to a comprehensive regulatory program that includes a suite of surveillances and routine examinations that review trading by DMMs and other market participants on the Exchange's trading Floor. Market participants on the trading Floor, including DMMs, are also required to implement policies and procedures reasonably designed to detect and deter inappropriate conduct and prevent the misuse of material, non-public information or disclosure of Floor-based non-public order information.³⁶

For all of the reasons stated above, the proposal is therefore consistent with the requirements of the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,³⁷ in general, and furthers the objectives of Sections 6(b)(5) of the Act,³⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that listing and trading ETPs that have

a component NMS Stock or are based on, or represent an interest in, an underlying index or reference asset that includes an NMS stock listed on the Exchange would remove impediments to and perfect the mechanism of a free and open market and a national market system by facilitating the listing and trading a broader range of ETPs consistent with the Exchange's current structure to trade listed securities. The Exchange believes that removal of the current exclusion of listed ETPs with NMS Stock components and the exclusion of ETPs from the definition of related products would not be inconsistent with the public interest and the protection of investors because listed ETPs that include equity securities as components are subject to listing requirements—whether the generic listing standards or those approved by individual rule filing—that are designed to ensure that underlying indices or portfolios are sufficiently broad-based and well-diversified to protect against manipulation. Moreover, the Exchange believes that potential manipulation of listed ETPs is also minimal because of ETPs reliance on an "arbitrage function" performed by market participants that influences the supply and demand of shares and, thus, trading prices relative to NAV. The Exchange believes that these safeguards would continue to serve to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest from concerns that may be associated with integrated market making and any possible misuse of non-public information.

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,³⁹ 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. The Exchange believes that the proposed change would promote competition by facilitating the listing and trading of a broader range of ETPs on the Exchange. The Exchange believes that the proposed rule change would facilitate the trading of Exchange-listed ETPs by DMMs on Pillar, which would enable the Exchange to further compete with unaffiliated exchange competitors that also list and trade ETPs. The proposed rule changes would also provide issuers with greater choice in potential listing

³³ See Securities Exchange Act Release No. 87056, *supra* note 8.

³⁴ See Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR-NYSE-2008-45) (order approving amendments to Rule 98 that permit specialist firms to integrate with off-Floor trading desks that trade in "related products," as that term is defined in Rule 98).

³⁵ Under Rule 98(b)(7), derivative instruments include options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or "any other instrument that is exercisable into or whose price is based upon or derived from a security traded at the Exchange."

³⁶ See, e.g., Rule 98(c)(3) (setting forth restrictions on trading for member organizations operating a DMM unit).

³⁷ 15 U.S.C. 78f(b).

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 78f(b)(8).

venues for their ETP products to include an exchange model that includes a DMM assigned to their security and related benefits to an issuer as a result of the Exchange's high-touch trading model.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2019-54 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-2019-54. 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-NYSE-2019-54 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-23051 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87328; File No. SR-NASDAQ-2019-059]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt Requirements for the Nasdaq Capital and Global Markets Applicable to Direct Listings

October 17, 2019.

On August 15, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt additional listing requirements for direct listings on the Nasdaq Capital and Global Markets. The proposed rule change was published for comment in the **Federal Register** on September 4,

2019.³ The Commission has not received any comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 19, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates December 3, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-Nasdaq-2019-059).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-23050 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87336; File No. SR-CboeBZX-2019-088]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.18

October 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,²

³ See Securities Exchange Act Release No. 86792 (August 28, 2019), 84 FR 46580 (September 4, 2019).

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on October 15, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) 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 Act³ 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 BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposal to extend the pilot related to the market-wide circuit breaker in Rule 11.18. The text of the proposed rule change is enclosed as Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), 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

BZX Rules 11.18(a) through (d), (f) and (g) describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, *i.e.*, market-wide circuit breakers. The market-wide circuit breaker (“MWCB”) mechanism was approved by 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. The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁶ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.18 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, 2019.⁷

The Exchange now proposes to amend Rule 11.18 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 11.18. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The market-wide circuit breaker under Rule 11.18 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 (“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. 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 11.18, 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 until the primary listing market opens the next trading day.

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 Section 6(b)(5) of the Act,⁹ 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 11.18 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, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

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 11.18 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

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 See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

⁷ See Securities Exchange Act Release No. 85689 (April 18, 2019), 84 FR 17217 (April 24, 2019) (SR-CboeBZX-2019-028).

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCBC mechanism. In addition, as noted above, the extension will permit the exchanges to consider enhancements to the MWCBC processes such as modifications to the Level 3 process. 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

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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 Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 to halt trading across the U.S. markets. 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.¹⁴

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-CboeBZX-2019-088 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2019-088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-CboeBZX-2019-088 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-23055 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: To Be Published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, October 23, 2019 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled under the Government in the Sunshine Act for Wednesday, October 23, 2019 at 10:00 a.m., has been cancelled and is expected to be rescheduled for a date in November 2019.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: October 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-23191 Filed 10-21-19; 11:15 am]

BILLING CODE 8011-01-P

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 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).

¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87331; File No. SR-ICEEU-2019-021]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Futures and Options Risk Procedures (the “F&O Risk Procedures”).¹

OCTOBER 17, 2019. Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on October 4, 2019, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(4)⁵ thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to make certain amendments to the F&O Risk Procedures to enhance their clarity in relation to the margin account structure, certain margin add-on calculation methodology, the process for the monitoring and reporting of the back-testing results and the data management and governance document processes.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C)

below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend its F&O Risk Procedures to enhance their clarity in relation to the margin account structure, certain margin add-on calculation methodology, the process for the monitoring and reporting of the back-testing results and the data management and governance document processes.

The revised procedures ensure that the short descriptions of the various accounts offered by ICE Clear Europe would be aligned with the related terminology present in the ICE Clear Europe Clearing Procedures. They would also allow for the clarification of the ICE Clear Europe departments responsible for the review of the F&O margins’ parameters. The proposed amendments would also include certain other enhancements and clarifications, described below.

I. European Market Infrastructure Regulation (EMIR) Add-On

The amendments would facilitate a more accurate description of the methodology with which the Clearing House currently complies with Article 26 of the EMIR Regulatory Technical Standards (RTS). The requirement prescribes that all Clearing Members’ house and proprietary positions from affiliates of a Clearing Member use a minimum of a two-business day margin period of risk (MPOR).

The EMIR add-on ensures that at least a two-business day MPOR amount would be collected for these positions for products that would otherwise use a one-business day MPOR for initial margin.

The amendments would ensure an accurate explanation of the EMIR add-on calculation inclusion in the ICE Clear Europe end of day margins calculation process and of the fact that ICE Clear Europe does not publish parameter arrays used for calculating additional initial margins.

II. Back-Testing

Several aspects of the F&O Risk Procedures addressing the back-testing process would be amended to enhance clarity and to ensure that the operational steps followed by ICE Clear Europe are accurately reflected in the F&O Risk Procedures. The amendments would cover the assumptions and the formula for the margin coverage

calculation and its test methodology. In relation to the back-test statistics, the amendments would specify that the Clearing Risk Department (CRD) could apply at its discretion other back testing statistics, in addition to the standard Basel Traffic Light.⁶

In relation to the macro back-testing the amendments would explain that if the model displays consistent and continuous red zone for some portfolios, ICE Clear Europe may require Clearing Members to provide for additional margin, referred to as super margin.

The amendments would also introduce a new section to the F&O Risk Procedures to address the margin coverage and back-testing monitoring and reporting process. The amendments would clarify, for both the macro and micro back-testing, the process for the daily creation of the relevant risk report for the top day breaches and the process for the related investigation by a Clearing Risk Department (“CRD”) analyst and escalation process to senior CRD personnel. Each macro margin coverage breach is also presented monthly to the Model Oversight Committee and bi-monthly to the F&O Product Risk Committee. The amendments would also cover the frequency with which the back-testing statistics, for both macro and micro back-testing, are generated and the internal reporting process followed for the review of the related results. Back-testing results would be reported by CRD analysts daily to Clearing House senior management staff with respect to macro back-testing results, and with respect to macro and micro back-testing results, monthly to the Model Oversight Committee and bi-monthly to the F&O Product Risk Committee. A Risk Oversight Department (“ROD”) analyst also reviews the macro level results and discusses details if necessary before presenting it to the Model Oversight Committee. Model remediation actions on a Clearing Member portfolio at a macro level or due to product back-testing results at a micro level would be flagged to senior management, the Model Oversight Committee and the F&O Product Risk Committee. The same information regarding monitoring and reporting would also be summarized in a table which would specify the level of the back-testing, the name of the report that is generated, the metrics contained in each report, the storage system used by the Clearing House, the frequency of

¹ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(4).

⁶ Basel Statistics test as per—Basel Committee on Banking Supervision, “Supervisory framework for the use of “backtesting” in conjunction with the internal models approach to market risk capital requirements” (January 1996), available at: <https://www.bis.org/publ/bcb22.pdf>.

the generation of each report and the audience with whom it is shared.

III. Data Management

The amendments would also introduce a new section to the F&O Risk Procedures to define the different types and sources of data used by the CRD and the related controls. The amendments classify the data used by the CRD into either static or dynamic data, and explain which data are included in each category.

The amendments would also provide details on the data quality checks performed by the CRD on the static and dynamic data and on the historical prices.

The section would also describe the reasons for which the CRD is allowed to correct or exclude data from being used in the margin models or stress scenarios and require that the list of exclusions and corrections with related justifications be reviewed each month by the Model Oversight Committee.

IV. Document Governance and Exception Handling

The amendments would also introduce a new section to the F&O Risk Procedures to describe the breach management process for the reporting and possible escalation of material breaches or unapproved deviations from the F&O Risk Procedures. The section would also include the description of the exception handling process and governance.

Certain other typographical corrections and similar clarifications would also be made.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁸ Section 17A(b)(3)(F) of the Act⁹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. As discussed above, the proposed amendments to the F&O Risk Procedures are intended to more

accurately reflect Clearing House practice and to enhance the ICE Clear Europe internal processes with respect to the EMIR add-on application, the back-testing calculation, data management activity and document governance. This would facilitate the Clearing House's ability to manage risk generally, and therefore promote the prompt and accurate clearance and settlement of transactions, and further the public interest in the sound operation of clearing agencies. (The amendments should not significantly affect, and are consistent with, the safeguarding of securities or funds in the custody or control of the Clearing House or for which it is responsible.) As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.

The amendments would also satisfy the relevant specific requirements of Rule 17Ad-22,¹⁰ as set forth in the following discussion. Through providing additional details, including details relating to monitoring of margin coverage and back-test statistics, the margin coverage calculation formula and data quality monitoring, and enhancing overall clarity of the F&O Risk Procedures, the amendments are consistent with Rule 17Ad-22(e)(3)(i),¹¹ which requires clearing agencies to have reasonably designed policies and procedures that, at a minimum, include risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by a clearing agency.

Rule 17Ad-22(e)(6)(i)¹² specifically requires clearing agencies to establish, implement, maintain and enforce

written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. The proposed amendments with respect to the EMIR add-on application are consistent with such requirement as they facilitate the application of the two-business day MPOR margin requirement for the relevant products to cover credit exposures to Clearing Members relative to the related product risks.

Rule 17Ad-22(e)(6)(vi)(D)¹³ specifically requires clearing agencies to implement reasonably designed policies and procedures to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by reporting the results of its analyses to appropriate decision makers at the covered clearing agency. In compliance with these requirements, the proposed amendments to the F&O Risk Procedures specify the monitoring and the reporting process which ICE Clear Europe must follow in relation to the results of the macro and micro level back-testing results. The amendments to the F&O Risk Procedures describe for each test, the frequency of the reporting of the relevant results and the ICE Clear Europe departments responsible for their monitoring and review, which include senior management, the Model Oversight Committee and the F&O Product Committee.

Rule 17Ad-22(e)(2)(i) and (v)¹⁴ requires clearing agencies to establish reasonably designed policies and

¹⁰ 17 CFR 240.17Ad-22.

¹¹ 17 CFR 240.17Ad-22(e)(3). The rule states that: "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (3) Maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which: (i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;"

¹² 17 CFR 240.17Ad-22(e)(6). The rule states that: "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum: (i) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market;"

¹³ 17 CFR 240.17Ad-22(e)(6). The rule states that: "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum: (vi) Is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by: (D) Reporting the results of its analyses under paragraphs (e)(6)(vi)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management framework;"

¹⁴ 17 CFR 240.17Ad-22(e)(2). The rule states that: "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (2) Provide for governance arrangements that: (i) Are clear and transparent; . . . (v) Specify clear and direct lines of responsibility. . . .

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. To facilitate compliance with this requirement, the proposed amendments to the F&O Risk Procedures more clearly define the ICE Clear Europe departments responsible for review of back-testing results, data quality checks, breach management and exception handling.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments on the EMIR add-on would apply to those F&O Contracts that are margined using a one-business day MPOR and are intended to strengthen risk management relating to these products and to ensure compliance with EMIR requirements relating to the EMIR add-on. The amendments would apply to all F&O Clearing Members that trade contracts in the relevant category. ICE Clear Europe does not believe the amendments would generally affect the overall cost of clearing for F&O Clearing Members or other market participants or otherwise affect access to clearing generally. To the extent the amendments relating to the EMIR add-on may impose certain additional costs on F&O Clearing Members, these result from requirement imposed by EMIR and are generally applicable to F&O Clearing Members. As a result, any additional burdens placed on F&O Clearing Members would be appropriate in furtherance of enhancing risk management, and are not intended to disadvantage any particular Clearing Member. As a result, ICE Clear Europe believes that any impact on competition would be appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments 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 has become effective pursuant to Section 19(b)(3)(A)

of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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-ICEEU-2019-021 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-ICEEU-2019-021. 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 Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not

redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2019-021 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-23053 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87338; File No. SR-CBOE-2019-094]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule To Modify Certain Processes and Requirements Relating to the Submission of Rebate Requests

October 17, 2019.

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 4, 2019, 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees schedule to modify certain processes and requirements relating to the submission of rebate requests. 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

¹⁵ 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).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) ("Cboe Global"), which is also the parent company of Cboe C2 Exchange, Inc. ("C2"), acquired Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX" or "EDGX Options"), Cboe BZX Exchange, Inc. ("BZX" or "BZX Options"), and Cboe BYX Exchange, Inc. ("BYX" and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the "Cboe Affiliated Exchanges"). Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, and also migrate its current billing system to a new billing system, on October 7, 2019 (the "migration"). In connection with the migration, the Exchange proposes to modify certain processes and requirements relating to the submission of rebate requests, effective October 7, 2019.

Particularly, the Exchange proposes to modify the process relating to Frequent Trader ID updates and eliminate the ability for TPHs to submit certain forms and written requests relating to: (i) Strategy order rebates, (ii) customer and non-customer large trade discounts and (iii) compression order rebates. Instead, TPHs will be required to mark inbound orders appropriately or make same-day changes in the Clearing Editor.

The Exchange first proposes to amend its fee schedule with respect to the Frequent Trader Program. By way of background, through the Frequent

Trader Program, the Exchange offers transaction fee rebates to Customers and Professional Customers and Voluntary Professionals (origin codes "C" and "W", respectively) (collectively "Customers") that meet certain volume thresholds in VIX, SPX (including SPXW) and RUT options, provided the Customer registers for the program. Once registered, the Customer is provided a unique Frequent Trader identification number ("FTID") that can be affixed to each of its orders. The FTID allows the Exchange to identify and aggregate all electronic and manual trades from that Customer for purposes of determining whether the Customer meets any of the various volume thresholds. The Customer has to provide its FTID to the Trading Permit Holder ("TPH") submitting that Customer's order to the Exchange ("executing agent" or "executing TPH") and that executing TPH would have to enter the Customer's FTID on each of that Customer's orders.⁵

The Exchange notes that there are instances however, in which a Customer's FTID was not or could not be, affixed to an order. For example, an executing TPH may receive an order with multiple contra parties, including parties that are also customers with their own unique FTIDs. The executing TPH's front end system however, may only allow it to input only one FTID on the order. Thus the other Customers to the trade would not have their FTID represented at the time of submission. Additionally, it is possible that an executing TPH inadvertently enters an incorrect FTID number on an order. Accordingly, the Exchange currently allows TPHs to add or modify FTID information on post-trade records using a Cboe Trade Match (CTM) terminal for changes on the trade date or submit such FTID information electronically to the Exchange in a form and manner prescribed by the Exchange.⁶ Such electronic submission must be received no later than 6:00 p.m. CT on the trade date. The Exchange currently allows, in extenuating circumstances as determined by the Exchange, the

deadline to be extended until 6:00 p.m. CT on the business day following the trade date.

The Exchange notes that post-migration, in connection with the transition of the Exchange's billing system, the Exchange will no longer be able to apply rebates to any trades that were not marked or updated on the trade date. As such, the Exchange proposes to eliminate the ability for TPHs to submit electronically updated FTID information on the following trade date. Instead, the Exchange proposes to provide that an executing TPH may add or modify FTID information on post-trade records using the Clearing Editor⁷ for changes on the trade date or electronically submit such FTID information to the Exchange in a form and manner prescribed by the Exchange no later than 4:29 p.m. CT, or by such time that the Exchange submits its final trade submission to the Options Clearing Corporation ("OCC") if later than 4:29 p.m. CT, on the trade date.⁸ The Exchange believes that the vast majority of TPHs shouldn't need more than the trade date to submit FTID information electronically as it is not an overly burdensome process. The Exchange also notes that the Frequent Trader Program was established over three years ago and TPHs therefore should be familiar with the program and its requirements and more proficient in ensuring FTID information is submitted in a timely manner. Moreover, TPHs still have the option of affixing FTIDs on the orders or may add or modify FTID information on post-trade records on the trade date via the Clearing Editor.

Next, the Exchange proposes to amend Footnote 13 of the Fees Schedule to eliminate the requirement to submit a rebate request with supporting documentation in order to qualify for strategy order fee caps. By way of

⁷ The Exchange notes that post-migration, the Cboe Trade Match (CTM) system will be replaced with the Clearing Editor, which is functionally equivalent to current CTM. As such, the Exchange proposes to replace the reference to Cboe Trade Match ("CTM") with "Clearing Editor" in the Frequent Trader Program Notes section.

⁸ Effective October 7, 2019, FTIDs can be added or modified using the Clearing Edit Service in the Secure Web API ("Clearing Editor API") on the trading day the trade occurred. See Cboe Options Trade Notice, "Frequent Trader ID Additions and Corrections—Change in Procedures", Reference ID C2019060700, which sets forth the manner in which TPHs may update FTID information. The Exchange notes that the default cutoff time to make changes via the Clearing Editor tool or API is 4:29 p.m. CT, which is the time the Exchange submits its final trade submission to the OCC, which triggers OCC's end of day processing and settlement. However, there may be instances in which the Exchange must delay its final trade submission and the Clearing Editor would in those instances not preclude changes to be made or submitted.

⁵ The Exchange notes that it is the responsibility of the Customer to request that the executing TPH affix its FTID to its order(s), and that it is voluntary for the executing TPH to do so.

⁶ The Exchange has issued an Exchange Trade Notice providing the details as to how TPHs may submit such information to the Exchange and any corresponding deadline. See Cboe Options Trade Notice, "Frequent Trader ID Additions and Corrections—Change in Procedures", Reference ID C2019060700, which sets forth the file format, information required and corresponding deadlines. To the extent the Exchange amends the process or deadline in the future, the Exchange will similarly issue Exchange a new Trade Notice describing the changes.

background, Market-Maker, Clearing TPH, Joint-Back Office (“JBO”), broker-dealer and non-TPH market-maker transaction fees are capped at (1) \$1,000 for all (i) merger strategies and (ii) short stock interest strategies and at (2) \$700 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class for options on equities, ETFs and ETNs. Such transaction fees for these strategies are further capped at \$25,000 per month per initiating TPH or TPH organization (excluding Clearing TPHs). Currently, to qualify transactions for the cap, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions. The Exchange notes that post-migration, it will no longer support the intake of various rebate request forms. Accordingly, the Exchange proposes to modify current Footnote 13 to eliminate the requirement that TPHs must submit a written request with supporting documentation in order to qualify for the fee caps. The Exchange notes that upon migration, TPHs will be able to mark their strategy orders as strategy orders and the fee caps will therefore automatically be processed without requiring any supporting documentation. As such, rebate forms are no longer necessary to process the above-mentioned fee caps. Additionally, the Exchange has only received a handful of these rebate requests over the past year and therefore believes the impact of the proposed change to be de minimis.

Next, the Exchange proposes to amend Footnotes 27 and 47 which govern the Customer Large Trade Discount Program and a non-customer Large Trade Discount Program, respectively. By way of background, the Customer Large Trade Discount Program caps fees for customer orders of a certain size in VIX, SPX/SPXW, XSP, other index options and ETF and ETN options. The Large Trade Discount Program similarly caps fees for non-customer orders of a certain size in VIX options. Both programs provide that qualification of an order for the fee caps are based on the trade date and order ID on each order. More specifically, to qualify for the discount, the entire order quantity must be tied to a single order ID (unless the order is a complex order with a number of legs that exceeds system limitations) either within the Cboe Command system or PULSe or in the front end system used to enter and/or transmit the order (provided the Exchange is granted access to effectively audit such front end system) (the order must be entered in its entirety on one

system so that the Exchange can clearly identify the total size of the order). Currently, for an order entered via PULSe or another front end system, or a complex order with multiple order IDs, a large trade discount request must be submitted to the Exchange within 3 business days of the transactions and must identify all necessary information, including the order ID and related trade details. The Exchange proposes to eliminate the ability to submit a form for orders entered via PULSe or another front end system or a complex order with multiple order IDs. Particularly, the Exchange notes that TPHs should be able to identify such orders on each order thus eliminating the need to support a rebate request and documentation post-trade. Additionally, the Exchange notes that it has received less than a handful of forms over the past year. As such, the Exchange believes the impact of the proposed change to be de minimis.

Lastly, the Exchange proposes to amend Footnote 41 to eliminate the requirement that TPHs must submit a rebate request to receive rebates for compression trades. By way of background, the Exchange rebates transaction fees, including the Index License Surcharge, for SPX and SPXW transactions if the transaction: (i) Involves a complex order with at least five (5) different series in S&P 500 Index (SPX) options, SPX Weeklys (SPXW) options, (ii) is a closing-only transaction or, if the transaction involves a Firm order (origin code “F”), is an opening transaction executed to facilitate a compression of option positions for a market-maker or joint-back office (“JBO”) account executed as a cross pursuant to and in accordance with Cboe Options Rule 6.74(b) or (d); (iii) is a position with a required capital charge equal to the minimum capital charge under Option Clearing Corporation’s (“OCC”) rules RBH Calculator or is a position comprised of option series with a delta of ten (10) or less and (iv) is entered on any of the final three (3) trading days of any calendar month. The Exchange also rebates transaction fees, including the Index License Surcharge, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum. Currently, to receive either rebate, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions. The Exchange notes that upon migration, TPHs will be able to mark their orders to identify them as eligible for the compression rebates which would enable the Exchange to

validate and process the rebates without the submission of a request and supporting documentation. As such, the Exchange believes the need to submit rebate requests and supporting documentation to receive compression rebates are no longer necessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange notes that eliminating the ability to submit FTID information after the trade date is reasonable as the Exchange will no longer be able to apply rebates to any trades that were not marked or updated on the trade date. The Exchange further believes that all TPHs should be able to prepare and submit FTID information electronically to the Exchange on the trade date. The proposed change continues to ensure timely processing and finality. Additionally, it has been approximately 3 years since the original FT Form was adopted and as such, TPHs should be familiar with the Frequent Trader Program and should have systems and procedures in place to process to provide the required FTID information on the trade date. The Exchange also notes that the ability to provide FTID information electronically to the Exchange post-trade is merely an additional means to ensure FTID information is relayed to the Exchange. TPHs still have the option of affixing FTIDs on the orders or may add or

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

modify FTID information on post-trade records on the trade date via the Clearing Editor (formerly the CTM terminal). As such, the Exchange believes notwithstanding the proposed changes, that TPHs still are provided a variety of means to ensure FTID information is relayed to the Exchange in a timely, efficient manner, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest.

The Exchange also believes eliminating the requirement to submit a written rebate request with supporting documentation in order to (i) qualify for strategy orders fee caps, (ii) to receive the discounts under the customer and non-customer Large Trade Discount programs for certain orders and (iii) to qualify for compression rebates is reasonable as TPHs are still eligible to receive all available caps, discounts and rebates. Specifically, post-migration, TPHs must merely mark inbound orders appropriately by populating the appropriate FIX or BOE field or make same-day changes in the Clearing Editor, in lieu of submitting documentation post-trade. The proposed changes also streamline and simplify the Exchange's billing processes, as the system will be able to identify marked orders and apply fee caps, rebates and discounts without TPHs having to submit, and the Exchange having to manually review, additional documentation. Lastly, the Exchange notes the proposed rule change is not intended to have a significant impact or address any competitive issues. Rather it is precipitated by the transition of its billing system to a new system that is automated and will not process post-trade rebate requests.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes applies uniformly to all TPHs and still provide for TPHs an opportunity to receive the above described caps, rebates, and discounts notwithstanding the elimination of various form submissions. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace

for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange asserts that waiver of the delay will allow the Exchange to implement the proposed changes on October 7, 2019, the day the Exchange's billing system is migrated to a new system. In addition, CBOE notes that the Exchange provided TPHs notice of the proposed changes and implementation on September 4, 2019.¹⁶ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the operative delay and designates the

proposed rule change operative upon filing.¹⁷

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 will 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-2019-094 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-2019-094. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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 requested that the Commission waive the five-day pre-filing requirement. The Commission hereby grants the request.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See *supra* note 6.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-094 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2019-23057 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87340; File No. SR-CBOE-2019-048]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)

October 17, 2019.

I. Introduction

On September 6, 2019, Cboe Exchange, Inc. (“Cboe” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to adopt Rule 6.9. The proposed rule change was published for comment in the **Federal Register** on September 25, 2019.³ On September 27, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. On October 2, 2019, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change.⁴ On October 7, 2019, the

Exchange filed Amendment No. 3 to the proposed rule change.⁵ The Commission received one comment on the proposed rule change.⁶ The Commission is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

II. Summary of the Proposed Rule Change

A. Background

Specified quantities of ETF shares are created and redeemed for consideration by authorized participants. “In-kind” creations and redemptions occur when the authorized participants present (in the case of creations) or receive (in the case of redemptions) securities in exchange for ETF shares. The Commission has observed that, when creation and redemption transactions occur wholly or partly in-kind, certain benefits can accrue to an ETF and its investors; specifically, in-kind exchanges generally result in: (1) Lower trading expenses (because securities received or delivered in-kind do not need to be purchased or sold in the market by the ETF, thus avoiding brokerage fees); and (2) lower taxable gains to shareholders (because appreciated securities are not sold but are delivered in kind to redeeming authorized participants).⁷

its expectation regarding the magnitude of the transfers pursuant to the proposed rule, asserting that it would constitute a minimal percentage of the total average daily volume of the combined standardized and FLEXible EXchange Options (“FLEX Options”) with the same underlying security or index (rather than simply stating that it would constitute a minimal percentage of average daily volume of options). Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, and therefore it is not subject to notice and comment. Amendment No. 2 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboe-2019-048/srcboe2019048-6283760-193330.pdf>.

⁵ In Amendment No. 3, the Exchange revises the proposed rule text to renumber proposed Rule 6.49C to Rule 6.9 and correct an internal cross-reference to newly renumbered Rule 5.12 in order to conform the proposal to rule text organizational changes that became effective pursuant to a separate proposed rule change while the instant proposal was pending before the Commission. Because Amendment No. 3 is a technical amendment that does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 3 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboe-2019-048/srcboe2019048-6258834-192936.pdf>.

⁶ See letter dated October 11, 2019 from Ken Mungan, Chairman, Milliman Financial Risk Management LLC, to Vanessa Countryman, Secretary, Commission (“Comment Letter”), which is available at: <https://www.sec.gov/comments/sr-cboe-2019-048/srcboe2019048-6285127-193334.pdf>.

⁷ See Securities Exchange Act Release No. 75165 (June 12, 2015), 80 FR 34729, 34732–33 (June 17, 2015) (requesting comment on topics related to the

The Exchange’s current rules do not allow its Trading Permit Holders to effect options transfers in connection with ETF creations or redemptions because such transfers do not occur on Cboe or on another national securities exchange. Specifically, Cboe Rule 5.12(a)⁸ generally requires that transactions by Trading Permit Holders in option contracts listed on the Exchange for a premium in excess of \$1.00 must be effected on the Exchange or on another national securities exchange.⁹

B. Proposed Rule 6.9

The Exchange proposes to adopt Rule 6.9, which would add a new circumstance under which off-floor transfers of options positions by Trading Permit Holders would be allowed. Under proposed Rule 6.9, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Trading Permit Holder in connection with transactions to purchase or redeem “creation units” of ETF shares between an “authorized participant”¹⁰ and the issuer¹¹ of such ETF shares, which transfer would occur at the price used to calculate the NAV of such ETF shares.

The Exchange asserts that proposed Rule 6.9: (1) Would allow options-based

listing and trading of exchange-traded products on national securities exchanges and sales of these products by broker-dealers).

⁸ See Amendment No. 3, *supra* note 5 (describing the relocation of this rule to its current location in the Cboe rulebook).

⁹ Cboe Rule 6.7(a) lists the circumstances under which Trading Permit Holders may transfer their positions off of the Exchange. The circumstances listed include: (1) The dissolution of a joint account in which the remaining Trading Permit Holder assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (3) positions transferred as part of a Trading Permit Holder’s capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; and (6) a merger or acquisition where continuity of ownership or management results. Additionally, Cboe Rule 5.12(b) allows a Trading Permit Holder acting as agent to execute a customer’s order off the Exchange floor with any other person (except when such Trading Permit Holder also is acting as agent for such other person in such transaction) for the purchase or sale of an option contract listed on the Exchange.

¹⁰ For purposes of proposed Rule 6.9, an “authorized participant” is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.*, specified quantities of ETF shares).

¹¹ For purposes of proposed Rule 6.9, an issuer of ETF shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 87013 (September 19, 2019), 84 FR 50490 (“Notice”).

⁴ In Amendment No. 2, the Exchange clarifies: (1) In its description of the proposal that the transfer price(s) of the options would be the price(s) used to calculate the net asset value (“NAV”) of the exchange-traded fund (“ETF”) shares, in conformance with the proposed rule text; and (2)

ETFs to be more tax-efficient investment vehicles, to the benefit of their shareholders; and (2) may result in transaction cost savings for such ETFs, which may be passed along to investors.¹² The Exchange states that, while information regarding options transactions effected on the Exchange is disseminated to OPRA, information regarding transferred options positions such as those that would occur pursuant to the proposed rule is not disseminated to OPRA and is not otherwise publicly available.¹³ Nevertheless, the Exchange asserts that price discovery and transparency for Exchange-listed options would not be compromised under proposed Rule 6.9. The Exchange notes that, in conjunction with the creation and redemption process, positions would be transferred at price(s) used to calculate the NAV of the ETF shares.¹⁴ The Exchange further states that any transfers effected pursuant to the proposed rule would constitute a minimal percentage of the total average daily volume of the combined standardized and FLEX Options with the same underlying security or index.¹⁵ Further, the Exchange generally expects creations or redemptions to include corresponding transactions by the authorized participant that will occur on an exchange and be reported to OPRA.¹⁶

C. Comment Letter

The Commission received one comment letter, and the commenter supports Cboe's proposal. The commenter states that Cboe's current rules do not permit off-floor transfers for an equal value of shares of an ETF. As a result, only equity- and bond-based ETFs may utilize the in-kind redemption process, which provides tax efficiency.¹⁷ The commenter asserts that, by helping to improve the tax efficiency of ETFs that hold options, the proposal would establish a level for options-based ETFs and thereby increase the choices available to investors, including allowing more

investors to access investment strategies previously available only to institutions and high net worth individuals.¹⁸

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ Specifically, the Exchange finds that the proposed rule change is consistent with Section 6(b)(5)²⁰ of the Act, which requires (among other things) 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 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 Commission believes that proposed Rule 6.9 is designed to protect investors and the public interest because it should facilitate in-kind creations and redemptions by options-based ETFs, which should lower taxable gains of shareholders of such ETFs. The Commission further believes that, by facilitating in-kind creations and redemptions by options-based ETFs, the proposed rule may also lower such funds' transaction costs.

In support of this proposal, the Exchange has made the following representations:

1. OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers.²¹

2. All transfers pursuant to proposed Rule 6.9 would be required to comply with OCC rules.²²

This approval order is based on all of the Exchange's statements and representations, including those set forth above, in the Notice, and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the Act²³ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Exchange represents that October 31, 2019 is the fiscal year end for certain options-based ETFs whose shares are listed on Cboe BZX Exchange, Inc. and that, if such ETFs transition to in-kind transactions by the end of their fiscal year, their shareholders would no longer be subject to taxable distributions. The Exchange further represents that the funds and their authorized participants require time to implement the transition to in-kind creations and redemptions. The potential for tax savings for options-based ETF shareholders constitutes good cause to approve the proposal on an accelerated basis. The Commission also notes that, during the 21-day comment period after the Notice was published in the **Federal Register**, the only comment received supports the proposal.²⁴

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-CBOE-2019-048), as modified by Amendment Nos. 2 and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-23059 Filed 10-22-19; 8:45 am]

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¹² See Notice, *supra* note 3, 84 FR at 50491.

¹³ See *id.* at 50493.

¹⁴ See Amendment No. 2, *supra* note 4.

¹⁵ See *id.*

¹⁶ The Exchange states that: (1) For in-kind creations, an authorized participant will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA; and (2) for in-kind redemptions, it expects that an authorized participant will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption, and that such options position likely would be acquired in an on-exchange transaction that would be reported to OPRA. See Notice, *supra* note 3, 84 FR at 50493, n.16.

¹⁷ See Comment Letter, *supra* note 6, at 2.

¹⁸ See *id.*

¹⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Notice, *supra* note 3, 84 FR at 50493, n.14.

²² See *id.*

²³ 15 U.S.C. 78f(b)(5).

²⁴ See *supra* section II.C.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87337; File No. SR–CBOE–2019–092]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Minor Amendments to and Relocate Certain Rules Related to the Listing of Index Options (Including Binary and Range Options) From the Currently Effective Rulebook to Proposed Chapter 4, Section B of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 17, 2019.

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 4, 2019, 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 Act³ 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 make

minor amendments to and relocate certain rules related to the listing of index options (including binary and range options) from the currently effective Rulebook (“current Rulebook”) to proposed Chapter 4, Section B of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (“shell Rulebook”). 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

In 2016, the Exchange's parent company, Cboe Global Markets, Inc.

(formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration and the related reorganization of its Rulebook, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to make minor amendments to and relocate certain rules related to the listing of index options (including binary options and range options) into proposed Chapter 4, Section B of the shell Rulebook.⁵ The Exchange notes that in addition to making these amendments and reorganizing the current rules, the proposed rule change deletes these rules from the current Rulebook. The proposed rule change relocates and, where applicable, reorganizes the rules as follows:

Shell rule	Current rule
Chapter 4, Section B Introduction	Chapter XXIV Introduction. In addition to nonsubstantive changes, the proposed rule change adds that other Rules may not apply if the context otherwise requires (for example, a rule that refers to the stock underlying an option would be inapplicable to an index option, which has an underlying index).
4.10 Designation of the Index	24.2 Designation of the Index. ⁶
4.11 Definitions	24.1 Definitions (except Interpretation and Policy .01). The proposed rule change deletes the definitions of “underlying security” and “reporting authority,” as those terms are already defined in Rule 1.1 of the shell Rulebook, and therefore the definitions in Rule 24.1 are redundant. ⁷
4.12(a)—(b) Dissemination of Information.	24.3 Dissemination of Information.
4.12(c) Reporting Authorities	24.1, Interpretation and Policy .01 Reporting Authorities. ⁸
4.13 Series of Index Options Open	24.9 Terms of Index Option Contracts. 8.14, Interpretation and Policy .01. ⁹
4.14 Debit Put Spread Cash Account Transactions.	24.11A Debit Put Spread Cash Account Transactions.
4.15 Range Options:	

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 The Exchange notes it moved certain rules related to index options from the current Rulebook to the shell Rulebook (such as rules related to trading hours and position and exercise limits) in

other rule filings. See, e.g., Securities Exchange Act Release No. 86173 (June 20, 2019), 84 FR 30267 (June 26, 2019) (SR–CBOE–2019–027); and SR–CBOE–2019–088.

Shell rule	Current rule
(a) General	Chapter XX, Introduction. ¹⁰
(b) Definitions	20.1 Definitions.
(c) Designation of Range Option Contracts	20.3 Designation of Range Option Contracts.
(d) Maintenance Listing Standards	20.4 Maintenance Listing Standards.
(e) Determination of the Settlement Value of the Underlying Index.	20.9 Determination of the Settlement Value of the Underlying Index.
4.16 Binary Options:	
(a) General	Chapter XXII, Introduction. ¹¹
(b) Definitions	22.1 Definitions. ¹²
(c) Designation of Binary Option Contracts	22.3 Designation of Binary Option Contracts.
(d) Maintenance Listing Standards	22.4 Maintenance Listing Standards.
(e) Determination of the Settlement Value of the Underlying Index.	22.10 Determination of the Settlement Value of the Underlying Index.
(f) Adjustment	22.13(c) Premium Bids and Offers; Minimum Increments; Priority and Allocation.
(g) FLEX Trading	22.16 FLEX Trading.
	The proposed rule change deletes the language from this provision regarding the inapplicability of minimum quote widths (in current Rule 24A.9) to binary options, as there is no longer a quote width obligation, so there is no longer a need to exclude its applicability to binary options. ¹³ Since this quote width obligation did not apply to binary options, deletion of that provision, and thus deletion of its reference in this proposed paragraph (g), would have no impact on the trading of FLEX binary options. [sic].

⁶ The proposed rule change moves current Rule 24.2, Interpretation and Policy .01 into proposed Rule 4.10(h) and (i), current Rule 24.2, Interpretation and Policy .02 into proposed Rule 4.10(j) and (k), and current Rule 24.2, Interpretation and Policy .03 into proposed Rule 4.10(l) and (m).

⁷ The proposed rule change also deletes reserved paragraphs that contain no substantive rule text from current Rule 24.1.

⁸ The proposed rule change updates the name of certain reporting authorities to their current legal names.

⁹ The Exchange previously deleted the rule text from current Rule 8.14. *See* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059). The Exchange is not adding to the shell Rulebook the language from Rule 8.14, Interpretation and Policy .01 that states the Exchange will have authority to change the eligible categories of Market-Maker participants for each group, as that authority is covered by other rules. *See* Rules 3.55(a) (which states the Exchange may designate one or more Market-Makers in good standing with an appointment in a class for which a designated primary market-maker ("DPM") has not been appointed as a Lead Market-Maker ("LMM")), 5.50(h) (which permits the Exchange to determine for each class traded on the Exchange whether a DPM should be appointed to the class), and 5.50(l) (which permits the Exchange to designate a class for trading without a DPM or LMM). Additionally, the language in current Rule 8.14, Interpretation and Policy .01(a) was previously moved to Rule 5.5(l)(1) of the shell Rulebook, .01(b) was previously moved to 5.50(l)(2) of the shell Rulebook, and .01(c) was previously moved to Rule 1.5(b) [sic] of the shell Rulebook.

¹⁰ The proposed rule change simplifies the current language, but makes no substantive changes.

¹¹ The proposed rule change simplifies the current language, but makes no substantive changes.

¹² The proposed rule change deletes the definition of "reporting authority," as that term is already defined in Rule 1.1 of the shell Rulebook, and therefore the definition in Rule 22.1 is redundant.

¹³ *See* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059) (in which filing the

The proposed rule change deletes current Rules 22.11 and 22.13(d), as those rules merely point to other rules as applying to binary options. Pursuant to proposed Rule 4.16(a), all rules apply to binary options unless otherwise provided or unless the context provides otherwise. Therefore, these rules are redundant and unnecessary.

The proposed rule change deletes the introduction to current Chapter XXIV. It is clear from the Chapter and Section headings that the rules being moved into the shell Rulebook relate to index options. Any rules that apply differently to index options specify that in the rules in the shell Rulebook. [sic]

The proposed rule change deletes indexes currently listed in current Rules 24.1, Interpretation and Policy .01 and 24.9(a)(3), (a)(4), (b)(2) and Interpretation and Policy .01¹⁴ (proposed Rules 4.12(c) and 4.13(a)(3), (a)(4), and Interpretation and Policy .01, respectively) on which the Exchange is authorized to list options, but on which the Exchange does not currently, and does not intend, to list options. Because there are currently no options listed on any of these indexes, the proposed rule change has no impact on how options are listed on the Exchange or the requirements for listing options on the Exchange.

The proposed rule change deletes a reference to Rule 8.14 from current Rule 24.9(d)(6) (proposed Rule 4.13(d)(6), as that provision was deleted as

Exchange deleted the quote width obligation from current Rule 24A.9 [sic]).

¹⁴ The proposed rule change also deletes a reference to one of the indexes being deleted from current Rule 24.9(c), and deletes current Rule 24.9, Interpretation and Policy .01(f) and (g), which relate to indexes being deleted from the rules.

unnecessary.¹⁵ The Exchange may determine eligible categories of Market-Maker participants for a class pursuant to other rules.¹⁶ Additionally, the proposed rule change deletes the parenthetical that references public customers whose orders would be eligible to be placed on the book under current Rule 7.4(a) from the introductory paragraph of Rule 24.11A (proposed Rule 4.14), as the orders of all public customers are eligible to be placed on the book in all classes, and there no longer is a Rule 7.4 in the current Rulebook.

The proposed rule change updates references in current Rule 24.9, Interpretations and Policies .01(b) and .11(c) (proposed Rule 4.13, Interpretations and Policies .01(b) and .10(c)) to the EOW/EOM Pilot Program in current Rule 24.9(e) (which the proposed rule change moves to proposed Rule 4.13(e)), to the Nonstandard Expirations Pilot Program, which is the current name of that program.

The proposed rule changes make also makes nonsubstantive changes to the rules in order to add section headings, update cross-references to other rules and chapters that will be implemented upon migration, update certain technical text formatting that will be used in the rules upon migration (*e.g.*, using words for numbers below 10 in the rule text and numerals for numbers above 10 in the rule text), update times from Chicago time to Eastern time (see

¹⁵ *See* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059).

¹⁶ *See, e.g.*, Rules 3.55 and 5.50 in the shell Rulebook.

Rule 1.6 of the shell Rulebook), delete empty reserved rules, correct punctuation, alphabetize definitions, refer to Standard & Poor's as S&P, incorporate defined terms, and reformat the paragraph lettering and numbering to conform to that used in the shell Rulebook.

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.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ 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)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change only deletes redundant rules, deletes references to indexes on which the Exchange does not list (and does not intend to list) options, and makes nonsubstantive changes to the rules and is merely intended to simplify, consolidate, and reorganize the Exchange's Rules in anticipation of the technology migration on October 7, 2019. The Exchange believes that these proposed change will foster cooperation and coordination with those facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and national market system by simplifying the Rules and Rulebook as a whole, and making its Rules easier to follow and understand, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of a technology migration of the Exchange's trading platform to the same system as the Cboe Affiliated Exchanges and the related reorganization of the Rulebook, and not as a competitive filing. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because it only deletes redundant rules, deletes references to indexes on which the Exchange does not list (and does not intend to list) options, and makes nonsubstantive changes to the rules and is merely intended to simplify, consolidate, reorganize the Exchange's Rules in the shell Rulebook that will be in place come October 7, 2019. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition because the proposed rules are substantially the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6)²¹ thereunder. 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 Act²² and Rule 19b-4(f)(6)²³ thereunder.

²⁰ 15 U.S.C. 78(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with 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 operative prior to the Exchange's proposed system migration on October 7, 2019, in order to permit the Exchange to provide a complete Rulebook upon the completion of the migration. According to the Exchange, the proposed rule change simplifies, consolidates, and updates its rule text and does not substantively alter any of its rules. Moreover, the Exchange has represented that the proposed rule change has no impact on how options are listed on the Exchange or the requirements for listing options on the Exchange. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Further, notwithstanding the introduction to Chapter 4, Section B, that all rules apply unless the context may otherwise require, the Commission expects any rules that were previously applicable will continue to apply in the same manner. Therefore, the Commission designates the proposed rule change to be operative on upon filing.²⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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.

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ *Id.*

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-2019-092 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-2019-092. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-092 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87339; File No. SR-CboeEDGX-2019-061]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; 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

October 17, 2019.

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 15, 2019, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 Act³ 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 EDGX Exchange, Inc. ("EDGX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposal to extend the pilot related to the market-wide circuit breaker in Rule 11.16. The text of the proposed rule change is enclosed as 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/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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).

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

EDGX Rules 11.16(a) through (d), (f) and (g) describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, *i.e.*, market-wide circuit breakers. The market-wide circuit breaker ("MWCB") mechanism was approved by 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. The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁶ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.16 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, 2019.⁷

The Exchange now proposes to amend Rule 11.16 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 11.16. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The

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 See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

⁷ See Securities Exchange Act Release No. 85667 (April 16, 2019), 84 FR 16736 (April 22, 2019) (SR-CboeEDGX-2019-023).

²⁷ 17 CFR 200.30-3(a)(12).

extension will also permit the exchanges to consider enhancements to the MWCb processes such as modifications to the Level 3 process.

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 ("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. 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. 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.

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 Section 6(b)(5) of the Act,⁹ 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, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCb mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCb processes such as modifications to the Level 3 process.

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.

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, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCb mechanism. In addition, as noted above, the extension will permit the exchanges to consider enhancements to the MWCb processes such as modifications to the Level 3 process. 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

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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 Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 to halt trading across the U.S. markets. 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.¹⁴

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:

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 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).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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-CboeEDGX-2019-061 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-CboeEDGX-2019-061. 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-CboeEDGX-2019-061 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-23058 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

¹⁵ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION**Senior Executive Service and Senior Level: Performance Review Board Members**

AGENCY: U. S. Small Business Administration.

ACTION: Notice of Members for the FY 2019 Performance Review Board.

Title 5 U.S.C. 4314(c)(4) requires each agency to publish notification of the appointment of individuals who may serve as members of that agency's Performance Review Board (PRB). The following individuals have been designated to serve on the FY 2019 Performance Review Board for the U.S. Small Business Administration.

Members

1. Barbara Carson (Chair), Deputy Associate Administrator, Office of Government Contracting and Business Development
2. Allen Gutierrez, Associate Administrator, Office of Entrepreneurial Development
3. Delorice Ford, Assistant Administrator, Office of Hearings and Appeals
4. Larry Stubblefield, Associate Administrator, Office of Veterans Business Development
5. Nina Levine, Associate General Counsel, Financial Law and Lender Oversight, Office of General Counsel
6. Michael Hershey, Associate Administrator, Office of Congressional and Legislative Affairs
7. Victor Parker, District Director, Los Angeles District Office, Office of Field Operations
8. David Glaccum, Associate Administrator, Office of International Trade

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019-23100 Filed 10-22-19; 8:45 am]

BILLING CODE 8026-03-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16160 and #16161; North Carolina Disaster Number NC-00111]

Administrative Declaration of a Disaster for the State of North Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 10/16/2019.

Incident: Hurricane Dorian.

Incident Period: 09/01/2019 through 09/09/2019.

DATES: Issued on 10/16/2019.

Physical Loan Application Deadline Date: 12/16/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 07/16/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Carteret, Dare, Hyde, New Hanover

Contiguous Counties:

North Carolina: Beaufort, Brunswick, Craven, Currituck, Jones, Onslow, Pamlico, Pender, Tyrrell, Washington

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16160 8 and for economic injury is 16161 0.

The State which received an EIDL Declaration # is North Carolina.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,
Acting Administrator.

[FR Doc. 2019-23083 Filed 10-22-19; 8:45 am]

BILLING CODE 8026-03-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2019-0009]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Labor (DOL).

The matching agreement (agreement) establishes the terms, conditions, and safeguards under which DOL will disclose the DOL-administered Part C Black Lung (BL) benefit data to SSA. SSA will match DOL's Part C BL data with SSA's records of persons receiving Social Security disability benefits to verify that Part C BL beneficiaries are receiving the correct amount of Social Security disability benefits.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice in the **Federal Register**. The matching program will be applicable on November 25, 2019, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966-0869, writing to Matthew D. Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G-401 WHR, 6401 Security Boulevard, Baltimore, MD 21235-6401, or emailing Matthew.Ramsey@ssa.gov. All comments received will be available for public inspection by contacting Mr. Ramsey at this street address.

FOR FURTHER INFORMATION CONTACT: Norma Followell, Supervisory Team Lead, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G-401 WHR, 6401 Security Boulevard, Baltimore, MD 21235-6401, at Telephone: (410) 966-5855, or send an email to Norma.Followell@ssa.gov.

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,
Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies:

SSA and DOL.

Authority for Conducting the Matching Program:

The legal authority for this matching program is section 224(h)(1) of the Social Security Act (Act), 42 U.S.C. 424a(h)(1). This legal authority requires any Federal agency to provide SSA with information in its possession that SSA may require for making a timely determination of the amount of reduction required under section 224 of the Act for workers' compensation offset.

Purpose(s):

This matching program establishes the terms, conditions, and safeguards under which DOL will disclose the DOL-administered Part C BL benefit data to SSA. SSA will match DOL's Part C BL data with SSA's records of persons receiving Social Security disability benefits to verify that Part C BL beneficiaries are receiving the correct amount of Social Security disability benefits.

Categories of Individuals:

The individuals whose information is involved in this matching program are those individuals who are receiving Part C BL benefits and Social Security disability benefits.

Categories of Records:

DOL's monthly extract file will contain each Part C BL beneficiary's Social Security number (SSN), name, date of birth, date of entitlement, payment status, current benefit amount, and effective date of the current benefit amount. SSA will determine which of the beneficiaries are receiving Social Security disability benefits and match the DOL data against the SSN, type of action code, and offset type for those beneficiaries in SSA's Master Beneficiary Record (MBR).

System(s) of Records:

SSA will match the DOL extract file against the MBR, 60-0090, last fully published at 71 FR 1826 (January 11, 2006), as amended at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), 83 FR 31250-31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018). DOL's extract file is from DOL's Office of Workers' Compensation Programs (OWCP), BL Benefit Payments file, DOL/OWCP-9, last fully published

at 81 FR 25765 (April 29, 2016). Both agencies have published the appropriate routine uses to permit the disclosures necessary to conduct this match.

[FR Doc. 2019-23131 Filed 10-22-19; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2019-0010]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Labor (DOL).

This matching agreement establishes the terms, conditions, and safeguards under which the DOL will disclose the DOL-administered Part B Black Lung (BL) benefit data to SSA. SSA will match DOL's Part B BL data with SSA's records of persons receiving Supplemental Security Income (SSI) to verify that Part B BL beneficiaries are receiving the correct amount of SSI payments.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice in the **Federal Register**. The matching program will be applicable on November 25, 2019, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966-0869, writing to Matthew D. Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G-401 WHR, 6401 Security Boulevard, Baltimore, MD 21235-6401, or emailing Matthew.Ramsey@ssa.gov. All comments received will be available for public inspection by contacting Mr. Ramsey at this street address.

FOR FURTHER INFORMATION CONTACT: Norma Followell, Supervisory Team Lead, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G-401 WHR, 6401 Security Boulevard, Baltimore, MD 21235-6401, at Telephone: (410) 966-5855, or send an email to Norma.Followell@ssa.gov.

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies:

SSA and DOL.

Authority for Conducting the Matching Program:

The legal authority for this matching program is section 1631(f) of the Social Security Act (Act), 42 U.S.C. 1383(f). This legal authority requires any Federal agency to provide SSA with information in its possession that SSA may require for making a determination of eligibility for, or the proper amount, of SSI payments.

Purpose(s):

This matching program establishes the terms, conditions, and safeguards under which DOL will disclose the DOL-administered Part B BL benefit data to SSA. SSA will match DOL's Part B BL data with SSA's records of persons receiving SSI to verify that Part B BL beneficiaries are receiving the correct amount of SSI payments.

Categories of Individuals:

The individuals whose information is involved in this matching program are those individuals who are receiving Part B BL benefits and SSI benefits.

Categories of Records:

DOL's monthly extract file will contain each Part B BL beneficiary's Social Security number (SSN), name, date of birth, date of entitlement, payment status, current benefit amount, and effective date of the current benefit amount. SSA will determine which of the recipients are receiving SSI payments and match the DOL data against the SSN, type of action code, and income type for those recipients in SSA's Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB) system of records.

System(s) of Records:

SSA will match the SSR/SVB (60-0103) system of records, last fully published on January 11, 2006 (71 FR 1830), as amended on December 10, 2007 (72 FR 69723), July 3, 2018 (83 FR 31250-31251), and November 1, 2018 (83 FR 54969), which contains all data pertinent to payments made to Title XVI recipients, with an extract from DOL's Office of Workers' Compensation Programs, BL Benefit Payments file (OWCP-9), published on April 29, 2016 (81 FR 25765). DOL has the appropriate

routine uses to permit the disclosures necessary to conduct this match.

[FR Doc. 2019-23132 Filed 10-22-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0192]

Hours of Service of Drivers: Kentucky Equipment Distributors (KED); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Kentucky Equipment Distributors (KED) requesting an exemption from the requirement that drivers of commercial motor vehicles (CMVs) qualifying for the "short-haul—100 air-mile radius driver" exception must return to the original work reporting location within 12 hours of coming on duty. KED asks that its short-haul CMV drivers be permitted to return within 14 hours instead of 12 without losing their short-haul status. FMCSA requests public comment on KED's application for exemption.

DATES: Comments must be received on or before November 22, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2019-0192 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or

comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4325; Email: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2019-0192), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2019-0192" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would

like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Drivers qualifying for the hours-of-service (HOS) short-haul exception in 49 CFR 395.1(e)(1) do not have to maintain a record of duty status (RODS) on board the vehicle. However, such drivers must return to their normal work reporting location and be released from work within 12 hours after coming on duty. A driver who exceeds the 12-hour limit loses the short-haul exception and must immediately prepare RODS for the entire day, often by means of an electronic logging device (ELD) (49 CFR 395.8(a)(1)(i)). KED is requesting that its short-haul CMV drivers be permitted to return within 14 hours instead of 12 without losing their short-haul status.

Kentucky Equipment Distributors (KED) is comprised of several large machinery distributors operating in several states whose fleet focuses on agriculture, construction, mining, as well as road paving. KED includes seven companies and approximately 3,500 employees. The requested exemption

would apply to short-haul drivers engaged in the transportation and repair of equipment and machinery. KED drivers generally meet the requirements of the short-haul operations exception, though they may occasionally take more than 12 hours to return and be released from their work reporting location. The requested increase to 14 hours will ensure KED drivers meet the requirements of the short-haul operations exception.

KED companies currently own and operate 431 vehicles that fall under the HOS regulations in 49 CFR part 395. Most of the vehicles are field service and parts delivery trucks. Duties associated with these vehicles enable the company to bring their shop/tools to the piece of equipment needing servicing versus having to transport the equipment back to the shop. KED's drivers perform duties such as but not limited to: onsite repairs, hauling parts and components, as well as routine maintenance. The vehicles are primarily utilized for haulage of equipment and tooling as relates to their primary use versus utilization for long-haul trucking.

Operators and owners within KED operate a series of large delivery vehicles and are not classified as long-haul drivers. All KED drivers perform a great deal of work outside of the vehicle, unlike drivers whose extended time behind the wheel makes them susceptible to fatigue. KED requests that these vehicles, which are like ready-mixed concrete and oilfield operational trucks, be designated for the exemption. KED drivers, like that of the ready-mixed concrete industry, spend most their shift hours performing non-driving job duties, which lessens driver fatigue. KED estimates that only 20% of its drivers' daily duties involves driving, typically to and from the worksite.

According to KED, the application is consistent with the current 14-hour limit for drivers of ready-mixed concrete vehicles. KED also pointed out that FMCSA had granted similar short-haul exemptions to Waste Management (WM) and the National Asphalt Pavement Association (NAPA). According to KED, WM drivers spend 30–50% of their time in "collection mode" and NAPA drivers drive 20% of the time. KED estimates that its drivers travel between 50–80 miles during each shift; driving time is therefore less than 20% of the individual's total duties.

KED's application for exemption is available for review in the docket for this notice.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, KED offers supplementary driver management training which includes identifying and managing sleep deprivation, reducing eye strain, as well as driver fatigue prevention. According to KED, this training helps drivers to understand as well as identify triggers associated with fatigue, and provides help to minimize fatigue. KED notes that Waste Management and asphalt paving workers have similar daily schedules, where driving is only a small part of their workload.

A copy of KED's application for exemption is available for review in the docket for this notice.

Issued on: October 11, 2019.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2019–23085 Filed 10–22–19; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0180]

Hours of Service of Drivers: Application for Exemption From the 14-Hour Rule During Independence Day Celebrations for Illumination Fireworks Partners, LP and ACE Pyro, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Illumination Fireworks Partners, LP and ACE Pyro, LLC (Applicants) for an exemption from the requirements that drivers of commercial motor vehicles (CMVs) must not drive following the 14th hour after coming on duty. The exemption would apply solely to the drivers of 60 CMVs employed by the applicant in conjunction with staging fireworks shows in celebration of Independence Day during the period of June 26–July 8, for the next five years (2019–2024) inclusive. During this period, the CMV drivers employed by the applicant would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and would continue to be subject to the

11-hour driving time limit, and the 60 and 70-hour on-duty limits. The applicant maintains that the terms and conditions of the limited exemption would ensure a level of safety equivalent to or greater than the level of safety achieved without the exemption.

DATES: November 22, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2019–0180 using any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice contact Ms. Pearl Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: MCPSPD@dot.gov. If you

have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0180), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA–2019–0180” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA–2019–0180” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Illumination Fireworks Partners, LP (USDOT 3247742) and ACE Pyro, LLC (USDOT 1352892) (Applicants) are fireworks display companies that employ CMV drivers who hold commercial driver’s licenses (CDLs) with hazardous materials endorsements. The drivers transport Division 1.3G and 1.4G fireworks and setup of firework shows for Independence Day celebrations. The applicants seek an exemption from the 14-hour rule in 49 CFR 395.3(a)(2) so that drivers would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. Illumination Fireworks Partners, LP states that the basis for the request is the existing FMCSA exemption granted to Illumination Fireworks, LLC and ACE Pyro, LLC under Docket No. FMCSA–2014–0111. The applicants state that they are seeking the HOS exemption because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the

existing regulation means that most shows would require two drivers, significantly increasing the cost of the fireworks display.

The applicants assert that without the extra duty period provided by the exemption, safety would decline as firework drivers would be unable to return to their home base following each show should they have fireworks remaining after the display. Drivers would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, the applicant offers short distance driving from the distribution point to the site of the fireworks display, no more than 150 miles. Drivers have several hours of off duty in the late afternoon and early evening the day of the event. In addition, drivers drive in the early morning during light traffic. Lastly, the applicant states that they have not been involved in any reportable accidents while operating under terms and conditions of the same exemption granted to the previous owner of the company.

A copy of the application for exemption is available for review in the docket for this notice.

Issued on: October 11, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019-23087 Filed 10-22-19; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2016-0136]

Pipeline Safety: Meeting of the Gas Pipeline Advisory Committee and Liquid Pipeline Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a joint public meeting of the Technical Pipeline Safety Standards Committee, also known as the Gas Pipeline Advisory Committee (GPAC), and the Technical Hazardous Liquid Pipeline Safety Standards Committee, also known as the Liquid Pipeline Advisory Committee (LPAC). The GPAC and LPAC will meet jointly to discuss a

variety of policy issues and topics relevant to both gas and liquid pipeline safety.

DATES: The GPAC and LPAC will meet jointly on November 14, 2019, from 8:30 a.m. to 5:00 p.m. ET. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Tewabe Asebe by November 4, 2019.

ADDRESSES: The meeting will be held at the Intercontinental Washington DC—The Wharf, 801 Wharf Street SW, Washington, DC 20024. The agenda and any additional information for the meeting will be published on the following meeting page at: <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=144>. Presentations will be available on the meeting website and posted on the E-Gov website, <https://www.regulations.gov/>, under docket number PHMSA-2016-0136 within 30 days following the meeting.

The meeting will be open to the public. Members of the public will be provided an opportunity to make a statement during the meeting. The proceeding will be recorded and a record of the proceeding will be made available to the public at <https://www.regulations.gov>.

Written comments: Persons who wish to submit written comments on the meeting may submit them to the docket in the following ways:

E-Gov website: <https://www.regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1-202-493-2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590-0001.

Hand Delivery: Room W12-140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA-2016-0136 at the beginning of your comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the

Federal Register published on April 11, 2000, (65 FR 19477), or view the Privacy Notice at <https://www.regulations.gov> before submitting comments.

Docket: For docket access or to read background documents or comments, go to <https://www.regulations.gov> at any time or to Room W12-140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA-2016-0136." The docket clerk will date stamp the postcard prior to returning it to you via the US mail.

Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as "Confidential"; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Tewabe Asebe at DOT, PHMSA, PHP-30, 1200 New Jersey

Avenue SE, PHP-30, Washington, DC 20590-0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

Services for Individuals with Disabilities: The public meetings will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Tewabe Asebe at tewabe.asebe@dot.gov.

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Tewabe Asebe at (202) 366-5523, or tewabe.asebe@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Meeting Detail and Agenda

The committees will meet in a joint session to discuss a variety of topics to update committee members on both gas and liquid pipeline applicable safety program and policy issues, such as: Pipeline safety public awareness; reauthorization of the pipeline safety program; a regulatory agenda update; a discussion of safety management systems within the pipeline industry; an update on the Voluntary Information Sharing Working Group, and an update on pipeline safety's research and development program.

II. Committee Background

The GPAC and the LPAC are statutorily mandated advisory committees that advise PHMSA on proposed gas pipeline and hazardous liquid pipeline safety standards, respectively, and their associated risk assessments. The committees are established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, as amended) and 49 U.S.C. 60115. The committees consist of 15 members with membership evenly divided among federal and state governments, the regulated industry, and the general public. The committees advise PHMSA on the technical feasibility, reasonableness, cost-effectiveness, and practicability of each proposed pipeline safety standard.

Issued in Washington, DC, on October 18, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019-23105 Filed 10-22-19; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0872]

Agency Information Collection Activity: Expanded Access to Non-Va Care Through the MISSION Program: Establishing a Process for Certification, Discontinuance, and Disputes for Veterans Care Agreements (VCAs)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 23, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to Brian.McCarthy4@va.gov. Please refer to "OMB Control No. 2900-0872" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615-9241.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of

information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Expanded Access to Non-Va Care Through the MISSION Program: Establishing a Process for Certification, Discontinuance, and Disputes for Veterans Care Agreements (VCAs).

OMB Control Number: 2900-0872.

Type of Review: Extension of a currently approved collection.

Abstract: Section 102 of the VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 (Pub. L. 115-182) authorizes VA to enter into Veterans Care Agreements (VCAs) to furnish required care and services when such care and services are not feasibly available to certain individuals through a VA facility, a contract, or a sharing agreement. VA seeks to establish a new collection to implement three requirements under section 102 of the MISSION Act:

a. **Certification:** Eligible entities and providers will be required to submit to VA information concerning relevant credentials, licenses, and other information as requested by VA to evaluate eligibility for certification. The information to be collected is authorized by 38 U.S.C. 1703A(c).

b. **Discontinuation:** Eligible entities and providers would be required to submit to VA a written notice of intent to discontinue a Veterans Care Agreement prior to the date of such discontinuation. The information to be collected is authorized by 38 U.S.C. 1703A(f)(1).

c. **Disputes:** Eligible entities and providers would be required to submit to VA written notices of dispute that contain specific information to allow VA to assess and resolve the matter in dispute. The information to be collected is authorized by 38 U.S.C. 1703A(h).

Certification

Affected Public: Private Sector.
Estimated Annual Burden: 1,263 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 15,152.

Discontinuance

Affected Public: Private Sector.

Estimated Annual Burden: 25 hours.
Estimated Average Burden per Respondent: 10 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 152.

Disputes

Affected Public: Private Sector.
Estimated Annual Burden: 268 hours.
Estimated Average Burden per Respondent: 20 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 803.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019-23044 Filed 10-22-19; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

VA National Academic Affiliations Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the VA National Academic Affiliations Council (NAAC) will meet via conference call on December 11, 2019, from 1:00 p.m. to 3:00 p.m. EST. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On December 11, 2019, the Council will receive updates from its Subcommittees and Work Groups: Diversity and Inclusion, Electronic Health Record Modernization, and Affiliation Partnership Councils; receive briefings on the status of VA MISSION Act educational sections; and discuss Graduate Medical Education expansion and other follow-up items. The Council will receive public comments from 2:40 p.m. to 2:50 p.m. EST.

Interested persons may attend and/or present oral statements to the Council. The dial in number to attend the conference call is: 1-800-767-1750. At the prompt, enter access code 12095 then press #. Individuals seeking to present oral statements are invited to submit a 1-2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested

parties may also provide written comments for review by the Council prior to the meeting or at any time, via email to Larissa.Emory@va.gov, or by mail to Larissa A. Emory PMP, CBP, MS, Designated Federal Officer, Office of Academic Affiliations (10X1), 810 Vermont Avenue NW, Washington, DC 20420. Any member of the public wishing to participate or seeking additional information should contact Ms. Emory via email or by phone at (915) 269-0465.

Dated: October 18, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019-23077 Filed 10-22-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0160]

Agency Information Collection Activity Under OMB Review: State Home Programs for Veterans

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 22, 2019.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to oira_submission@omb.eop.gov. Please refer to “OMB Control No. 2900-0160” in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Danny S. Green, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421-1354 or email danny.green2@va.gov Please refer to

“OMB Control No. 2900-0160” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501-21.

Title: State Home Programs for Veterans (VA Forms 10-5588, 10-5588A, and 10-10SH).

OMB Control Number: 2900-0160.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: Congress passed Public Law 115-159, the State Veterans Home Adult Day Health Care Improvement Act of 2017, requiring VA to pay State homes for medical model adult day health care to certain eligible Veterans, and Title 38, CFR part 52, which provides for the payment of per diem to State homes that provide adult day health care to eligible Veterans. It also continues to provide for the payment of per diem to State homes that provide care to eligible Veterans in accordance with Title 38, CFR part 51. The intended effect of these provisions is to provide a safeguard that Veterans are receiving high quality care in State homes.

This information collection is necessary to ensure that VA per diem payments are limited to facilities providing high quality care. To verify this level of care, VA requires those facilities providing nursing home care, domiciliary, and adult day health care programs to Veterans to supply various kinds of information. The information required includes an application/eligibility for admission and justification for payment; records and reports which facility management must maintain regarding activities of payment for eligible residents or participants; and the records and reports that facilities management and health care professionals must maintain regarding the level of care approved for residents or participants.

This OMB Control Number previously included six additional forms, VA Forms 10-0460, 10-0143, 10-0143A, 10-0144, 10-0144A, and 10-3567, which have now been separated out into another information collection (to be approved under a separate OMB Control Number). This information collection, under OMB Control Number 2900-0160, now includes only three forms: VA Forms 10-5588, 10-5588A, and 10-10SH.

a. VA Form 10-5588: State Home Report and Statement of Federal Aid Claimed—38 CFR 51, 52 and Title 38, U.S.C., Sections 1741, 1742, 1743 and 1745—is used to assess and provide per diem to State homes. This collection is used by the State home employees and VA Staff.

b. VA Form 10–5588A: Claim for Increased Per Diem Payment for Veterans Awarded Retroactive Service Connection—38 CFR 51, 52 and Title 38, U.S.C., Sections 1741, 1742, 1743 and 1745—is used to assess and provide per diem to State homes retroactively. This collection is used by the State home employees and VA Staff.

c. VA Form 10–10SH: State Home Program Application for Veterans Care Medical Certification—38 CFR 51, 52 and Title 38, U.S.C., Sections 1741, 1742, 1743 and 1745—provides for the collection of information to apply for the benefits of this program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period

soliciting comments on this collection of information was published at 84 FR 37016 on July 30, 2019, pages 37016 and 37017.

VA Form 10–5588

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden: 834 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 1,668.

VA Form 10–5588A

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden: 180 hours.

Estimated Average Burden per

Respondent: 20 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 540.

VA Form 10–10SH

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden: 3,802 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 11,406.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–23043 Filed 10–22–19; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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October 23, 2019

Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2520

Default Electronic Disclosure by Employee Pension Benefit Plans Under
ERISA; Proposed Rule

DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Part 2520****RIN 1210–AB90****Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA**

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule and request for information.

SUMMARY: The Department of Labor is proposing in this document a new, additional safe harbor for the use of electronic media by employee benefit plans to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974 (ERISA). The proposal, if adopted, would allow plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website. Individuals who prefer to receive these disclosures on paper will be able to request paper copies and to opt out of electronic delivery entirely. The Department expects that the proposal, if adopted, would improve the effectiveness of the disclosures and significantly reduce the costs and burden associated with furnishing many of the recurring and most costly ERISA disclosures. This document also contains, in section D of the preamble, a Request for Information that explores whether and how any additional changes to ERISA's general disclosure framework, focusing on design, delivery, and content, may be made to further improve the effectiveness of ERISA disclosures.

DATES: Comments on the proposal and on the Request for Information, in section D of the preamble, must be submitted on or before November 22, 2019.

ADDRESSES: You may submit written comments, identified by RIN 1210–AB90 to either of the following addresses:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Electronic

Disclosure by Employee Benefit Plans, RIN 1210–AB90.

Instructions: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at <https://www.regulations.gov> and <https://www.dol.gov/agencies/ebsa> and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis or Kristen Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**A. Background***(1) Current Delivery Standards for ERISA Disclosures*

The Employee Retirement Income Security Act of 1974 (ERISA) and regulations thereunder provide general standards for the delivery of all information required to be furnished to participants, beneficiaries, and other individuals under Title I of ERISA.¹ Plan administrators must use delivery methods reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals.² For example, in-hand delivery to an employee at his or her workplace is acceptable, as is material sent by first class mail.

(i) 2002 Electronic Disclosure Safe Harbor

Based on developing technology, such as email and the internet, the Department of Labor (Department) amended the general standards for delivery of required disclosures in 2002 by establishing a safe harbor for the use of electronic media (the 2002 safe harbor).³ The 2002 safe harbor is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard. Plan administrators may find that other

procedures will allow them to meet ERISA's general delivery requirements. However, administrators who satisfy the conditions of the safe harbor are assured that the general delivery requirements have been satisfied.

The 2002 safe harbor, which is set forth in paragraph (c) of § 2520.104b–1, is available only if: First, the plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt of transmitted information and protects the confidentiality of personal information relating to the individual's accounts and benefits; second, the electronically delivered documents are prepared and furnished in a manner that is consistent with the style, format, and content requirements applicable to the particular document; third, notice is provided to each participant, beneficiary, or other individual, in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the individual of the significance of the document when it is not otherwise reasonably evident as transmitted and of the right to request and obtain a paper version of such document; and fourth, upon request, the participant, beneficiary or other individual is furnished a paper version of the electronically furnished documents.⁴

The 2002 safe harbor applies only to two categories of individual recipients. The first category includes those participants who have the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee and with respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties. This group is sometimes referred to as being "wired at work." The second category includes participants, beneficiaries, and other persons who are entitled to documents under Title I of ERISA who do not fit into the first category, but who *affirmatively consent* to receive documents electronically. For this category, the safe harbor assumes the use of electronic information systems beyond the control of the plan or plan sponsor; therefore, relief is available for the second category of individuals only if they *affirmatively consent* to receive documents electronically.

In general, the affirmative consent condition requires plan administrators to ensure that an individual has affirmatively consented, in electronic or

¹ See 29 CFR 2520.104b–1.

² See 29 CFR 2520.104b–1(b)(1).

³ See 29 CFR 2520.104b–1(c).

⁴ 29 CFR 2520.104b–1(c)(1)(i) through (iv).

non-electronic form, to receiving documents through electronic media and has not withdrawn such consent. Alternatively, in the case of documents furnished through the internet or other electronic communication networks, the individual must have affirmatively consented or confirmed consent electronically. The manner in which an individual confirms consent must reasonably demonstrate the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and the individual must have provided an address for the receipt of electronically furnished documents.

In addition, before consenting, the individual must be provided, in electronic or non-electronic form, a clear and conspicuous statement indicating: First, the types of documents to which the consent would apply; second, that consent can be withdrawn at any time without charge; third, the procedures for withdrawing consent and for updating the participant's, beneficiary's, or other individual's address for receipt of electronically furnished documents or other information; fourth, the right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and fifth, any hardware and software requirements for accessing and retaining the documents.

Further, following consent, if a change in such hardware or software requirements creates a material risk that the individual will be unable to access or retain electronically furnished documents, the individual: First, is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents; second, is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and third, again consents in accordance with the requirements above.⁵

(ii) Field Assistance Bulletin 2006–03

Although the 2002 safe harbor remains in effect, the Department occasionally has issued guidance in limited circumstances addressing electronic delivery methods other than the method permitted by the 2002 safe harbor. For example, in 2006, the Department issued Field Assistance Bulletin 2006–03 (FAB 2006–03) to help

administrators and their service providers comply with amendments to ERISA's pension benefit statement requirements made by the Pension Protection Act of 2006.⁶ FAB 2006–03, in relevant part, provides that when pension plans give participants continuous access to benefit statement information through one or more secure websites, "the Department will view the availability of pension benefit statement information through such media as good faith compliance with the requirement to furnish benefit statement information, provided that participants and beneficiaries have been furnished notification that explains the availability of the required pension benefit statement information and how such information can be accessed by the participants and beneficiaries." In addition, the notification "must apprise participants and beneficiaries of their right to request and obtain, free of charge, a paper version of the pension benefit statement information required under section 105."⁷

(iii) Field Assistance Bulletin 2008–03

On April 29, 2008, the Department issued Field Assistance Bulletin 2008–03 (FAB 2008–03), which provides guidance on the Department's final regulation providing relief from certain fiduciary responsibilities under ERISA for investments made on behalf of participants or beneficiaries who fail to direct the investment of assets in their individual accounts.⁸ The qualified default investment alternative (QDIA) regulation requires plans that choose to offer a QDIA to provide participants and beneficiaries with an initial and annual notice thereafter of the QDIA.⁹ FAB 2008–03 explains that, absent subsequent guidance to the contrary, plans that wish to use electronic means to satisfy their notice requirements may rely on either the regulations issued by the Department of Labor at 29 CFR 2520.104b–1(c) or the regulations issued by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) at 26 CFR 1.401(a)–21 relating to use of electronic media.¹⁰ FAB 2008–03 gives administrators additional flexibility and complements the Department's position that an administrator may use one consolidated notice to satisfy both the QDIA regulation and the notice requirements in Internal Revenue Code

(Code) sections 401(k)(13)(E) and 414(w)(4) for automatic contribution arrangements.

(iv) Technical Release 2011–03R

On December 8, 2011, the Department issued Technical Release 2011–03R (TR 2011–03R), which sets forth an interim enforcement policy regarding the use of electronic media to satisfy the disclosure requirements under 29 CFR 2550.404a–5, the participant-level disclosure regulation. Under TR 2011–03R, a plan administrator may furnish § 2550.404a–5 disclosures through electronic media (including through a continuous access website) if participants voluntarily provide the employer, plan sponsor, or plan administrator (or its designee) with an email address; if the administrator furnishes initial and annual notices; and if other conditions are satisfied. TR 2011–03R establishes a temporary enforcement policy until the Department issues further guidance in this area. Under this policy, the Department will not take any enforcement action against a plan administrator who complies with the conditions in TR 2011–03R. TR 2011–03R is specifically limited to the obligation to furnish required disclosures under 29 CFR 2520.104b–1(b)(1), as it applies to the disclosures under 29 CFR 2550.404a–5.

(2) 2011 Request for Information

The Department's Request for Information Regarding Electronic Disclosure by Employee Benefit Plans, published April 7, 2011 (the 2011 Request for Information), explained in detail what is required for an administrator to establish "affirmative consent" by an individual.¹¹ The Department published the 2011 Request for Information in response to Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011. The Executive Order stressed the importance of achieving regulatory goals through the most innovative and least burdensome tools available, and the Department was mindful of this directive when issuing the Request for Information to assist its approach to electronic disclosure by employee benefit plans. The Department received approximately 78 comments in response to the 2011 Request for Information; the responses to this Request continue to inform the Department's understanding

⁶ Public Law 109–280, 120 Stat. 780 (2006).

⁷ Field Assistance Bulletin No. 2006–03 (Dec. 20, 2006).

⁸ See 29 CFR 2550.404c–5.

⁹ 29 CFR 2550.404c–5(c)(3).

¹⁰ See Field Assistance Bulletin No. 2008–03, (Q&A7), quoting 72 FR 60458 (Oct. 24, 2007).

¹¹ 76 FR 19286 (Apr. 7, 2011).

⁵ See 29 CFR 2520.104b–1(c)(2)(ii).

and analysis of electronic delivery and other disclosure issues.¹²

Since publication of the 2011 Request for Information, the Department continues to consider whether there are more effective ways to regulate the disclosure and delivery of information to participants and beneficiaries. Questions have been raised in connection with many of the Department's rulemaking and other initiatives. Stakeholders on these initiatives increasingly request that the Department recognize changes in technology as some other Federal agencies have done, and take advantage of those changes by updating and modernizing ERISA's electronic delivery standards. Many stakeholders believe the Department should promote electronic delivery of information to the greatest extent possible, and contend that electronic delivery is more efficient, less burdensome, and less costly than delivery of paper disclosures. Other stakeholders state that electronic delivery is not necessarily appropriate for all individuals, or for all ERISA disclosures. The Department agrees that electronic delivery generally can be as effective as paper based communication, and that it can reduce plan costs and increase the timeliness and accuracy of information that is disclosed. The Department also understands, however, that some of America's workers and retirees do not have reasonable access to the internet, and that some workers and retirees prefer, and may benefit from, traditional (paper) delivery for important financial information, including ERISA plan disclosures.

(3) Purpose of Regulatory Action

The Department believes that caution is warranted before taking regulatory action to change the longstanding electronic delivery standard under ERISA. The Department has spent considerable time analyzing the issue, both internally and by consulting other Federal departments and agencies with disclosure requirements that may affect the employee benefit plan marketplace. The Department consistently strives to reconcile competing policy goals when considering the best framework for delivering ERISA disclosures—a framework that appropriately balances the innovations and reduced costs that may be achieved through enhanced use of electronic communication with suitable safeguards for participants and

beneficiaries who may be harmed or disadvantaged by such enhanced use.

Since publication of the 2011 Request for Information—and, before then, publication of the current electronic delivery safe harbor rule in 2002—the Department has recognized the importance of the ever-evolving changes in technology affecting individuals at home and at work. Examples include the expansion of broadband internet access through cable, fiber optic and wireless networks; internet-connected applications (apps); hardware improvements to servers and personal computers improving storage, memory, recovery, and computing power; introduction of smartphones, net books and other personal computing devices; and social networking (e.g., LinkedIn, Facebook, and Twitter).

Evidence suggests substantial access to and use of electronic media:

- A 2017 survey by the U.S. Census Bureau, for instance, found that 87 percent of the United States population lives in a home with a broadband internet subscription.¹³
- A 2018 study concluded that 93 percent of households owning defined contribution accounts had access to, and used, the internet in 2016.¹⁴
- A 2015 survey of retirement plan participants' online habits indicated that 99 percent reported having internet access at home or work, and 88 percent of respondents reported accessing the internet on a daily basis.¹⁵
- A 2015 report observes that smartphones are used for much more than calling, texting, or basic internet browsing. Based on surveys, the report notes that: 62 percent of smartphone owners have used their smartphones in the past year to look up information about a health condition; 57 percent to do online banking; 44 percent to look up

real estate listings; 43 percent to look up information about a job; 40 percent to look up government services or information; 30 percent to take a class or find education content; and 18 percent to submit a job application.¹⁶

The Department believes that these access and usage rates, to date and as they continue in the future, may increase the number of individuals for whom electronic delivery of ERISA disclosures is appropriate or preferred. Further, increased technological capabilities may enable plan administrators, their service and investment providers, and the Department to monitor and ensure the effectiveness of the safeguards in place for all participants and beneficiaries. Accordingly, and in response to Executive Order 13847, discussed in the next section, the Department is now prepared to propose a new electronic delivery framework, as a safe harbor, for ERISA disclosures. The proposed safe harbor would be in addition to the 2002 safe harbor. Thus, plan sponsors and administrators could choose between the two safe harbors, or use both safe harbors, selecting the best approach for their plan population.

(4) Executive Order 13847

On August 31, 2018, President Trump issued Executive Order 13847, affirming the Federal Government's policy to expand access to workplace retirement plans for American workers, ensuring that workers will be financially prepared to retire.¹⁷ The Order focused on the concern that costly and complex regulations may discourage employers, especially small businesses, from sponsoring retirement plans for their employees. Specifically, the Order instructs the Department to review whether regulatory or other actions could be taken to improve the effectiveness of required notices and disclosures and reduce their cost to employers, promoting retirement security by expanding access to workplace retirement plans. The Order also emphasizes that reducing the number and complexity of ERISA notices and disclosures currently required would ease regulatory burdens.

Specifically, Executive Order 13847 directs that within 1 year of the date of the Order, the Secretary of Labor shall, in consultation with the Secretary of the Treasury, "complete a review of actions that could be taken through regulation or guidance, or both, to make retirement plan disclosures required under ERISA

¹³ "Types of Internet Subscriptions by Selected Characteristics," U.S. Census Bureau American Community Survey 1-Year Estimates (Table S2802) (2017).

¹⁴ Peter Swire and DeBrae Kennedy-May, "Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time has Come to Prefer Electronic Delivery—2018 Update," (April 2018), p. 19.

¹⁵ 2015 Telephone Survey Conducted by Greenwald & Associates for the SPARK Institute. A total of 1,000 randomly-selected plan participants nationwide were administered a 10-minute telephone survey. Data collection was done by Greenwald & Associates and its affiliate National Research. To qualify for the survey, respondents needed to be employed either full or part time and participate in an employer retirement plan. Sample was weighted by age and gender to reflect demographics of plan participants in the United States, as reported in the Current Population Survey. See Also, Quantria Strategies for the SPARK Institute, *Improving Outcomes with Electronic Delivery of Retirement Plan Documents*, (June 2015).

¹² The comments on the 2011 Request for Information are available at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB50>.

¹⁶ Aaron Smith, *Smartphone Use in 2015*, Pew Research Center (April 1, 2015).

¹⁷ E.O. 13847, 83 FR 45321 (Sept. 6, 2018).

and the Internal Revenue Code of 1986 more understandable and useful for participants and beneficiaries, while also reducing the costs and burdens they impose on employers and other plan fiduciaries responsible for their production and distribution.” In addition, the Order specifically emphasizes that this review “shall include an exploration of the potential for broader use of electronic delivery as a way to improve the effectiveness of the disclosures and to reduce their associated costs and burdens.” The Order directs that, if the Secretary of Labor finds that action should be taken, the Secretary shall, in consultation with the Secretary of the Treasury, consider proposing appropriate regulations or guidance, consistent with applicable law and policy set forth in the Order.¹⁸

Since issuance of the Order, the Department has undertaken a comprehensive review of actions that may be taken in response to the Order’s policy mandates. In doing so, the Department consulted with not only staff of the Treasury Department, as to notices required under the Code, but also the Securities and Exchange Commission (Commission), banking regulators, and others concerning their electronic disclosure requirements and practices. The Department also has reviewed recent studies focusing on changes in internet access and usage across different populations and met with stakeholders to hear about specific experiences with electronic delivery. Having completed this review as set forth in the Order, the Department decided to publish a proposed regulation on electronic disclosure that it believes will reduce the costs and burdens imposed on employers and other plan fiduciaries, while at the same time creating the opportunity for disclosures that are more useful to participants and beneficiaries. The Department has also concluded that it needs further information from stakeholders before proposing any substantive regulatory additions, deletions, or changes to ERISA’s disclosures themselves, as opposed to delivery of such disclosures. Therefore, this document includes, below, a Request for Information comprising a series of questions to elicit views from all interested parties on additional ways to enhance the usefulness and effectiveness of ERISA disclosures.

(5) Review of Other Agencies’ Electronic Disclosure Practices and Standards

The Department has reviewed other agencies’ practices and standards

regarding electronic delivery of required information. Although the Executive Order only directed the Department to consult with the Treasury Department, the Department of Labor believed it prudent to explore a wider variety of approaches to electronic delivery.

(i) Social Security Statements

For budgetary reasons, the Social Security Administration effectively eliminated paper as the primary method of furnishing benefits statements.¹⁹ Individuals now are entitled to register on the Administration’s website for a “my Social Security” account to access their statements and other information. The Social Security Administration does, however, mail paper statements to individuals age 60 and older if they don’t yet receive Social Security benefits and they have not yet set up a “my Social Security” account on the website and to other individuals upon request.²⁰ In fiscal year 2018, the Administration mailed 14.5 million paper statements to individuals.²¹ More than 45 million individuals have established “my Social Security” online accounts and the Administration sends an annual email reminding individuals that their statement is available online. In 2018, nearly 17 million registered users checked their online statements.²²

(ii) Federal Thrift Savings Plan

The Federal Thrift Savings Plan (TSP) is a retirement savings plan similar to a 401(k) plan, covering Federal civilian employees and members of the uniformed services. The TSP has approximately 5.5 million participant accounts²³ with approximately 3.3 million participants contributing through payroll deduction and approximately \$559 billion in investment assets at fair market value.²⁴ Effective December 31, 2003, the TSP uses electronic delivery as the default for quarterly benefit statements, unless an individual requests mail delivery.²⁵

¹⁹ Office of the Inspector General Social Security Administration, *Issuance of Social Security Statements* (Report No. A–03–18–50724, Feb. 14, 2019), p. 4–5.

²⁰ See <https://www.ssa.gov/myaccount/>.

²¹ See fn. 19 at p. 6.

²² *Id.*

²³ This includes Federal employees covered under Federal Employee Retirement Systems (FERS), the Civil Service Retirement System (CSRS), or equivalent retirement systems for the uniformed services.

²⁴ Federal Thrift Savings Fund, Financial Statement for December 31, 2018, available at <https://www.frtib.gov/ReadingRoom/FinStmnts/TSP-FS-Dec2018.pdf>.

²⁵ 5 CFR 1640.6 (“The TSP will furnish the information described in this part to participants by making it available on the TSP website. A participant can request paper copies of that

The TSP notifies new participants of the internet availability of their account information through an initial welcome package followed by two separate mailings containing a web password and personal identification number for accessing the website and automated telephone system.²⁶ Annual statements are available on the website and delivered by mail, unless an individual requests only electronic annual statements.²⁷ Among the 3.5 million TSP participants who are covered under the Federal Employee Retirement System (FERS),²⁸ a large majority, or 81 percent, appear to be in default status, receiving only annual statements (and not quarterly statements) in paper by mail. Of these, 57 percent have accessed their account online at least once since January of 2018. A very small fraction of all FERS-covered TSP participants, or just 3 percent, have opted for no paper/mail delivery. Of these, 95 percent have accessed their account online.

(iii) Treasury Department, Internal Revenue Service

On October 20, 2006, the Treasury Department and the IRS published 26 CFR 1.401(a)–21, setting forth rules relating to the use of an electronic medium to provide applicable notices and to make participant elections, with respect to a retirement plan, an employee benefit arrangement, or an individual retirement plan.²⁹ These regulations provide that an applicable notice³⁰ required to be in writing or in written form³¹ can be provided to a recipient electronically only if the requirements of 26 CFR 1.401(a)–

information from the TSP by calling the ThriftLine, submitting a request through the TSP website, or by writing to the TSP record keeper.”). See also U.S. Government Accountability Office, *Federal Thrift Savings Plan: Customer Service Practices Adopted by Private Sector Plan Managers Should Be Considered*, GAO–05–38 (Jan. 2005) at 12, n. 21, available at <https://www.gao.gov/new.items/d0538.pdf> (providing statistics on cost savings experience with TSP).

²⁶ See TSP enrollment form, Form TSP–1; See also Summary of the Thrift Savings Plan at <https://www.tsp.gov/PDF/formspubs/tspb08.pdf>.

²⁷ Summary of the Thrift Savings Plan, p.24, available at <https://www.tsp.gov/PDF/formspubs/tspb08.pdf>.

²⁸ This generally includes Federal civilian employees hired in 1984 or later.

²⁹ T.D. 9294, 71 FR 61877 (Oct. 20, 2006).

³⁰ An applicable notice is any notice, report, statement, or other document required to be provided to a recipient under a retirement plan, employee benefit arrangement, or individual retirement plan. See 26 CFR 1.401(a)–21(e)(1).

³¹ For notices that are not required to be in writing or in written form, 26 CFR 1.401(a)–21(a)(1)(iii) provides that the rules are a safe harbor method for using an electronic medium to provide the notice.

¹⁸ See *id.*

21(a)(5)³² are satisfied and either the requirements of 26 CFR 1.401(a)–21(b) (relating to the consumer consent requirements) or 26 CFR 1.401(a)–21(c) (providing an exemption from the consumer consent requirements) are satisfied.³³ Under the consumer consent requirements, the recipient must affirmatively consent to the electronic delivery of the notice in accordance with the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act, Public Law 106–229 (114 Stat. 464) (2000) (E–SIGN Act). Under the exemption from consumer consent requirements, the electronic medium used to provide the applicable notice must be a medium that the recipient has the effective ability to access, at the time the applicable notice is provided, the recipient must be advised that he or she may request and receive the applicable notice in writing on paper at no charge, and upon request the notice must be provided to the recipient at no charge. In the past, some parties have encouraged the Department to allow providers to rely on these rules for providing electronic notices, which they interpreted to be more flexible than the Department's 2002 safe harbor.³⁴ And from time to time, in temporary guidance, the Department has allowed administrators to rely on these regulations under the Code for electronic delivery of disclosures as an

³² 26 CFR 1.401(a)–21(a)(5) contains requirements relating to the design of the electronic system used to deliver applicable notices. The requirements are that the electronic system must be reasonably designed to provide the information in the notice to a recipient in a manner that is no less understandable than a written paper document and that the system must be designed to alert the recipient, at the time the applicable notice is provided, to the significance of the information in the notice and to provide instructions needed to access the notice, in a manner that is readily understandable.

³³ See, however, the special electronic delivery requirements for providing a section 204(h) notice to an applicable individual, which are described in 26 CFR 54.4980F–1, Q&A–13(c). A section 204(h) notice may be provided electronically if certain requirements are satisfied: (a) The notice is provided using an electronic method (other than an oral communication or a recording of an oral communication) that satisfies the requirements in 26 CFR 1.401(a)–21, and (b) either the notice is actually received by the applicable individual or the plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the electronic method results in actual receipt. There are special safe harbor rules on the actual receipt rule in 26 CFR 54.4980F–1, Q&A–13(c)(3).

³⁴ For example, in comments submitted to the ERISA Advisory Council in 2017, the Department was encouraged to adopt the Treasury Department's approach. See Groom Law Group, statement to the ERISA Advisory Council, June 7, 2017, p. 4, available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans-levine-and-winters-written-statement-06-07.pdf>.

alternative to reliance on the Department's regulation.³⁵

(iv) Securities and Exchange Commission

The mission of the U.S. Securities and Exchange Commission (SEC) is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. The SEC oversees the key participants in the securities marketplace, including securities exchanges, securities brokers and dealers, investment advisers, and mutual fund companies. These participants very often are service providers to ERISA-covered retirement plans.

On June 22, 2018, the SEC adopted a new rule, 30e–3, under the Investment Company Act of 1940.³⁶ Subject to conditions, rule 30e–3 provides certain registered investment companies with an optional method to satisfy their obligation to transmit shareholder reports by making such reports and other materials accessible at a website address specified in a notice to investors. The new rule incorporates a set of protections so that investors who prefer to receive reports on paper will continue to receive them in that format. These protections include, among others, a minimum length phase-in period that ends no earlier than December 31, 2020, and notice requirements that must be implemented and followed beginning January 1, 2019, or the date shares are first publicly offered, if a registered investment company wants to use new rule 30e–3 as of January 1, 2021. The rule requires that a paper notice be sent to an investor each time a current shareholder report is accessible online.³⁷

Similarly, in 2007 the SEC adopted amendments to the proxy rules under the Securities Exchange Act of 1934 that provide an alternative method for issuers and other persons to furnish proxy materials to shareholders by posting them on an internet website and

providing shareholders with notice of the availability of the proxy materials. Under the amendments, issuers must make copies of the proxy materials available to shareholders on request, at no charge to shareholders. The amendments put into place processes that provide shareholders with notice of, and access to, proxy materials while taking advantage of technological developments and the growth of the internet and electronic communication. The amendments were phased-in over a two-year period.³⁸

On January 26, 2009, the SEC adopted amendments to the form used by mutual fund companies to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933 in order to enhance the disclosures that are provided to mutual fund investors. The amendments require key information to appear in plain English in a standardized order at the front of a mutual fund statutory prospectus. The amendments also permit persons to satisfy their mutual fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an internet website. Upon an investor's request, mutual fund companies are also required to send the statutory prospectus to the investor.³⁹ Under these rules, paper copies of the prospectus must be sent at no charge to shareholders requesting them.

Apart from these three document-specific rules, the SEC has a longstanding position that governs the use of electronic media for other investor disclosures by issuers of all types, including operating companies, investment companies, and municipal securities issuers, as well as market intermediaries. In general, issuers and market intermediaries must assess their compliance with legal disclosure delivery requirements in terms of notice, access, and evidence of delivery. One method for satisfying the evidence-of-delivery standard is to obtain an informed consent from an investor to

³⁵ See, e.g., Field Assistance Bulletin No. 2006–03 (Dec. 20, 2006), providing for “the furnishing of pension benefit statements in accordance with the provisions of [26 CFR] section 1.401(a)–21, as good faith compliance with the requirement to furnish pension benefit statements to participants and beneficiaries” under ERISA.

³⁶ 83 FR 29158 (Jun. 22, 2018).

³⁷ See 17 CFR 270.30e–3. The D.C. Circuit Court of Appeals denied a Petition for Review regarding the electronic delivery method permitted in the SEC's rule 30e–3. *Twin Rivers Paper Co. v. SEC* 934 F.3d 607 (D.C. Cir. Aug. 16, 2019). The Department further notes that this proposal includes a notice and access structure similar to the SEC rule, but also contains many differences. The structure and purposes of ERISA are different from the structure and purposes of the Investment Company Act of 1940.

³⁸ 72 FR 4148 (Jan. 29, 2007).

³⁹ 74 FR 4546 (Jan. 26, 2009). In addition, in 2018, the SEC proposed a rule that permits a person to satisfy its prospectus delivery obligations for a variable annuity or variable life insurance contracts by sending a summary prospectus to investors and making the prospectus available online. Securities and Exchange Commission, 17 CFR parts 230, 232, 239, 240, 270 and 274. “Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts.” 83 FR 61730 (Nov. 30, 2018).

receive information through a particular electronic medium.⁴⁰

(v) Office of the Comptroller of the Currency.

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises all national banks and Federal savings associations as well as Federal branches and agencies of foreign banks. The OCC is an independent bureau of the Treasury Department. The mission of the OCC is to ensure that national banks and Federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. These businesses very often are service providers to ERISA-covered retirement plans. On January 23, 2017, as part of its review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the OCC revised certain of its rules to remove outdated or otherwise unnecessary provisions. The OCC found that the use of electronic communications has become widespread and is provided for in state and Federal law, such as the E-SIGN Act, which allows for electronic communications with customers. The OCC, consequently, removed 12 CFR 12.102 and 151.110 which required, among other things, that customers must agree to electronic instead of hard-copy notifications.⁴¹ In a separate regulatory action, the OCC now treats the posting of certain collective-investment-fund information on a bank's website as satisfying the bank's obligation to furnish such information to customers on request.⁴²

(6) Other Recommendations to the Department

The actions taken today are responsive not only to Executive Order 13847, but to recommendations made to the Department by the Employee Benefits Security Administration's ERISA Advisory Council, the U.S. Government Accountability Office (GAO), and other parties.

(i) ERISA Advisory Council Recommendations

The ERISA Advisory Council (the Advisory Council) has repeatedly made recommendations to the Department concerning possible changes to the electronic delivery rules for ERISA

disclosures. Most recently, in its November 2017 report, the Advisory Council recommended that to ease burdens on plans and improve understandability for participants, an ideal disclosure protocol would implement both paper and electronic delivery.⁴³ In making its recommendation, the Advisory Council cited to witness testimony that a majority of participants do not read paper documents sent to them, and participants who do read the documents find them difficult to understand, noting that "SPDs were becoming increasingly detailed and using legalistic language to mitigate the litigation risks."⁴⁴ The Council also noted that home internet and computer use for adults over age 50, individuals with less than \$25,000 in annual income, those without a college degree, and those living in rural areas is lower than for other demographic groups.⁴⁵ The Council further recommended that a new disclosure called a "Quick Reference Guide" could be distributed annually to participants that would provide answers to basic questions about the plan.⁴⁶

*2009 Advisory Council Report.*⁴⁷ In July and September of 2009, the Advisory Council held public hearings to study the efficacy of ERISA's reporting and disclosure requirements, as well as problems and costs related to such disclosures. Upon completion of testimony from 18 witnesses, the Advisory Council issued its report recommending that the Department allow administrators to rely on the IRS regulations. In support of this recommendation, the Council stated this rationale:

The Council believes that the IRS Regulations will adequately protect the rights of those participants who are actively employed because it will generally be very simple for administrators to determine whether active employees have reasonable access to the electronic medium used to furnish the disclosure. The Council believes that administrators will not furnish those individuals who are not working actively—such as retirees or beneficiaries—with electronic disclosure *unless the administrator has a working electronic mail*

address for such individuals. In that way, participants who are not actively employed and plan beneficiaries will be protected (emphasis added).

The Council's report further explains:

Electronic communications have enormously improved the retirement system for both plans covered by ERISA and their participants. They have improved participant education, retirement planning, and plan participation. Electronic communications have allowed plans to furnish more information to participants and beneficiaries for less cost. They have simplified plan administration and improved plan recordkeeping. All of these benefits of electronic communication have improved retirement security, which was and remains an underlying goal of ERISA. The Council believes that this goal of retirement security would be better served if the DOL would expand the array of electronic media that plan administrators may use to satisfy ERISA's disclosure requirements.

*2007 Advisory Council Report.*⁴⁸ Another public hearing was held by a working group of the Advisory Council in July and September of 2007, in this case to hear thirteen witnesses testify about the new pension benefit statement requirements in the Pension Protection Act of 2006.⁴⁹ In its report issued following the hearing, the Advisory Council recommended that "the Department of Labor should update its regulations regarding electronic communication to a 'reasonable access' standard more similar to the Department of Treasury safe harbor, recognizing the continued advancement in Web-based communication and the increase in its use by participants." The Advisory Council also cautioned that many participants would nonetheless be better served with paper when managing their plan assets. In any event, the Advisory Council recommended that the Department reexamine the use of electronic communication for benefit statements to recognize the changes in technology and participants' use of such technology.

*2006 Advisory Council Report.*⁵⁰ An Advisory Council working group held hearings at which it heard testimony from thirteen witnesses in August and September of 2006 on a variety of issues pertaining to the management of plan assets, including the use of electronic media for furnishing disclosures

⁴⁰ SEC Release 34-42728 (2000). See also Release No. 33-7288 (1996).

⁴¹ 82 FR 8082 (Jan. 23, 2017).

⁴² See 12 CFR 9.18(b)(1), permitting banks to make copies of their investment fund plan available on their websites and to furnish electronic copies upon request.

⁴³ *Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors*, ERISA Advisory Council, p.27 (Nov. 2017).

⁴⁴ *Id.* at p.7 (referring to the 2005 ERISA Advisory Council Report).

⁴⁵ *Id.* at p.26

⁴⁶ *Id.* at p.7.

⁴⁷ See 2009 ERISA Advisory Council Report on Promoting Retirement Literacy and Security by Streamlining Disclosures, at <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2009-promoting-retirement-literacy-and-security-by-streamlining-disclosures-to-participants-and-beneficiaries>.

⁴⁸ See ERISA Advisory Council Working Group Report on Participant Benefit Statements, at <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2007-participant-benefit-statements>.

⁴⁹ Public Law 109-280, 120 Stat. 949-952.

⁵⁰ See ERISA Advisory Council Report Working Group on Prudent Investment Process, available at <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2006-prudent-investment-process>.

required by ERISA section 404(c). The Council's subsequent report recommended that the Department reconsider the efficacy of its 2002 safe harbor. Given the growth in access to and use of the internet since the 2002 safe harbor was adopted, the working group recommended that the Department relax the conditions in the 2002 safe harbor, especially the "integral part of the employee's duties" condition.

(ii) U.S. Government Accountability Office

In its 2013 report, "Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved," the GAO recommended requiring plans to include the summary plan description (SPD) and any summaries of material modifications (SMMs) on a continuous access website.⁵¹ Furthermore, the GAO recommended that the Department focus on the readability standard for required disclosures by adding "clear, simple, brief highlights" ⁵² of required disclosures, noting that "the quantity of information diminishes the positive effects it can have for participants." ⁵³

(iii) Congressional Activity

The Department also observes that in recent years there has been continued Congressional interest in expanding the use of electronic media for ERISA disclosures.⁵⁴ In 2018, the Secretary of Labor testified before the Senate Appropriations Subcommittees on Labor, Health and Human Services, Education, and related Agencies' Senate Appropriations on the Department's FY 2019 budget request.⁵⁵ In response to the hearing, U.S. Senator Jeanne Shaheen (D-NH) submitted a question for the record to the Secretary, explaining her view that the Department's rules for employees to receive required information on their retirement plan are out of date. She believes that furnishing disclosures

electronically should be the default method of delivery for retirement savers, because electronic delivery will reduce costs for retirement savers, save countless amounts of wasted paper, protect the environment, and help connect savers with a wealth of online tools and resources to help put them on a better path to a secure retirement. In 2017, 38 bipartisan cosponsors introduced the Receiving Electronic Statements to Improve Retiree Earnings Act (RETIRE Act), which would have amended ERISA and the Code to give employers the option of furnishing required information to participants and beneficiaries electronically, while preserving their right to choose to receive disclosures in hard copy.⁵⁶ In 2018, a bipartisan group of six Senators introduced the RETIRE Act, but the bill failed to pass before the close of the 115th Congress.⁵⁷ To date, no further Congressional action has taken place with respect to the RETIRE Act.

B. Proposed Rule—Alternative Method for Disclosure Through Electronic Media—Notice and Access

In this document, the Department proposes to amend part 2520 by adding a new section, § 2520.104b–31, entitled "Alternative method for disclosure through electronic media—Notice and access." This proposed safe harbor method for electronic disclosure is an additional method and would not change the Department's current safe harbor for electronic delivery in § 2520.104b–1(c). As proposed, plan administrators who wish to continue to rely on the existing safe harbor for electronic delivery, or to furnish paper documents by hand-delivery or by mail, are free to continue to do so. The Department requests comments on whether it should make a technical amendment to § 2520.104b–1(c) to direct readers to the newly proposed safe harbor, or whether affected parties would know to consider both possible options without such a technical amendment.⁵⁸ The proposed § 2520.104b–31 provides a new,

optional method for compliance with ERISA's general standard for delivery of disclosures to participants and beneficiaries. Specifically, proposed paragraph (a) provides that the administrator of an employee benefit plan may satisfy § 2520.104b–1(b)(1) with respect to covered individuals and covered documents, as described below, by complying with the notice, access, and other requirements of the proposal.⁵⁹

After reviewing and analyzing a variety of electronic disclosure standards and other related information, and discussions with various regulators, the Department has determined that its policy objectives may be best advanced through adoption of a "notice and access" structure, similar to that previously adopted by the Department in FAB 2006–03 and by the Commission for certain investor disclosures.⁶⁰ The Department proposes to extend this structure to all required ERISA disclosures for pension benefit plans, as discussed below, and has adapted the structure to reflect the nature and context of disclosures required by ERISA from administrators, as plan fiduciaries, to participants and beneficiaries. The Department anticipates that permitting administrators to post ERISA disclosures online will create significant efficiencies in disclosing information by affording participants and beneficiaries the convenience of continuous access to their ERISA disclosures using an internet connected device.

Administrators also have flexibility, within the framework provided by the proposed rule, to take advantage of existing and developing technology and to create internet-based experiences that result in a better understanding of the disclosed information. Online access enables a layered approach to disclosure that can be designed not only to reduce the time and expense of disclosure, but to more effectively communicate information. The Department believes the "notice and access" structure proposed in this document answers the directive of Executive Order 13847 "to

⁵¹ GAO–14–92, Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved, p. 40, GAO (Nov. 2013), available at <https://www.gao.gov/assets/660/659211.pdf>.

⁵² *Id.* at p. 41.

⁵³ *Id.* at p. 29.

⁵⁴ See, e.g., Joint Committee on Taxation, *Technical Explanation of H.R. 4, the "Pension Protection Act of 2006"*, as Passed by the House on July 28, 2006, and as considered by the Senate on Aug. 3, 2006 (JCX–38–06), Aug. 3, 2006 (regulations relating to the furnishing of pension benefit statements, "could permit current benefit statements to be provided on a continuous basis through a secure plan website for a participant or beneficiary who has access to the website").

⁵⁵ Review of the FY 2019 Dept. of Labor Budget Request, Senate, 115th Cong. (April 12, 2018), <https://www.appropriations.senate.gov/hearings/review-of-the-fy2019-dept-of-labor-budget-request>.

⁵⁶ See H.R. 4610 (Dec. 11, 2017).

⁵⁷ S. 3795 (Dec. 19, 2018).

⁵⁸ The Department may have to make a number of technical amendments to other sections of the Code of Federal Regulations (CFR) if the proposal in this document becomes a final rule. Certain other CFR sections currently cross reference the 2002 safe harbor and may need to cross reference Proposed Rule § 2520.104b–31 as well. See, e.g., 29 CFR 2560.503–1(g)(1) (where the provision stating that any electronic notification of benefit determination "shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv)" may have to reference the new safe harbor as well). Commenters are encouraged to identify other CFR sections that would need conforming edits of this type.

⁵⁹ When certain material, including reports, statements, notices and other documents, is required under Title I of ERISA or regulations issued thereunder, to be furnished either by direct operation of law or on individual request, a plan administrator "shall use measures reasonably calculated to ensure actual receipt by plan participants, beneficiaries and other specified individuals." 29 CFR 2520.104b–1(b)(1).

⁶⁰ Although the proposed safe harbor would have no impact on the current regulatory safe harbor at § 2520.104b–1(c), it would, if adopted as a final rule, supersede the relevant portions of FAB 2006–03 (Dec 20, 2006), FAB 2008–03 (Q&A 7) (April 29, 2008), and Technical Release 2011–03R (Dec. 8, 2011).

make retirement plan disclosures required under ERISA . . . *more understandable and useful* for participants and beneficiaries, while also *reducing the costs and burdens* they impose on employers and other plan fiduciaries[.]”⁶¹

In addition to the specific conditions of the proposed rule, the Department invites commenters to submit general views on the proposed “notice and access” disclosure framework. For example, the Department is interested in comments on the desire for enhanced internet availability of required disclosures, from the plan’s and from the participants’ perspective; how many plans (or sponsoring employers) already have and use websites to make information available to employees; whether administrators or service providers for small plans are more or less likely to have and use websites, and whether and what other disclosure rules may be more appropriate for small plans; and whether the Department should reconsider the existing electronic delivery rules in § 2520.104b–1(c)(2), including the consent requirement, instead of or in addition to the proposed framework. Although the proposed safe harbor provides for access to required disclosures on a “website,” the Department invites comments on whether, and how, the proposal should be modified to explicitly include other internet-based mechanisms, such as multimedia messaging and mobile applications. When feasible and sufficiently protective of plan participants, the Department does not want to inhibit innovation in the delivery of required disclosures, especially as forms of internet-based communication continue to expand. In this sense, the Department wishes to explore whether the proposal would require revision to promote technical neutrality. Commenters should explain not only their views on the use of other internet-based mechanisms, but also their (or plan participants’) experiences with such mechanisms.

In light of Executive Order 13847 requiring consultation with the Treasury Department, this proposal is intended to align with Treasury’s electronic media regulation for applicable notices at § 26 CFR 1.401(a)–21(c). Commenters are invited to share their views on whether this objective is desirable and what other steps might be needed to achieve it.

(1) Covered Individual

The proposed rule begins by defining the individuals to whom disclosure may

be made under the new safe harbor. Paragraph (b) defines a “covered individual” for purposes of the rule as a participant, beneficiary, or other individual entitled to covered documents and who, as a condition of employment, at commencement of plan participation, or otherwise, provides the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) with an electronic address, such as an email address or internet-connected mobile-computing-device (e.g., smartphone) number. Alternatively, if an electronic address is assigned by an employer to an employee for this purpose, the employee is treated as if he or she provided the electronic address.⁶² The existence of an electronic address by which a covered individual can be notified as to the availability of required disclosures is critical to the effective implementation of the proposed notice and access framework, much like a mailing address is critical to delivery of a paper document. The Department believes it is appropriate, therefore, to require as a condition of reliance on the safe harbor that an administrator receives an electronic address or number with which to communicate with a covered individual. The Department intends to provide a sufficient level of flexibility to administrators, and to covered individuals, as to how to institute this condition. In many cases, for employees who are given a company-provided email address upon employment, the Department anticipates that satisfying this condition will be fairly simple, without significant burden. The proposal also allows an employee to provide a different, personal email address to the administrator; often employers obtain electronic addresses from new employees’ application materials or from other human resource documents. Alternatively, an administrator or plan service provider may request an electronic address in plan enrollment paperwork or to establish a plan participant’s online access to plan documents and account information. A company-issued mobile smartphone (with a data plan) and corresponding mobile phone number

⁶² The Department requests comment on whether an employer-provided electronic address, as distinguished from a personal electronic address, would necessitate additional or different conditions, and if so, why. For example, is there a heightened need to ensure covered individuals’ awareness of the electronic address and the notice and access method of delivery, or to prevent unauthorized access, email compromise, or other malicious activity in the case of inactive employer-provided addresses?

also may be used to satisfy this condition.

While the proposal conditions “covered individual” status on the provision of an electronic address, which may include an address or number associated with an internet-based mobile-computing device, such as a smartphone, tablet, or laptop computer, the proposal does not impose any specific requirements or limitations on the type of device that a person must have in order to be a covered individual under the safe harbor. The Department intends to avoid favoring any particular technology that is considered advanced today but could be outdated tomorrow. On prior rulemaking initiatives under ERISA, many commenters have cautioned the Department against inadvertently stifling innovation by sanctioning particular technologies considered state-of-the-art at the time, especially in matters of digital technology. The Department invites comments on this analysis and whether different types of mobile-computing devices, or technologies, warrant different conditions to ensure that covered individuals are able to receive, review, and take appropriate actions in response to a notice of internet availability.

(2) Covered Documents

(i) Employee Pension Benefit Plans

Paragraph (c) of the proposal goes on to define the “covered documents” to which the rule applies. The safe harbor may be used, for a pension benefit plan, as defined in ERISA section 3(2), to furnish any document that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of ERISA, except for any document that must be furnished upon request.⁶³ This includes documents that, pursuant to ERISA’s disclosure provisions, must be furnished solely because of the passage of time, such as pension benefit statements or summary annual reports. This also includes documents that must be furnished because of a specific triggering event

⁶³ Under ERISA, some documents must be furnished automatically and others only upon request by an eligible person. The proposed safe harbor does not apply to documents that are furnished only upon request. *See, e.g.*, 29 U.S.C. 1024(b)(4) for the general requirement that upon written request of any participant or beneficiary, plan administrators must furnish plan documents including the latest updated summary plan description, latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. *See also* 29 U.S.C. 1021(k) with respect to multiemployer plan information provided to participants and beneficiaries upon written request.

⁶¹ E.O. 13847 (emphasis added).

other than the passage of time, such as an SMM or a blackout notice. A plan administrator is not required to furnish all of these documents, as applicable for a particular plan, pursuant to the safe harbor if the administrator prefers a different method of furnishing for some of the documents. The Department requests comments generally as to whether the scope of covered documents is appropriate, and specifically whether certain employee pension benefit plan disclosures are better suited for such electronic disclosure.

(ii) Employee Welfare Benefit Plans

The safe harbor, as proposed, does not apply to employee welfare benefit plans, as defined in section 3(1) of ERISA, such as plans providing disability benefits or group health plans. Paragraph (c)(2) of the proposal, instead, is reserved so that the Department can study the future application of the new safe harbor to documents that must be furnished to participants and beneficiaries of employee welfare benefit plans. This reservation follows the directive of Executive Order 13847, which focuses the Department's review on retirement plan disclosures. Although the Department does not interpret the Order's directive as limiting the Department's ability to take action with respect to employee welfare benefit plans, especially to the extent similar policy goals, including the reduction of plan administrative costs and improvement of disclosures' effectiveness, may be achieved, this proposal is limited to retirement plan disclosures. Welfare plan disclosures, such as group health plan disclosures, may raise different considerations, such as pre-service claims review and access to emergency and urgent health care. Moreover, the Department shares interpretive jurisdiction over many group health plan disclosures with the Treasury Department and the Department of Health and Human Services. In considering any possible new electronic delivery safe harbor for group health plan disclosures in the future, the Department would want to consult with these other Departments. Accordingly, focusing its attention first on retirement disclosures is a sound and efficient use of the Department's resources.

(3) Notice of Internet Availability

As a general rule, the proposed method for delivery through electronic media requires that administrators furnish to each covered individual a notice of internet availability for each covered document, in accordance with

the requirements of this section. Thus, for example, if a particular plan is required to furnish to all of its covered individuals eight different covered documents in a given year, the proposed safe harbor's general rule would require that the plan's administrator instead furnish to covered individuals eight notices of internet availability (subject to the more specific rule in paragraph (i), which allows an administrator to combine notices for certain covered documents). Paragraph (d) sets forth the conditions for satisfying this first requirement of the safe harbor.

(i) Timing of Notice of Internet Availability

Paragraph (d)(2) provides that the administrator must furnish a notice of internet availability at the time the covered document that is the subject of the notice is made available on the website. For example, if section 105 of ERISA requires a plan administrator to furnish to covered individuals their pension benefit statements no later than April 15th of a given year, the administrator could satisfy that obligation by furnishing to these individuals a notice of internet availability on April 15th and ensuring that the covered document is accessible on the internet website on this date.

If, however, the administrator furnishes a combined notice of internet availability for more than one covered document, pursuant to paragraph (i) of the proposal, discussed below, the requirement to furnish a notice of internet availability will be treated as satisfied if the combined notice of internet availability is furnished each plan year, and, if the combined notice was furnished in the prior plan year, no more than 14 months following the date the prior plan year's notice was furnished. The proposal provides administrators with a 14-month period in which to comply with the annual notice requirement to ensure adequate flexibility to the extent the date of furnishing may vary slightly from year to year. Further, the Department does not want administrators to have to push back the date of furnishing from year to year to avoid the risk that they run afoul of a strict 12-month requirement. The Department intends that the proposed two-month grace period will offer sufficient administrative flexibility without compromising participants' and beneficiaries' receipt of a notice on a periodic, and essentially annual, basis. The Department requests comments on these timing requirements, and whether different timing requirements would be more likely to ensure prompt and

efficient delivery to participants and beneficiaries.

The proposal also requires, as discussed below, that a covered document must be made available on the website no later than the date on which the covered document otherwise must be furnished in accordance with the applicable section of ERISA or regulation thereunder. This proposal is *not* intended to alter the substance or timing of any of ERISA's required disclosures for pension benefit plans. Rather, this "notice and access" structure merely provides a possible method of delivery for disclosures by concluding that a website posting, in conjunction with a properly-timed notice of internet availability, constitutes "furnishing" for purposes of ERISA pension plan disclosures. An administrator who chooses to rely on this safe harbor would continue to be subject to the content, timing, and other provisions that apply to any particular disclosures. Further, if an administrator chooses to furnish a consolidated notice of internet availability under paragraph (i) of this section, once a year, doing so will not change the date on which the covered documents must be made available on the website. Each covered document contained in the consolidated notice of internet availability must be made available on the website no later than the date it must be furnished to participants and beneficiaries by law. It is only the timing for the combined notice of internet availability that would be altered to furnish one each year, rather than furnishing a separate notice for each of the covered documents at the time it otherwise would be required.

(ii) Content of Notice of Internet Availability

Paragraph (d)(3) lists the proposed content requirements for the notice of internet availability: A prominent statement, for example as a title, legend, or subject line that reads, "Disclosure About Your Retirement Plan;" a statement that, "Important information about your retirement plan is available at the website address below. Please review this information;" a brief description of the covered document; the internet website address where the covered document is available; a statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right; a statement of the right to opt out of receiving covered documents electronically, and an explanation of how to exercise this right; and a telephone number to contact the

administrator or other designated representative of the plan.

The rule provides that the required internet website address must be sufficiently specific to provide ready access to the covered document (or, in the case of a combined notice of internet availability, covered documents).⁶⁴ A website address will satisfy this requirement if it leads the covered individual directly to the covered document. A website address also will satisfy the “sufficiently specific” standard if the address leads the covered individual to a login page that provides, or immediately after a covered individual logs on provides, a prominent link to the covered document. The term “website address” in paragraph (d)(3)(iv) of the proposed safe harbor includes links and hyperlinks, as appropriate. The Department invites comments on whether the notice of internet availability should also address secure login procedures, such as how participants can securely receive and recover login information.

An administrator must ensure that the “brief description” of a covered document communicates key information about its importance. The Department does not intend this “brief description” to be a technical summary of the content of the underlying disclosure. The Department encourages comments on the content requirements for the notice, including views as to the most critical information that should be included in a “brief description” of a covered document. Although the current requirement provides a level of flexibility to administrators in how they draft the “brief description,” the Department may consider providing more explicit guidelines or models for administrators to use in drafting these descriptions. Commenters may address whether additional guidelines or models would be useful, and the specific issues it would be most helpful to address.

One of the Department’s goals in establishing the proposed framework was to be certain that, regardless of the

delivery method chosen by a plan administrator, covered individuals who wish to receive paper copies of covered documents would be able to do so without undue burden. Paragraphs (d)(3)(v) and (vi) set forth two significant protections for such covered individuals. First, any time a participant prefers to receive a paper copy of any of the covered documents, he has the right to request and receive a paper copy, free of charge. For example, a participant who receives a notice of internet availability of the plan’s SPD, but prefers to have a paper copy of the SPD to keep in his personal finance files at home, will be able to request a paper copy of the SPD in accordance with the explanation of how to exercise his right to do so. Further, a covered individual who prefers to receive all covered documents in paper may opt out of receiving any covered documents electronically. This global opt out provision enables a participant who wants to have all of her disclosures in paper, without having to make repeated elections to do so; she will receive all covered documents in paper, unless and until she later consents to receive covered documents electronically.

The Department requests comments on these proposed content requirements and whether the notice of internet availability will adequately serve its intended purpose. Commenters are encouraged to focus on whether the content requirements are sufficient or excessive. Specifically, the Department requests comments regarding whether a toll-free number should be used or whether specific website, login or password reset features should be described in the notice.

(iii) Form and Manner of Furnishing Notice of Internet Availability

The Department intends the notice of internet availability to be a concise, clear disclosure that will convey its importance and easily call the recipient’s attention to its content. With this goal in mind, paragraph (d)(4) describes standards for the form and manner of furnishing the notice. To satisfy the safe harbor, a notice of internet availability must: First, be furnished electronically to the address referred to in paragraph (b) of the proposal; second, contain only the content specified in paragraph (d)(3) of the proposal, except that the administrator may include pictures, logos, or similar design elements, so long as the design is not inaccurate or misleading and the required content is clear; third, be furnished separately from any other documents or disclosures furnished to covered

individuals, except as permitted under paragraph (i) of the proposal (which deals with consolidation of certain notices of internet availability); and fourth, be written in a manner calculated to be understood by the average plan participant. A notice that uses short sentences without double negatives, everyday words rather than technical and legal terminology, active voice, and language that results in a Flesch Reading Ease test score of at least 60 will satisfy the fourth requirement.⁶⁵

Because the notice of internet availability contains important information alerting covered individuals to the online disclosures available to them with respect to their plan, the Department believes it is essential that the notice be furnished by itself and not be obscured by other information, including other information that is required to be disclosed under ERISA. The second and third requirements in paragraph (d)(4) are intended to achieve this objective. Any additional information or content must be limited; to permit otherwise may frustrate the Department’s goal of a clear, concise notice. However, to the extent design elements may enhance the appearance of the notice of internet availability and possibly increase the likelihood that it will draw the desired attention of covered individuals, the proposal does not exclude the use of pictures, logos, and similar design elements, so long as the design is not inaccurate or misleading and the required content is clear.

Plan administrators must write clear and understandable notices of internet availability. The proposal relies on the standard measure for readability of ERISA disclosures—that the annual notice be “written in a manner calculated to be understood by the average plan participant[.]” However, because the content of this notice is so concise, and because the information is so critical to the effectiveness of covered documents, paragraph (d)(4)(iv) includes additional guidelines for administrators to satisfy the readability requirement. Administrators are encouraged to apply the plain language concepts described above. The Department believes that use of these concepts may improve individuals’ comprehension of the information on the notice of internet availability. Administrators who apply these concepts will satisfy the readability

⁶⁴ See, e.g., 29 CFR 2550.404a–5(d)(v), which similarly requires disclosure of specified information at “[a]n internet website address that is sufficiently specific to provide participants and beneficiaries access to” such information (emphasis added). To date, the Department has not been made aware by plan fiduciaries, administrators, or service or investment providers that this “sufficiently specific” standard requires further interpretation or is ineffective in ensuring that individuals are able to access information online. However, to assist administrators and their service providers in complying with this standard, the proposal includes two methods for website access that satisfy this standard. These methods are not the exclusive means by which a website address will be “sufficiently specific.”

⁶⁵ See, e.g., general information about this formula for writing in plain English, at https://web.archive.org/web/20160712094308/http://www.mang.canterbury.ac.nz/writing_guide/writing/flesch.shtml (Rudolf Flesch).

standard for purposes of the proposed safe harbor.

The Department is mindful of the additional cost and burden associated with any additional disclosure, especially when it must be furnished separately. In this case, however, the Department believes that the additional cost and burden associated with the required notice of internet availability will be more than offset by the reductions in cost and burden available to administrators who rely on this safe harbor to make disclosures available online instead of furnishing them directly to covered individuals. The Department invites commenters to discuss these relative costs, as well as the other standards in paragraph (d)(4). The Department also is interested in views on whether additional or different content should be required, or permitted, on the notice, and whether commenters have other ideas about how to ensure the notice is clear and understandable to an average plan participant, consistent with the notice's intended purpose. If commenters believe that a model notice of internet availability would be useful, the Department requests that they submit a sample "model notice" for the Department's consideration, along with any reason(s) to believe that such a model notice would be used and would be helpful.

(4) Standards for Internet Website

The proposed safe harbor also includes minimum standards concerning the availability of the covered documents on a website. Paragraph (e)(1) of the proposal begins by stating the general requirement that the administrator must ensure the existence of an internet website at which a covered individual is able to access covered documents. This paragraph holds the plan administrator responsible for ensuring the establishment and maintenance of the website. The Department understands that in some cases the administrator may not establish and maintain a website himself or herself. Some responsibilities associated with websites may be assumed by plan service or investment providers or other third parties. The proposed safe harbor does not preclude the assignment of website-related activities to parties other than the administrator, subject to the administrator's compliance with paragraph (j) of the safe harbor, "Reasonable procedures for compliance," discussed below, and the administrator's general obligation as a plan fiduciary under ERISA section 404

to prudently select and monitor such parties.

A plan administrator also must take measures reasonably calculated to ensure that the specific standards for the internet website, listed in paragraph (e)(2), have been satisfied. First, paragraph (e)(2)(i) requires that the covered document be available on the website no later than the date on which the covered document must be furnished under ERISA. As discussed above, the proposed safe harbor does not alter the substantive or timing requirements for covered documents. Even if an administrator chooses to consolidate a notice of internet availability for certain disclosures and furnish a combined notice pursuant to paragraph (i) of the proposal, a covered document (as opposed to the notice for such document) must be made available on the website on a timely basis consistent with when it would otherwise be required to be furnished under the relevant statute or regulation. For example, if the administrator of a participant-directed individual account plan wishes to rely on the safe harbor to make its comparative investment chart for participants available on the website, the administrator must look to the timing requirements in 29 CFR 2550.404a-5(d)(1) to determine when the annual investment chart must be furnished; the comparative investment chart must be made available on the website no later than that date.

Second, the covered document must remain available on the website, pursuant to paragraph (e)(2)(ii) of the rule, until it is superseded by a subsequent version of the covered document. In the preceding example, the participant-level fee disclosure regulation requires an updated investment chart to be furnished "at least annually"—an administrator would need to adhere to the definition of "at least annually" in 29 CFR 2550.404a-5(h)(1) to determine when the next year's investment chart would have to be made available on the website. Requiring the covered document to remain available on the internet site until it is superseded is intended to ensure that covered individuals have readily available the information they need to protect and enforce their rights under ERISA and the plan. The Department requests comments on whether there are circumstances when a superseded document may still be relevant to a covered individual's claims or rights under the plan and, if so, whether additional or different conditions are needed to address such circumstances. Comments also are invited on whether

a final rule should explicitly address the category of covered documents that technically do not become superseded by reason of a subsequent version of the covered document, but instead ceases to have continued relevance to covered individuals. For instance, as opposed to the investment chart referenced earlier in this paragraph, blackout notices typically are not superseded by subsequent blackout notices, but they do lack relevance after the temporary restriction ends. Would a final rule be clearer on this point if it provided that a covered document must remain available on the website until it is superseded by a subsequent version of the covered document or, if applicable, until it ceases to have continued relevance?

Paragraphs (e)(2)(iii) through (vi) of the proposed safe harbor address the presentation of covered documents on the website. Paragraph (e)(2)(iii) requires that a covered document be presented on the website in a manner calculated to be understood by the average plan participant. This standard is identical to the readability standard for the notice of internet availability in paragraph (d)(4)(iv), which is discussed above. Next, the covered document must, pursuant to paragraph (e)(2)(iv), be presented on the website in a widely-available format or formats that are suitable to be both read online and printed clearly on paper. An administrator may be able to comply with this requirement, for example, by posting the document in a portable document format (PDF) or similar widely-used format on the website. The covered document also must be searchable electronically by numbers, letters, or words, to satisfy paragraph (e)(2)(v). The Department believes that an electronic searching capability for covered documents will contribute significantly to making disclosures more effective for participants, enabling them to use keywords to quickly and easily find specific information about a particular topic or benefits question.

Finally, under paragraph (e)(2)(vi), the covered document must be presented on the website in a widely-available format or formats that allow the covered document to be permanently retained in an electronic format that satisfies the requirements of paragraph (e)(2)(iv) (requiring a format that can be read online and printed clearly on paper). This requirement is intended to enable covered individuals and plans to keep a copy of the covered document, for example, by saving it to a file in electronic format, on a personal computer.

Several studies observe that some individuals access the internet only through hand-held devices, such as smartphones. Some of these individuals may not have full access to the enhanced functionality of plan websites and may find the presentation of covered documents to be less effective. What, if any, additional actions are needed to ensure that an effective and useful presentation of covered documents is available to hand-held-device-only individuals? Should such actions be mandatory for administrators who wish to comply with the proposal? What are the likely cost implications of these actions?

The final standard for the internet website is based on the fact that, in some cases, covered documents contain personal information about covered individuals and their benefits. In order to protect this information, paragraph (e)(3) of the proposal requires the administrator to take measures reasonably calculated to ensure that the website protects the confidentiality of personal information relating to any covered individual. For example, a pension benefit statement includes individualized information about a specific person's accrued benefit and should not be accessible to others without authority.⁶⁶ Given the employee benefit plan industry's increasing reliance on and use of electronic technology, the Department expects that many administrators, or their service or investment providers, already have secure systems in place to protect covered individuals' personal information, as is generally required by section 404 of ERISA. The Department requests comments on whether this standard is sufficient to protect covered individuals' personally identifiable information, including whether more specific security guidelines or best practice protocols would be helpful and appropriate.⁶⁷

(5) Right to Copies of Paper Documents or To Opt Out of Electronic Delivery

As part of any increase in electronic disclosure permitted under ERISA, the Department believes it is essential to respect the wishes of participants and beneficiaries who prefer to receive covered documents on paper, mailed or delivered to them in accordance with

2520.104b-1(b). To that end, the proposed safe harbor, in paragraph (f), provides two safeguards for these covered individuals. First, paragraph (f)(1) provides that, upon request from a covered individual, the administrator must furnish to such individual, free of charge, a paper copy of a covered document. The Department expects that the copy will be furnished to the covered individual as soon as reasonably practicable after receiving the request.⁶⁸ Covered individuals also can request more than one covered document pursuant to this provision. For instance, a participant could contact the administrator for a participant-directed individual account plan and request paper copies of the plan's comparative investment chart required by 29 CFR 2550.404a-5(d)(2) as well as a copy of the participant's most recent quarterly pension benefit statement. Only one paper copy of any covered document must be provided free of charge, however, under this provision. Beyond that, whether the plan charges for additional copies of the same covered document depends on the terms of the particular plan and other provisions of ERISA and regulations thereunder.

The Department expects that some covered individuals, however, may want all of their covered documents in paper and, accordingly, paragraph (f)(2) of the proposal provides covered individuals with a broad opt out right. Specifically, the administrator must give covered individuals the ability to opt out of electronic delivery and receive only paper versions of some or all covered documents. If a covered individual elects to opt out, the administrator must promptly comply with the individual's election. This provision may be referred to as a "global" opt out, in the sense that an individual can opt out of electronic delivery entirely. All future covered documents must be furnished to the electing covered individual in paper, unless and until the covered individual expresses the desire to "opt back in" to electronic delivery. Covered individuals may opt out pursuant to this provision at any time in accordance with the plan's reasonable procedures for doing so. The two provisions operate together to give covered individuals a good deal of flexibility in how they receive their disclosures. A participant who does not wish to opt out entirely but, for a variety of potential reasons, would like a paper copy of a covered document, may request a copy under paragraph (f)(1). Alternatively, the global opt out

provision in paragraph (f)(2) provides a more comprehensive option for a covered individual who truly prefers paper in all circumstances. The Department requests that commenters address whether these two safeguards are sufficiently protective of covered individuals who do not always want to receive information electronically. Commenters are invited to suggest additional or different safeguards that they believe may be more effective.

To further protect the rights of covered individuals who want paper copies of covered documents, the rule requires administrators to carefully manage requests for paper copies or requests to opt out of electronic delivery under the safe harbor. Specifically, paragraph (f)(3) provides that the administrator must establish and maintain reasonable procedures governing requests or elections under paragraphs (f)(1) and (2) of the safe harbor. The procedures are not reasonable if they contain any provision, or are administered in a way, that unduly inhibits or hampers the initiation or processing of a request or election.

Finally, paragraph (f)(4) requires that the system for furnishing the notice of internet availability must be designed to alert the plan administrator of an invalid or inoperable electronic address. In the event that a plan administrator becomes aware of an invalid or inoperable electronic address, such as if an email is returned as undeliverable and the problem is not promptly cured, the administrator must treat the covered individual as if he or she had elected to opt out of electronic delivery. One way to cure the problem would be to keep a secondary electronic address for the covered individual on file and send the notice of internet availability to the secondary address when alerted of the invalidity or inoperability of the primary electronic address. Another way to cure the problem would be to promptly obtain a new electronic address for the covered individual. Certainly other cures exist depending on the particular facts and circumstances surrounding the un-deliverability of the notice of internet availability. If the problem is not promptly cured, however, the deemed election would persist until the administrator is able to obtain a valid and operable electronic address for the covered individual.

This provision is intended to ensure that covered individuals actually receive their pension documents by guarding against invalid or inoperable electronic addresses. So long as the plan administrator is not alerted to an invalid or inoperable address, and the other

⁶⁶ The Department invites comments on whether additional standards for account authorization are necessary, for example, whether the proposed safe harbor should specifically prohibit automatic authentication of user identification, password, or other similar information.

⁶⁷ See, e.g., National Cybersecurity Center of Excellence Practice Guide and related materials, at <https://www.nccoe.nist.gov/projects/use-cases/access-rights-management>.

⁶⁸ See, e.g., 29 U.S.C. 1132(c)(1).

conditions of the proposed safe harbor are satisfied, the administrator is considered to have furnished the pension documents required under Title I of ERISA. This provision does not address issues such as whether a covered individual read, understood, or had actual knowledge of the contents of the covered documents accessed. Nor does this provision impose an affirmative obligation on the plan administrator to monitor whether covered individuals visit the specified website or login at the website. The Department requests comments on whether the protections in paragraph (f)(4) are excessive or sufficient to ensure covered individuals have access to covered documents.

(6) Initial Notification of Default Electronic Delivery and Right To Opt Out

The Department believes it is important for all participants and beneficiaries, who are accustomed to the current ERISA delivery rules, to be notified, on paper, that the administrator will be adopting a new method of electronic delivery. At this point in time, before a participant or beneficiary receives disclosures in accordance with the proposed safe harbor, the individual must be apprised that he or she will receive future retirement plan information electronically, through a notice and access model in which the notice will be furnished to an electronic address (e.g., email), and that he or she has a legal right to request paper copies or to opt out of electronic delivery. Paragraph (g) therefore requires an administrator to furnish to each person for whom the new safe harbor is to be used, an initial notification on paper that some or all covered documents will be furnished electronically to an electronic address, of the right to request paper copies of some or all of the covered documents or to opt out of electronic delivery altogether, and the procedures for exercising such rights. The Department intends that each such person receive this notification one time; a paper copy is required because of the importance of advising participants at the outset how covered documents will be furnished and their rights described in the notification. For transition purposes, an administrator who wants to rely on the safe harbor, if finalized, would have to send this notification to existing employees before the administrator could rely on the safe harbor for such existing employees. Thereafter, an administrator must send this notification to all new employees who would be covered by the new safe

harbor. This notification must be sent to an employee even if that employee is currently receiving electronic disclosures under the existing safe harbor at 29 CFR 2520.104b–1(c), for example because he previously provided affirmative consent to receive disclosures electronically, if an administrator wishes to rely on the safe harbor for that employee. If the employer does not wish to rely on this new safe harbor for a group of employees, however, the employer does *not* need to send this initial notification to that group of employees. To illustrate, assume that an existing defined contribution plan covers three participants, only one of whom is covered under the 2002 safe harbor as an employee who is “wired at work.” This plan could take advantage of the new safe harbor for all three participants, in which case each participant would have to be furnished the initial notification, even the employee who is “wired at work.” Alternatively, this plan could take advantage of the new safe harbor only with respect to the two participants who are not covered under the 2002 safe harbor, in which case only these two participants would have to be furnished the initial notification. The Department requests comments on whether this initial notification is sufficiently protective of employees to make sure they understand their rights with respect to electronic delivery. Additionally, the Department requests comments on whether a model would be useful. If commentators believe a model would be useful, they are encouraged to submit a model notice for the Department’s consideration along with their reason(s) for its helpfulness.

(7) Special Rule for Severance From Employment With Plan Sponsor

The Department appreciates that, as part of the framework proposed today, covered individuals may continue to receive and need access to certain ERISA disclosures even after they sever their employment with the employer sponsoring the plan. To ensure that this severance does not interrupt a covered individual’s access to important ERISA information if he or she continues to participate in the plan, paragraph (h) of the proposal provides a special rule for severance from employment. At the time a covered individual who is an employee severs from employment, the administrator must take measures reasonably calculated to ensure the continued accuracy of the covered individual’s electronic address or number, described in paragraph (b), or to obtain a new electronic address that

enables receipt of covered documents following the individual’s severance from employment. This provision focuses on circumstances in which there is special cause for concern about the accuracy of contact information in connection with an employee’s severance from employment, and does not diminish or alter plan fiduciaries’ ongoing obligation to keep accurate records on plan participants.

The Department requests comments as to whether this requirement will be effective in ensuring a seamless transition with respect to the dissemination of ERISA plan information when an employee has a severance from employment. For example, commenters may submit views on whether any unique issues arise in the context of terminated vested participants after severance from employment, for example as to updating and validating changes to contact or similar information, and whether these issues warrant additional safeguards in the proposal. This provision may ensure not only effective electronic delivery in the future for such individuals, but may also serve as a protection against these individuals becoming missing participants. Further, commenters should raise any other relevant transition issues that may arise for employees severing employment under the notice and access framework of this proposal.

When an email address was previously provided by the employer, the employer could (as part of its severance from employment procedures) ask the participant for another means of electronic communication for future notifications. The Department requests comments as to whether such information is currently requested or provided at severance from employment. The Department also requests comments on whether employers envision relying on this safe harbor for participants who have severed from employment.

The words “severance from employment” in paragraph (h) are intended to have their ordinary meaning. Thus, for example, a severance from employment occurs when an employee dies, retires, is dismissed, or otherwise terminates employment with the employer that maintains the plan, including when the employee continues on the same job for a different employer as a result of a liquidation, merger, consolidation or other similar corporate transaction. Whether a severance from employment has occurred is determined based on the facts and circumstances of the particular situation. The Department

solicits comments on whether further clarity is needed on this point.

As noted above, the proposed safe harbor would be available to all pension benefit plans, including multiemployer pension plans. The Department solicits comments on whether the requirements in paragraph (h) accommodate routine practices of multiemployer pension plans. For example, will the administrator of a multiemployer pension plan typically have knowledge of a covered individual's severance from employment from a contributing employer = "at the time" of the individual's severance? Commenters are encouraged to identify whether there are unique circumstances in this setting that warrant modifications or adjustments to the approach taken in paragraph (h) of the proposal, or with respect to any other provision in the safe harbor, (including paragraph (b) permitting the administrator to use an electronic address assigned by an employer).

(8) Special Rule for Consolidation of Certain Notices of Internet Availability

Although the proposal generally requires, in paragraph (d)(1), that an administrator furnish a notice of internet availability for each covered document, a special rule in paragraph (i) of the proposal allows an administrator to furnish one notice of internet availability, subject to the timing requirements in paragraph (d)(2), that incorporates or combines the content required by paragraph (d)(3) with respect to one or more of a subset of covered documents. These documents include, as applicable: (1) A summary plan description; (2) a summary of material modifications; (3) a summary annual report; (4) an annual funding notice; (5) an investment-related disclosure under 29 CFR 2550.404a-5(d); (6) a qualified default investment alternative notice; and (7) a pension benefit statement. These covered documents represent the most common and recurring disclosures that are made to pension plan participants, and which are triggered by no event other than the passage of time.⁶⁹

The Department excluded other required documents, for example, because they are event-specific disclosures and might communicate information that requires or invites

specific and timely action on behalf of a participant or beneficiary. In other cases, this special rule excludes contingent or irregular documents that are furnished based on an individual transaction or plan status basis, or that are not regularly furnished to participants and beneficiaries. For example, a participant who receives notice of a blackout period, as required by ERISA section 101(i), may consider changing her investment directions and, if so, must do so within the timeline specified. Similarly, a participant who receives notice of an adverse benefit claim determination, as required by ERISA section 503(1), may wish to appeal or take other action following such determination, in which case he too must act within defined periods of time. Additional examples include a qualified domestic relations order determination under ERISA section 206(d)(3)(G)(i)(II), a notice of the right to divest under ERISA section 101(m), a notice of failure to meet minimum funding standards under ERISA section 101(d), and a notice of significant reduction in future benefit accruals under ERISA 204(h).

In short, the Department excluded documents that it believes do not lend themselves, primarily because of their timing, irregularity, or requirement of potentially timely action by a covered individual, to a framework that permits consolidation into one annual notice. The Department solicits comments on whether, and why, the subset of covered documents eligible for paragraph (i) should be expanded or narrowed, and the criteria that would justify an expansion or narrowing. In addition, the Department solicits comments on whether, instead of an explicit list of the covered documents to which paragraph (i) applies, a final rule should adopt a principle-based or categorical approach, describing the type or nature of covered documents that may be consolidated?

Paragraph (d)(2), as discussed above, requires that a combined notice of internet availability for more than one covered document under paragraph (i) be furnished at least once each plan year, and, if the combined notice was used for the prior plan year, no more than 14 months following the prior year's notice. The Department intends that this combined notice of internet availability be an annual disclosure; however, to provide flexibility to administrators and avoid potential foot faults associated with a strict 12-month standard, the rule provides that an "annual" notice of internet availability may be furnished up to 14 months following the prior "annual" notice.

(9) Reasonable Procedures for Compliance

The Department understands that, for a variety of technical and other reasons beyond the control of the administrator, there may be temporary interruptions to the availability of covered documents on a website. For example, in spite of reasonable diligence by an administrator, its information technology staff, and service and internet providers, there may be network outages or connectivity problems due to utility interruptions, force majeure, or other factors reasonably beyond these parties' control. To prevent administrators from violating their disclosure obligations under ERISA in such limited circumstances, the proposal includes relief for administrators if reasonable compliance procedures are in place. Paragraph (j) explains that if certain requirements are satisfied, the conditions of the safe harbor are satisfied, notwithstanding the fact that covered documents are temporarily unavailable for a period of time in the manner required by § 2520.104b-31 due to unforeseeable events or circumstances beyond the control of the administrator. The administrator must have reasonable procedures in place to ensure that the covered documents are available in the manner required by § 2520.104b-31. In the event that covered documents are temporarily unavailable, the administrator must take prompt action to ensure that the documents become available in the manner required by § 2520.104b-31 as soon as practicable following the earlier of the time at which the administrator knows or reasonably should know that the documents are temporarily unavailable. The Department believes that paragraph (j) fairly balances the reality of temporary disruptions to website accessibility in modern times with the protection of participants and beneficiaries by expecting that administrators act reasonably in preparing for, and reacting to, such disruptions. The Department requests comments on whether this is a suitable standard that is practical and realistic, but also sufficiently rigorous to make sure that, as a general matter, important ERISA information is available to participants and beneficiaries when they need it.

(12) Effective and Applicability Dates

The Department proposes effective and applicability dates for the safe harbor in paragraph (k). Specifically, paragraph (k)(1) provides that the new alternative method for disclosure

⁶⁹ While the SMM does not technically fit under the passage of time descriptor, the document's timing requirement sets it apart from, and warrants different treatment than, other event-triggering disclosures, the timing for which more closely corresponds to the particular event. See 29 CFR 2520.104b-3(a) (requiring the plan administrator to furnish the SMM "not later than 210 days after the close of the plan year in which the modification or change was adopted").

through electronic media, as finalized, will be effective 60 days following publication of a final rule in the **Federal Register**. In establishing an applicability date, the Department wants to make the safe harbor in new 29 CFR 2520.104b–31 available to administrators as soon as possible. Because it is a safe harbor, rather than a required method for disclosure, administrators will not have to be in compliance with all of the conditions as of the applicability date—administrators are free to begin taking advantage of the safe harbor at any time on or after the applicability date. Thus, the Department proposes that the new safe harbor apply to employee benefit plans on the first day of the first calendar year following the publication of the final rule in the **Federal Register**. The Department requests comments on the extent to which this applicability date should be sooner, given that the provision is optional, or later, if necessary to safeguard plan participants and beneficiaries from potential harm if administrators rely on the safe harbor too soon.

C. E-SIGN Act

Under this proposed regulation, for the reasons discussed below, the covered documents would be exempt from the consumer consent requirements of the E-SIGN Act and would provide an alternative method of complying with the requirement that covered documents be furnished in writing. Section 101(c) of the E-SIGN Act sets forth special protections that apply when a statute, regulation, or other rule of law requires that information relating to a transaction be provided or made available to a consumer in writing. Section 101(e) of the E-SIGN Act provides that if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of the contract or other record may be denied if the contract or other record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

Under section 104(d)(1) of the E-SIGN Act, a Federal regulatory agency may exempt, without condition, a specified category or type of record from the consumer consent requirements in section 101(c) if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. If finalized, this proposed

regulation would be an alternative method of compliance which would satisfy section 104(d)(1) of the E-SIGN Act. In accordance with section 104 of the E-SIGN Act, the Department believes that there is substantial justification for this proposed regulatory exemption from the consent requirements of the E-SIGN Act because the rule is necessary to eliminate a substantial burden on electronic commerce and the proposal would not pose a material risk of harm to consumers. The Department requests comments as to whether there are additional, or different, steps it could take to ensure that these proposed rules are consistent with the requirements of section 104(d)(1) of the E-SIGN Act. The Department is particularly interested in receiving comments that provide suggestions or evidence related to whether these proposed rules would (or would not) impose unreasonable costs on the acceptance and use of electronic records. The Department believes that, as proposed, these regulations would not require (or accord greater legal status, or effect to) the use of any specific technology. The Department requests comments, however, on whether there are any changes to the proposal that would better ensure the proposal does not require (or in any way endorse) any specific technology.

D. Request for Public Comments and Information

(1) Request for Comments on Proposed Regulation

The Department invites comments from interested persons on all facets of the proposed alternative method for disclosure through electronic media—i.e., the “notice and access” safe harbor. Commenters are free to express their views not only on the specific provisions of proposed 29 CFR 2520.104b–31, as set forth in this document, but on other issues germane to the subject matter of the proposal. This may include, for example, comments, questions, or ideas on how the proposed safe harbor interrelates with the 2002 safe harbor, or improvements to that safe harbor. Comments should be submitted in accordance with the instructions at the beginning of this document. The Department believes that this period of time will afford interested persons an adequate amount of time to analyze the proposed safe harbor and submit comments. This comment solicitation, which focuses on the electronic delivery framework in proposed 29 CFR 2520.104b–31, is distinguished from the

Request for Information, in section D–(2) of this document.

(2) Request for Information on Effectiveness of ERISA Disclosures

As discussed earlier in this document, Executive Order 13847 called on the Department to explore not only reducing burdens and costs associated with ERISA disclosures, in particular through the use of electronic media, but also enhancing the effectiveness of ERISA’s disclosures for participants and beneficiaries. The Department is confident that the electronic delivery safe harbor proposed in 29 CFR 2520.104b–31 would, without more, substantially respond to both prongs of the Executive Order, including the directive pertaining to improving the effectiveness of plan disclosures. As discussed in the Regulatory Impact Analysis section of this document, a notice and access framework has the potential to significantly reduce plan costs. A notice and access framework also facilitates, among other things, interactivity, just-in-time notifications, layered or nested information, word and number searching, engagement monitoring, anytime or anywhere access, and potentially improved visuals, tutorials, assistive technology for those with disabilities, and translation software. These features may be used to improve participants’ and beneficiaries’ disclosure experiences.

Nevertheless, pursuant to the Executive Order’s directive pertaining to improving the effectiveness of plan disclosures, the Request for Information solicits information, data, and ideas on additional measures (beyond the electronic delivery safe harbor proposed in 29 CFR 2520.104b–31) the Department could take in the future (either as part of finalizing the proposal in this document, or a separate regulatory or appropriate guidance initiative) to improve the effectiveness of ERISA disclosures, especially with respect to design and content of ERISA disclosures. To foster consideration of these issues, the Department sets forth below a number of questions for consideration. Commenters need not answer every question, but should identify by number the questions that are addressed. Although the rule, as proposed in this document, does not include employee welfare benefit plans, commenters should feel free, as relevant, to respond to these questions for both pension and welfare benefit plans. Commenters also are encouraged to address any other matters they believe to be relevant to the effectiveness of ERISA disclosures and, when relevant, to submit samples or

models of information, disclosures, or formats that they believe to be particularly effective.

1. What is the best way to measure the effectiveness of a disclosure? Should participant engagement or attentiveness to plan affairs be a measure of the effectiveness of mandated disclosures? If so, how can the Department have the most meaningful impact on engagement through mandated disclosures? Are there factors other than design, delivery, and content that should be considered by the Department? Please direct the Department's attention to relevant research and evidence that illuminates how and to what degree plan disclosures can be made more effective, and how regulation (or deregulation) can best promote effective disclosure.

2. How do or could plan sponsors and administrators assess the use, effectiveness, and impact of disclosures? What are the findings of these assessments? What actions are taken in response to such assessments? Should assessments and responses be required by regulation, either together with or as an alternative to prescriptive standards for disclosures?

3. Please identify any currently mandated routine retirement plan disclosures for which effectiveness and efficiency could be improved and set forth recommendations for improvement. Please explain why the particular disclosure needs improvement.

4. Would more personalized disclosure enhance engagement? If so, how?

5. Are there ways through regulation or appropriate sub-regulatory guidance to require, incentivize, or facilitate plan administrators to organize information within the required disclosures to reflect life events so that information is available as the need arises?

6. Some people have indicated that at least some ERISA documents may be too voluminous, complex, or both. These individuals highlight a need to strike a balance between providing too little information for participants to gain an adequate understanding of what the disclosure is trying to convey and providing too much information, which can become overwhelming and confusing. Please identify each ERISA document in these categories.

7. With respect to each document identified in the previous question, state whether the Department should encourage or require, as an alternative to furnishing the entire document, that the plan administrator furnish a brief, clear, and accurate summary of key information from the document, for example not to exceed one or two pages,

coupled with access to more detailed information online, on request, or both. Also identify what should be considered "key" for this purpose. To illustrate this concept, readers are directed to the 2017 ERISA Advisory Council Report.

8. Does ERISA require disclosure of any information that has become obsolete, for example as a result of the passage of time or changes in the regulatory, business, or technological environment? If so, what information? Is there information that would be important to disclose instead of the obsolete information?

9. Is there redundant or inconsistent information disclosed to participants under current rules? If so, which information?

10. Is the problem that there are too many disclosures, or that there is too much information that is disclosed, or both? Would it be feasible, and advisable, to condense and streamline information into fewer disclosures or less voluminous disclosures, rather than eliminating disclosure of certain information?

11. To what degree does the design of disclosures (as opposed to their content) impact the likelihood that participants will read and understand the information disclosed? Are there design elements or tools that are particularly effective? For example, should certain information be presented in a question-and-answer (Q&A) format? Are larger font sizes, greater use of white spaces, colors, or visuals, or the use of audio or video potentially helpful? Would it be appropriate for the Department to require particular design elements for all plans (e.g., including small plans, retirement and welfare plans, defined contribution and defined benefit plan, etc.)?

12. Are there additional or better standards for improving the readability of the content in disclosures than the Department's general standard—i.e., that documents must be written in a manner calculated to be understood by the average plan participant?

13. How can the Department best assess the views of plan participants themselves on the frequency, content, design, delivery, and other aspects of ERISA disclosures? Although commenters who represent plan participants are well positioned to evaluate participants' understanding of, and opinions on, ERISA disclosures, would the Department be better served by supplementing these commenters' point of view with feedback from individuals directly? If so, what would be an effective approach (e.g., surveys, focus groups), factoring in the resources necessary to administer such an

approach? What, precisely, do commenters believe the Department should measure, and how? Specific suggestions, including sample outreach materials if relevant, are requested.

14. Do the timing requirements for various ERISA disclosures increase or decrease the likelihood that participants will pay attention to them? Should the Department consider changing when information is disclosed to participants and, if so, how? Explain how such changes would enhance the likelihood that participants would pay attention to the disclosure or disclosures or otherwise improve the disclosure experience.

15. Discuss the role of education in assisting participants and beneficiaries with the often technical and complex subject matter of ERISA disclosures, including investing generally. Should the Department take additional steps or provide further guidance with respect to participant education and, if so, what steps? How would this improve participants' receipt, understanding, or use of information required to be disclosed? What could or should the Department do to increase engagement on the part of ERISA plan participants?

16. Well-designed plan websites or internet-connected apps may benefit plan participants by effectively communicating plan information, including by adopting features not possible with paper, such as interactive videos, calculators, and layered design. What common features have plan administrators adopted in their websites or apps that are effective in communicating plan information to participants and attracting participants to engage in activity with their plan accounts online? What are the benefits of these features, and how do they achieve them? Should any such features be required by regulation?

17. As discussed in the regulatory impact analysis (RIA), well-designed plan websites and apps may also be used to provide effective communication of plan information to certain vulnerable populations, such as the visually impaired and non-native English speakers, by adding voice-reader and translation features. How do plan websites and apps currently use these features and how effective are they in enhancing the presentation and use of covered documents by participants with special needs?

18. Some plan sponsors and participants have expressed concerns about cybersecurity and privacy when participants access sensitive plan information and engage in financial activity online. To protect against these concerns, how do plan administrators

currently assess risks and provide secure online access to their participants? What safeguards are implemented to protect participants, how effective are they, and what improvements could be made to make current systems more secure? What cost considerations are raised by increasing cyber security and privacy protections? Should risk assessments and security measures be required by regulation?

19. Some literature suggests that participants find that different documents are presented more effectively in different mediums. For example, some participants prefer to receive certain covered documents on paper while other types of covered documents are preferred to be received electronically. What, if any, types of covered disclosures do plans and participants perceive to be more effectively communicated in print (*e.g.* highly individualized and complex notices), and what explains this preference? How might modern technology and effective website or app design make electronic presentation of these covered disclosures more effective and increase participant engagement?

20. In the RIA for this proposal, the Department estimates that plans will benefit from substantial cost savings by distributing more covered documents electronically. How and to what extent do plans share these cost savings with plan participants?

21. Are there steps the Department could take to better coordinate disclosures required under ERISA and notices required under the Code?

E. Regulatory Impact Analysis

(1) Relevant Executive Orders for Regulatory Impact Analyses

Executive Orders 12866⁷⁰ and 13563⁷¹ direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, “significant” regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a “significant regulatory action”

as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. The Department anticipates that this proposed regulatory action would likely have economic impacts of \$100 million or more in any one year, and therefore meets the definition of an “economically significant rule” within the meaning of section 3(f)(1) of the Executive Order 12866. Therefore, the Department has provided an assessment of the potential benefits, costs, and transfers associated with this proposed rule. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by OMB.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule is expected to be an E.O. 13771 deregulatory action, because it would provide pension benefit plans subject to ERISA with an alternative safe harbor to use electronic media to provide required disclosures to participants and beneficiaries thereby reducing the printing, material, and postage costs associated with providing printed disclosures by mail. Details on the estimated net cost savings of this proposed rule can be found below.

(2) Need for Regulatory Action

Technology has changed substantially since the establishment of the 2002 safe harbor,⁷² including through the expansion of broadband and wireless networks and use of email, improvements to servers and personal computers, as well as the expanded use of smartphones, tablets, and other mobile devices. These changes are reflected in data. For example, in 2003, one year after the existing safe harbor rule was established, approximately 62 percent of households had one or more

computers.⁷³ More recently, in 2016, approximately 89 percent of households had computers, smartphones, or tablets at home.⁷⁴ Smartphone ownership has increased rapidly in the past decade. The share of Americans who own a smartphone increased from 35 percent in 2011 to 81 percent in 2019.⁷⁵ The share of households with internet access also has increased: 55 percent of households had access to internet at home in 2003,⁷⁶ while 82 percent had such access in 2016.⁷⁷ As the internet, smartphones, and other electronic devices have become an integral part of everyday American life, consumers use them in a wide range of activities, including shopping online and conducting financial transactions. According to an online survey conducted by the Federal Reserve Board in 2015, 82 percent of smartphone owners with a bank account used online banking and 53 percent used mobile banking to check their balances or recent transactions in the prior 12 months.⁷⁸

Moreover, as technological capabilities and access to and use of the internet has increased, other government agencies have issued rules encouraging wider use of electronic disclosure. For example, the Social Security Administration no longer sends paper statements to workers; rather, workers generally must register on the Administration’s website for a “my Social Security” account to access their statements.⁷⁹ As another example, the Federal Thrift Savings Plan uses paperless delivery as the default for its quarterly statements, unless an individual requests mail delivery.⁸⁰

⁷³ Jennifer Cheeseman Day, Alex Janus, and Jessica Davis, “Computer and internet Use in the United States: 2003” (U.S. Census Bureau, 2005).

⁷⁴ Camille Ryan, “Computer and internet Use in the United States: 2016” (U.S. Census Bureau, 2018).

⁷⁵ Monica Anderson, “Mobile Technology and Home Broadband 2019,” *Pew Research Center* (June 13, 2019).

⁷⁶ Jennifer Cheeseman Day, Alex Janus, and Jessica Davis, “Computer and internet Use in the United States: 2003” (U.S. Census Bureau, 2005).

⁷⁷ Ryan, “Computer and internet Use in the United States.”

⁷⁸ “Consumers and Mobile Financial Services 2016” (Board of Governors of the Federal Reserve System, March 2016).

⁷⁹ See section (5)(i) of the Notice for a fuller discussion. See also <https://faq.ssa.gov/en-us/Topic/article/KA-01741>. The Administration does, however, mail paper social security statements to workers age 60 and older if they don’t receive social security benefits and they have not yet set up a “my social security” account on the website.

⁸⁰ 5 CFR 1640.6 (“The TSP will furnish the information described in this part to participants by making it available on the TSP website. A participant can request paper copies of that information from the TSP by calling the ThriftLine, submitting a request through the TSP website, or by

⁷⁰ 58 FR 51735 (Oct. 4, 1993).

⁷¹ 76 FR 3821 (Jan. 21, 2011).

⁷² See 29 CFR 2520.104b–1(c).

Annual statements are available on the website and delivered by mail, unless an individual requests only electronic annual statements. TSP reported its switch from delivering statements by mail to electronic paperless delivery saved about \$7 to \$8 million in 2006.⁸¹

In addition, on October 20, 2006, the Treasury and the IRS published 26 CFR 1.401(a)–21, setting forth standards for electronic systems that make use of an electronic medium to provide a notice to a recipient or to make a participant election or consent, generally with respect to a retirement plan, an employee benefit arrangement, or an individual retirement plan.⁸² See section A(5)(iii), above, for a fuller discussion of these regulations. Similarly, the Securities and Exchange Commission (SEC) has issued several regulations facilitating electronic deliveries of certain required disclosures. See section A(5)(iv), above, for a fuller discussion of these regulations.

The ERISA Advisory Council in prior years has made multiple recommendations regarding improvements to the 2002 safe harbor. Most recently, in its November 2017 report, the Advisory Council recommended that to ease burdens on plans and improve understandability for participants, an ideal disclosure protocol would implement both paper and electronic delivery.⁸³ The ERISA Advisory Council, in the 2017 report, recommended electronic delivery because it can help participants better navigate and understand their benefits in addition to reducing the cost burden on plan sponsors.⁸⁴ In prior reports, the Council has recommended that the Department consider adopting electronic disclosure regulations more aligned with 26 CFR 1.401(a)–21. Also, in a 2013 report, the General Accountability Office (GAO) recommended that the Department (1)

require plans to include the SPD and any SMMs on a continuous access website,⁸⁵ and (2) focus on the readability standard for required disclosures by adding “clear, simple, brief highlights”⁸⁶ of required disclosures, noting that “the quantity of information diminishes the positive effects it can have for participants.”⁸⁷

As discussed earlier in this preamble, in Executive Order 13847 dated August 31, 2018,⁸⁸ President Trump required the Department to make retirement plan disclosures required under ERISA more understandable and useful for participants, while also reducing the costs and burdens imposed on plan sponsors. The executive order also required the Department to explore the broader use of electronic delivery of disclosures as a way to improve the effectiveness of disclosures and to reduce their associated costs and burdens.

Responding to the mandate in Executive Order 13847, recommendations by the ERISA Advisory Council and GAO, and widespread use of the internet, computers, and mobile devices, as discussed in detail in Section B, above, the Department is proposing an alternative method for disclosure through electronic media in addition to the Department’s current safe harbor for electronic delivery, which also would remain available. According to the Private Pension Plan Bulletin, there exist approximately 702,000 private retirement plans with over 136 million participants in 2016.⁸⁹ Some of these participants already receive disclosures electronically by relying on the Department’s current safe harbor for electronic delivery. Under the proposed rule, plan administrators could electronically deliver disclosures to participants who have been receiving paper copies by mail by sending a notice of internet availability that directs participants to access a website for detailed information. By taking this approach, participants can be informed of covered disclosures and access the website for details if desired, and request any covered disclosures to be sent by mail or email free of charge. The Department is also publishing a companion Request for Information

soliciting comments on additional ideas on how to improve the effectiveness of ERISA disclosures.

(3) Impacts

The Department expects that the proposed rule would facilitate expanded use of electronic technologies when providing covered disclosures to participants and beneficiaries, which will produce cost savings for plan sponsors by eliminating materials, printing, and mailing costs associated with furnishing printed disclosures.

The Department estimates that plans currently incur approximately \$355 million annually to furnish only seven selected disclosures such as SPDs by mail.⁹⁰ As described in detail below, the Department estimates that the gross savings produced by moving from printed to electronic disclosures would be \$289 million in the first year. These savings would be partly offset by \$146 million incurred to maintain a website; prepare the notice of internet availability; and prepare and distribute the initial notification and right to opt out. These added costs produce \$144 million in net savings, or a 40 percent cost reduction from the \$355 million current cost burden. In the second year, the cost reduction would increase to 72 percent, or \$264 million in net savings. In the 10th year, the cost reduction would increase to 86 percent. Over 10 years, the approximate net savings are \$2.4 billion, annualized to \$274 million per year, using a three percent discount rate, resulting from eliminating distribution and mailing costs associated with furnishing retirement plan related disclosures.⁹¹ When the Department uses a perpetual time horizon to allow for comparisons under E.O. 13771, the perpetual annualized cost savings are \$324 million at a three percent discount rate and \$305 million at a discount rate of seven percent in 2016 dollars.⁹² However, the Department cautions against relying on the perpetual annualized cost savings estimate for purposes other than the required analyses under E.O. 13771 because any long-term projection is inherently uncertain. The fast pace of technological innovations in the context of this rulemaking makes it especially

writing to the TSP record keeper.”). See also “Federal Thrift Savings Plan: Customer Service Practices Adopted by Private Sector Plan Managers Should Be Considered,” GAO–05–38 (U.S. Government Accountability Office, Jan. 2005), p. 12, n. 21, www.gao.gov/new.items/d0538.pdf (providing statistics on cost savings experience with TSP).

⁸¹ See Federal Retirement Thrift Investment Board, Board Meeting Minutes (February 2007), available at <https://www.frtib.gov/MeetingMinutes/2007/2007Feb.pdf>.

⁸² 71 FR 61877.

⁸³ “Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors,” ERISA Advisory Council, p. 27 (Nov. 2017).

⁸⁴ “Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors,” ERISA Advisory Council on Employee Welfare and Pension Benefit Plans (Nov. 2017).

⁸⁵ “Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved,” GAO–14–92, p. 40 (Government Accountability Office, Nov. 2013), <https://www.gao.gov/assets/660/659211.pdf>.

⁸⁶ *Id.* at p. 41.

⁸⁷ *Id.* at p. 29.

⁸⁸ 83 FR 45321.

⁸⁹ Private Pension Plan Bulletin 2016, Employee Benefits Security Administration, Department of Labor.

⁹⁰ These seven disclosures are those that may be included in a combined notice of internet availability pursuant to paragraph (i) of the proposal.

⁹¹ The net cost savings would be approximately \$2.0 billion over 10-year period, annualized to \$270 million per year, if a seven percent discount rate were applied.

⁹² The cost savings in years 11 and beyond are estimated using the same methodology as for years 1 to 10, which is explained in the following section.

difficult to reliably project cost savings into the far-distant future.

(i) 10-Year Cost Saving Projection

The Department's projections are based on the following assumptions: (i) The number of participants will grow at 0.7 percent per year,⁹³ (ii) the percentage of participants opting out of the default e-delivery system, will gradually decrease from 18.5 percent to 7.5 percent over the 10-year period.⁹⁴ The Department's 10-year projection may overstate cost savings because more participants may gradually receive disclosures electronically even in the absence of this proposed rule. This occurs because more participants may affirmatively consent to receive disclosures electronically as internet access expands and/or the internet and computer access become an integral part of more jobs in various occupations and industries. Therefore, plans would mail fewer disclosures to participants, and incur smaller printing and mailing costs even without this proposed rule. On the other hand, the Department's 10-year projection may understate cost savings if there are a small number of electronic delivery failures for notices of internet availability over time as plan administrators develop and maintain the most up-to-date lists of covered individuals' electronic addresses. If so, printing and mailing costs for covered documents will decrease and net cost savings will increase within the 10-year period. However, the Department's projection is based on the assumption that the rates of undelivered notices of internet availability would remain constant over the 10-year period. These cost savings could indirectly benefit

covered individuals if they are used to defray plan expenses and lower the direct or indirect participant fees.

(ii) Comparisons Between the Department's Estimates and Industry Estimates

Industry groups have published estimates of the costs plans incur to furnish covered documents by mail taking into account printing, material, and mailing costs. For example, a recent report submitted to the Department⁹⁵ estimates that plans would incur total costs of more than \$385 million per year to mail an average of six documents per year to 80.3 million 401(k) participants, assuming a cost of \$0.80 per document. The Department's estimated cost savings are distinguishable from the report's cost estimate for the following reasons:

- Reflecting practices under current rules, including the Department's 2002 safe harbor, the Department assumes that *slightly less than half* of participants currently receive covered documents by mail, and plans would realize cost savings by switching many of these participants from mail delivery to e-delivery if the proposed rule is finalized. In contrast, the cost estimate in the report assumes that *all* participants currently receive notices by mail.

- The Department assumes that in the first year about 18 percent of individuals that currently receive paper documents would opt out of e-delivery and continue to receive covered documents by mail.⁹⁶ In subsequent years, the Department assumes that opt-out rates will gradually decrease such that in ten years only seven percent of current mail recipients will continue to receive paper copies of disclosures by mail. In contrast, the cost estimate in the report does not factor in the percentage of participants that request paper copies by mail.

- The Department estimated the cost savings disclosure by disclosure, assuming different percentages of plans and participants would receive different disclosures. Due to this methodology, it is difficult to directly compare the report's assumptions regarding the

average number of notices participants receive annually.

- The Department assumes plans would incur one-time start-up costs to develop systems and notices required by the proposal and material, printing, and postage costs to mail the initial notice of internet availability and right to opt out. As shown in the cost savings table below, these one-time costs will significantly diminish over time and become negligible in the long-term.

(iii) Cost Savings

The Department's cost savings estimates understate the potential savings generated from this proposed rule, because they account for cost savings that would be realized by eliminating materials, printing, and mailing costs associated with furnishing only seven selected disclosures, such as SPDs, even though the rule would be more broadly available for other pension disclosures as well.⁹⁷ According to the Department's Paperwork Reduction Act information collection inventory, these seven selected disclosures are some of the most costly disclosures for retirement plans in terms of distribution and mailing costs, because they affect a large number of plans and participants.⁹⁸ Therefore, the proposed rule will generate the most cost savings from these seven disclosures by allowing plans to electronically deliver them without incurring printing and mailing costs. In contrast, other pension disclosures are distributed irregularly because they are triggered by the occurrence of certain events. Consequently, the proposed rule would produce relatively smaller cost savings from these irregular disclosures because they affect a smaller number of plans and covered individuals.

The Department's cost savings estimate is derived from the methodology it uses to estimate costs associated with furnishing printed disclosures for information collections subject to the Paperwork Reduction Act. For this purpose, preparation costs generally include costs plans incur to develop the content and format of disclosures, while distribution costs generally include materials, printing,

⁹³ The Bureau of Labor Statistics projects that total employment will grow at 0.7 percent annually from 2016 to 2026. Based on this employment projection, the Department assumes that the total number of participants will also increase at 0.7 percent each year. See T. Allan Lacey, Mitra Toossi, Kevin S. Dubina, and Andrea B. Gensler, "Projection overview and highlights, 2016–2026," *Monthly Labor Review* (October 2017).

⁹⁴ The Department assumes that (1) in the first year, approximately 18 percent of participants currently receiving disclosures by mail will opt out of the proposed default e-delivery and receive disclosures by mail, and (2) in the second year, about 16.2 percent of participants receiving disclosures by mail will opt out, based on the American Community Survey data. Then the Department projects the opt-out rates will decrease gradually at rates consistent with exponential decay function, $a * b^{(t-1)}$, where a is the initial opt-out rate 18 percent, t is year, and b is the decay rate, 0.9 ($= 16.2/18$) and in the 10th year, only seven percent of those participants currently receiving disclosures by mail will continue to do so. Then the Department made an additional adjustment by adding 0.5 percentage point annually to account for the requirement in paragraph (f)(4) of the proposal regarding invalid or inoperable electronic addresses for covered individuals. For more detailed discussion, see the quantified cost section, below.

⁹⁵ Peter Swire and DeBrae Kennedy-May, "Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery—2018 Update," *peterswire.net* (April 2018), p. 19.

⁹⁶ This 18 percent opt-out assumption used in the Department's estimates comes from the 2016 American Community Survey (ACS) conducted by the Census Bureau. According to ACS, about 82 percent of U.S. households have internet subscriptions, thus can securely and conveniently access the internet at home; therefore, the Department assumes that the remaining 18 percent are more likely to opt out.

⁹⁷ These are the same disclosures that can be included in a combined notice of internet availability pursuant to paragraph (i) of the proposal.

⁹⁸ Out of these seven disclosures, all but one (Pension Benefit Statements) have the associated information collection requests under the Paperwork Reduction Act. To estimate cost savings attributable to this proposed rule, the Department estimated the current cost burden associated with Pension Benefits Statements, although it is not a part of the Department's information collection inventory.

and mailing costs administrators incur to furnish required disclosures to participants and beneficiaries. The Department's estimates assume that preparation costs for covered disclosures such as SPDs and SMMs would be unchanged by the proposed regulation, because the proposed rule would not change the content of such disclosures. This reflects the Department's assumption that master copies of printed versions of disclosures are typically maintained in electronic form or can be easily converted to such form to be distributed to covered individuals.

(iv) Quantified Costs

While the Department expects the proposed rule to reduce costs associated with distributing covered disclosures by eliminating material, printing, and mailing costs, these cost reductions are partly offset by costs incurred by administrators to meet the new safe harbor's requirements to: (1) Furnish a notice of internet availability to covered individuals ((paragraph (d) of the proposal); (2) ensure the existence of a website at which a covered individual is able to access covered documents (paragraph (e) of the proposal); and (3) furnish an initial notification of default electronic delivery and right to opt out in paper to each person, before he or she becomes a covered individual (paragraph (g) of the proposal).

The Department assumes that plans will incur one-time start-up costs to develop systems and notices required by the proposal, which would include time for the plan's (or the plan service provider's) legal counsel to prepare and review the notices to ensure compliance with the proposed regulatory requirements. While the Department also assumes that the cost incurred by plans to distribute notices of internet availability would be negligible because they could be distributed electronically, the initial notification of default electronic delivery and right to opt out would impose material, printing, and postage costs on administrators, because they would be required to be furnished to covered individuals in a non-electronic format.

The initial notification and right to opt out is a one-time transitional notice that informs participants who are existing employees of changes in default delivery system to e-delivery.⁹⁹ Administrators are required to furnish

this notice in paper form to each person, prior to such person becoming a covered individual, informing them that some or all covered documents will be furnished electronically, that they have the right to request paper copies of some or all of the covered documents or to opt out of electronic delivery altogether, and of the procedures for exercising such rights. For transition purposes, the proposed rule would require an administrator using the proposed safe harbor to send this notification to all existing employees before any or all of them can become a "covered individual."

Thereafter, an administrator must send this notification to all new employees and beneficiaries receiving benefits. To minimize any unnecessary confusion and ensure smooth transitions from participants' perspectives, the proposal requires this notification to be sent to employees who have affirmatively consented to receive electronic disclosures under the existing safe harbor if an administrator wishes to transition to providing electronic disclosures to such participants under the proposed safe harbor. The Department believes that the costs for the initial notice are justified, because it is essential to protect participants' interests by adequately notifying them in paper that the administrator will be adopting a new method for electronic delivery of covered documents and that they have the option to opt out and receive paper copies of such documents.

Retirement plans will incur one-time costs to develop and design an initial notice. The proposed rule clearly describes the specific information required to be included in this notice; therefore, the Department expects the costs to develop and design the notice would be modest, approximately \$39 million on aggregate assuming all retirement plans decide to rely on this proposed alternative.¹⁰⁰ The Department estimates that approximately 60 million retirement plan participants received covered disclosures by mail in 2016;¹⁰¹ and

¹⁰⁰ The Department estimates there were over 702,000 retirement plans in 2016. The Department estimates that attorneys will take approximately 293,000 hours to develop and review the Initial Notice. Assuming the hourly rate for in-house attorneys was \$133.50 in 2016, the costs of developing the Initial Notice are estimated approximately \$39 million (292,725 hours * \$133.50).

¹⁰¹ ICRs associated with the SPD, SMM, SAR, and 404(a)(5)/404(c) disclosures recently were renewed after OMB review and public comment. These ICRs assume that approximately 56 percent of participants electronically receive those disclosures by relying on the 2002 safe harbor e-disclosure rule. According to the 2016 Private Pension Bulletin, there are approximately 136 million participants. Therefore, the Department estimates that

therefore, could potentially receive the initial notice from their plan administrators. Assuming a one-page notice is mailed to these 60 million participants, the Department estimates the costs of distributing and mailing the initial notice will be approximately \$50 million.¹⁰² Therefore, the Department estimates that retirement plans would incur approximately \$90 million one-time costs to develop and mail the initial notice. The Department assumes that these are one-time transitional costs that would not be incurred in subsequent years.¹⁰³

Paragraph (e) of the proposed rule would require administrators to ensure the existence of a website at which plan participants can access covered disclosures. The Department understands that very modest one-time costs would be incurred to comply with this condition of the proposed safe harbor. This is based on the Department's assumption that nearly all plans have institutional recordkeepers, third-party administrators, trustees, or investment providers that have compliant or easily adaptable platforms that most plans would rely on for compliance. The Department acknowledges that a small fraction of plans without institutional recordkeepers, third-party administrators, or investment providers may incur costs to develop or modify their websites. The Department is concerned that, while most small plans use bundled service providers that maintain highly functional websites, those few small plans that do not are less likely than larger plans to have their own websites, and, thus, are more likely to bear the cost burden associated with this requirement. The Department, however, does not have sufficient data to estimate such costs. The Department solicits comments regarding the fraction of plans, particularly the fraction of small plans, that would need to develop or modify a website in order to rely on this proposed safe harbor rule, and how the burden on small plans can be minimized while encouraging plans to furnish disclosures electronically.

approximately 60 million participants (44 percent of 136 million) receive disclosures by mail, while 56 percent of participants currently receive disclosures electronically.

¹⁰² This estimate is based on \$36 million mailing costs (approximately 60 million notices * \$0.60) and \$14 million preparation costs incorporating an in-house clerk's time to prepare for mailing (approximately 330,000 hours * \$64.20 hourly rate of mailing clerk).

¹⁰³ For newly hired employees, the Department assumes that they will receive the Initial Notice in their new employee packets, as it will be incorporated into a part of new employee intake process, thus employers incur only negligible costs in subsequent years.

⁹⁹ For newly hired employees, it is assumed that they will receive the Initial Notice and Right to opt out in their new employee packets, as it will be incorporated into a part of new employee intake process, thus employers incur only negligible costs in subsequent years.

Paragraph (f)(4) of the proposal requires plan administrators to take certain actions if they are alerted that a covered individual's electronic address has become invalid or inoperable, such as if a notice of internet availability sent to that address is returned as undeliverable. In such circumstances, the administrator must (1) promptly take reasonable steps to cure the problem (for example, by furnishing a notice of internet availability to the covered individual's secondary electronic address that is valid and operable, if available, or obtaining a new valid and operable electronic address for the covered individual), or (2) treat the covered individual as if he or she made an election to opt out of electronic disclosure under paragraph (f)(2) of the proposal. If the covered individual is treated as if he or she opted out, the plan administrator must furnish to the covered individual, as soon as is reasonably practicable, a paper version of the covered document identified in the undelivered notice of internet availability. To satisfy this requirement, plan administrators would incur costs associated with detecting invalid or inoperable electronic addresses, taking appropriate actions to remedy the problem, and/or treating those covered individuals as if they opted out of electronic disclosure and furnishing covered documents to them via mail.

Some plan administrators would incur costs to purchase software to detect the validity and operability of electronic addresses due to this requirement. The Department believes, however, that most plan administrators already have such features built into their electronic delivery systems. The Department assumes that a small fraction, approximately one percent, of plans currently do not have such

features built in to their systems, and thus, would incur costs to purchase software to allow them to verify whether electronic notices are delivered, bounced back, opened, and clicked through.¹⁰⁴ The Department estimates these plan administrators would incur approximately \$2.5 million in aggregate annual costs to purchase such software.¹⁰⁵ The Department invites comments on costs associated with monitoring the validity and operability of electronic addresses, particularly how many plans currently lack these capabilities and also whether these types of software are widely available for types of electronic communications other than email such as texts and mobile applications.

Plan administrators also would incur costs to remedy failed delivery of internet availability notices. The Department assumes that before mailing out covered documents to the recipients of an undelivered notice of internet availability, plan administrators would choose the option of resolving issues that are relatively easier to fix such as attempting to redeliver bounced emails or reaching out to covered employees to obtain updated electronic addresses. However, it may be difficult for plan administrators to remedy failed delivery for certain covered individuals, such as those who have separated from service. Plan administrators consequently are likely to treat at least some such covered individuals as opting out of electronic delivery. Although the Department acknowledges that plan administrators would spend time attempting to correct failed delivery as provided in paragraph (f)(4) of the proposal, it does not have sufficient data to quantify associated costs. The Department, however, assumes that plan administrators always would select the least costly and most

efficient option. Therefore, if obtaining updated electronic addresses were too burdensome, the Department assumes that the plans would furnish covered documents identified in the undelivered notice of internet availability to those participants by mail.

For purposes of this regulatory impact analysis, the Department assumes that this requirement would increase the global out-out rate by 0.5 percentage points relative to what it otherwise have been in each year as plans furnish covered disclosures by mail to covered individuals with invalid or inoperable electronic addresses.¹⁰⁶ The Department assumes that plan administrators would exercise due diligence to remedy the problem by reaching out to participants with invalid or inoperable electronic addresses rather than simply treating them as participants globally opting out of electronic delivery; therefore, this increase in the global opt-out rate would not compound over time. The 0.5 percentage point increase in the global opt-out rate is reflected in the cost savings estimates for the seven covered documents.

This proposed rule would provide a comprehensive alternative to the 2002 safe harbor, such that all participants and beneficiaries may be easily covered. Although some plan sponsors currently using the 2002 safe harbor may prefer to switch entirely to the proposed alternative, the Department assumes that most will maintain their existing systems and use the proposed rule to cover individuals that fall outside of the existing safe harbor.

(v) Quantified Net Cost Savings

The Department's estimates of the net cost savings from the proposed regulations are summarized below.

TABLE—ESTIMATED COST SAVINGS ATTRIBUTABLE TO THE PROPOSED RULE

[\$ million]

	1st Year	2nd Year	3rd Year	Total over 10 years
Cost Savings from eliminating printing & mailing costs:				
Summary Plan Description (SPD)	\$76	\$76	\$76	\$741
Summary of Material Modification (SMM)	15	15	15	151
Summary Annual Report (SAR)	23	23	23	225

¹⁰⁴ The Department understands that software is commercially available to produce a list of email addresses that have bounced back with the owners' name, export the list into different formats, and, in certain circumstances, remove invalid email addresses from the list. Such software also generates and reports relevant statistics such as bounce rate, open rate and click-through rate. Some software has the capability to automatically re-attempt delivery depending on the reasons of failed delivery.

¹⁰⁵ The Department gathered pricing information for five commercial software packages that ranged

from \$10 per month to \$320 per month depending on the volume and sophistication of features available. Taking the average of basic level price of these five products, the Department assumes that it would cost \$28.2 per month (\$338.4 per year) to subscribe. Assuming 7,392 plans would purchase this type of product, the Department estimates that the aggregate costs would total an estimated \$2.5 million (7,392 plans * \$338.40).

¹⁰⁶ One industry report indicates that a well-targeted and maintained email list yields on average 1.06% bounce rate. See <https://www.campaignmonitor.com/resources/guides/>

[email-marketing-benchmarks/](https://www.campaignmonitor.com/resources/guides/email-marketing-benchmarks/) for more information. For another example, EBBA's newsletter email deliveries yield a 4% bounce back rate. Although the Department's assumed 0.5% bounce back rate is lower than the information discussed here, the Department believes that in general, plan administrators are able to generate and maintain more accurate and current electronic addresses for covered individuals.

TABLE—ESTIMATED COST SAVINGS ATTRIBUTABLE TO THE PROPOSED RULE—Continued
[\$ million]

	1st Year	2nd Year	3rd Year	Total over 10 years
Annual Funding Notice	13	13	13	129
404(a)(5)/404(c) Disclosure	42	42	42	411
Annual QDIA Notice	8	8	8	79
Pension Benefits Statement	112	111	111	1,085
Subtotal: Gross Cost Savings [1]	289	290	289	2,821
Costs imposed by the proposed rule:				
Website	23	16	16	154
Initial Notification and Right to Opt out	90	0	0	90
Notice of Internet Availability	33	17	17	170
Subtotal: Costs of the proposed rule [2]	146	33	32	413
Total Net Cost Savings: [1]–[2]	144	257	257	2,408

Note: Totals in table may not sum precisely due to rounding.
Discounted at three percent.

The estimated cost savings of each covered disclosure, \$289 million for the first year, in the Table reflect the Department's assumption that approximately 81.5 percent of participants who currently receive paper copies of covered documents by mail would receive covered documents electronically under the proposed rule, while 18.5 percent would elect to receive such documents by mail.¹⁰⁷ This assumption is based on the American Community Survey (ACS) estimate that about 82 percent of U.S. households had internet subscriptions in 2016.¹⁰⁸ This assumption may overstate the cost savings in some circumstances, because some participants with internet access at home may opt out because they prefer to receive paper copies. In other circumstances, however, this assumption may understate the cost savings, because households holding defined contribution plan accounts tend to have higher internet access rates and are more comfortable navigating online, which could lead to a lower opt-out rate.¹⁰⁹ In projecting cost savings for 10

years, the Department assumes that in the 10th year this opt-out rate will gradually decrease to only seven and half percent of those participants currently receiving documents by mail.¹¹⁰ The Department solicits comments regarding any relevant information about the share of recipients that would elect to opt out and request to receive print disclosures by mail.

(vi) Non-Quantified Costs (Potential Adverse Impacts)

Although overall 82 percent of U.S. households had access to the internet at home in 2016, the data indicate that the following persons have lower rates of internet-access at home: Limited English-speaking households (63%), households with income less than \$25,000 (59%), households where the head of the household is age 65 or older (68%), black households (73%), households in nonmetropolitan areas of the South (69%), and households where the head of the household obtained a

high school diploma or less (56%).¹¹¹ Responding to these relatively lower internet access rates for certain demographics, ICI/ARA pointed out in a letter to the Department that households with defined contribution (DC) plan accounts tend to have higher internet access rates. For example, ICI/ARA stated that among households with DC accounts, 79 percent of households with income between \$20,000 and \$39,999 use the internet and 76 percent of households where the head of the household is age 65 or older use the internet.¹¹² However, these numbers confirm that some groups owning DC plan accounts still have a lower usage rate than the overall 93 percent internet usage rate of DC plan account holders.

Another subpopulation worth noting is households connected to the internet only through smartphones. Racial/ethnic minorities and low-income households are more likely to comprise these smartphone-only households.¹¹³ In 2015, approximately 8 percent of households in the U.S. depended on handheld devices for internet connectivity, and 16 percent of households where the head of the household obtained a high school diploma or less are handheld device-only households. In contrast, only 3 percent of households where the head of the household obtained a Bachelor's degree or higher are handheld device-

¹⁰⁷ Among participants who currently receive disclosures by mail under the existing safe harbor, 18.5 percent are assumed to opt out of electronic delivery and receive paper copies. This 18.5 percent global opt-out rate reflects 0.5 percentage point upward adjustment due to failed delivery of internet availability notice such as bounced emails. Without this adjustment, the global opt-out rate would be 18 percent, which is consistent with the data from American Community Survey 2016.

¹⁰⁸ Ryan, "Computer and Internet Use in the United States."

¹⁰⁹ According to one study, for households owning DC plan accounts, 93 percent used the internet in 2016. See Peter Swire and DeBrae Kennedy-Mayo, "Delivering ERISA Disclosure for Defined Contribution Plans," *peterswire.net* (April 2018). Another survey suggests that 99 percent of respondents have a computer at home or work that is connected to the internet and 84 percent agree

that employers can provide retirement plan information electronically if they can opt out at any time. This implies approximately 83 percent (99% × 84%) have internet access and would agree to receive plan information electronically, which is similar to the Department's assumption of 82 percent. See "Improving Outcomes with Electronic Delivery of Retirement Plan Documents," *Quantria Strategies* (June 2015), Appendix A—Plan Participant Views on Paper Versus Electronic Delivery of Plan Documents.

¹¹⁰ Based on the American Community Survey (ACS) data from 2016 and 2017, the Department assumes the opt-out rate for the 2nd year is 16 percent. The Department's projection on the opt-out rates is based on these two recent years of ACS data, and gradually declining but adjusted to not reach a zero opt-out rate far in the future. This also reflects the 0.5 percentage point upward adjustment due to bounced emails.

¹¹¹ Ryan, "Computer and Internet Use in the United States."

¹¹² Investment Company Institute and American Retirement Association Letter to the Department of Labor, dated April 30, 2018.

¹¹³ Ryan, "Computer and Internet Use in the United States."

only households.¹¹⁴ Although connected to the internet, these households face some limitations in fully harnessing the efficiency, capacity, and convenience offered by modern technology. Therefore, accessing disclosures online for these households may not be as convenient as for households with other means to access the internet.

For participants without ready internet access, this proposed rule may create additional impediments to accessing critical plan information by requiring them to go to a public library or family members' home to access the information if they do not opt out or request printed documents. As stated earlier in this preamble, the proposed rule would require covered individuals to receive a notice of internet availability containing statements regarding their rights to (1) request and obtain a paper version of the covered document, free of charge, and receive an explanation of how to exercise this right, and (2) opt out of receiving all covered documents electronically and an explanation of how to exercise this right. One of the Department's goals in establishing the proposed framework was to be certain that, regardless of the delivery method chosen by a plan administrator, covered individuals who wish to receive paper copies of covered documents would be able to do so without undue burden. Further, a covered individual who prefers to receive all covered documents in paper may opt out of receiving any covered documents electronically. This global opt-out provision enables a participant who wants to have all of her disclosures in paper, without having to make repeated requests, to elect to do so; she will receive all covered documents in paper.

If covered individuals in groups with low internet-access rates fail to request hard copies of disclosures or exercise their opt-out rights due to inertia or if they face impediments to accessing the covered documents on the internet (if, for example, they forget their password that must be entered when the plan's internet address takes them to a login page), the negative impacts imposed on these individuals would offset some benefits of this proposed regulation. The Department does not have sufficient data to quantify these negative impacts, which most likely would be borne disproportionately by demographics such as the low-income, the elderly, and

workers in rural areas. If these unintended consequences were to occur, plan administrators might take steps to limit their impact, such as conducting outreach with these demographics and communicate their plan's electronic disclosure policy effectively, providing sufficient time for participant education before implementing any electronic disclosure changes, and employing simple processes for requesting print documents, opting out of electronic disclosure, and establishing and resetting passwords. Such steps might help ensure that the cost savings discussed above would be realized without unduly burdening vulnerable subpopulation groups.

Another potential negative impact is that covered individuals' confidential information could be intentionally or unintentionally breached due to increased use of electronic media to furnish covered documents to them. Paragraph (e)(3) of the proposal requires the administrator to take measures reasonably calculated to ensure that the website protects the confidentiality of personal information relating to any covered individual. As generally required by ERISA section 404, the Department expects that many administrators, or their service or investment providers, already have secure systems in place to protect covered individuals' personal information, which should reduce the possibility that confidentiality breaches would occur.

(vii) Benefits

Although this proposed regulation generally would not require plan sponsors to develop formats or content beyond that which satisfies disclosure requirements in printed form, some plan sponsors may elect to develop new formats and content for electronic disclosures. Such formats may include interactive interfaces that involve hot-links and/or multimedia presentations, all of which could improve the quality and accessibility of information for participants. Furthermore, for defined contribution plans, the account information is available to participants continuously and updated in real-time, which allows them to effectively manage their accounts. Using assistive technology such as screen readers, some electronic disclosures could be read to the visually impaired, thus making disclosures more accessible to a wide participant population. Some technology features, such as online translation, also could enhance the ability of covered individuals with limited English proficiency to

understand their disclosures, which would assist their decision-making process. Some plans may create apps with interactive features that will allow participants to navigate with ease and conduct account transactions. Although the Department does not have sufficient data to quantify these benefits, it underscores that effective design using currently available technology could make disclosures more accessible and relevant to recipients. The Department solicits comments about how to improve the effectiveness of ERISA disclosures, particularly by incorporating recent technological features in the companion Request for Information.

(4) Regulatory Alternatives

In conformance with Executive Order 12866, the Department considered several regulatory approaches in developing this proposed rule, which are discussed below.

(i) Covering Welfare Benefit Plan Disclosures

As discussed earlier in section (B)(2)(ii) of this document, while the Department considered including welfare benefit plan disclosures in the proposal, it has concluded not to include them. Therefore, paragraph (c)(2) of the proposed rule currently is reserved so that the Department can study the future application of the new safe harbor to documents that must be furnished to participants in employee welfare benefit plans. This reservation follows the directive of Executive Order 13847, which focuses the Department's review on retirement plan disclosures.

Although the Department does not interpret the Order's directive as limiting the Department's ability to take action with respect to employee welfare benefit plans, especially to the extent similar policy goals, including the reduction of plan administrative costs and improvement of disclosures' effectiveness, may be achieved, this proposal is limited to retirement plan disclosures.

Welfare plan disclosures, such as group health plan disclosures, may raise different considerations, such as pre-service claims review and access to emergency and urgent health care. Moreover, the Department shares interpretive jurisdiction over many group health plan disclosures with the Treasury Department and the Department of Health and Human Services. In considering any possible new electronic delivery safe harbor for group health plan disclosures in the future, the Department would want to consult with these other Departments. Accordingly, focusing its attention first

¹¹⁴ Jamie M. Lewis, "Handheld Device Ownership: Reducing the Digital Divide?" SEHSD Working Paper 2017-04 (U.S. Census Bureau, 2017).

on retirement disclosures is a sound and efficient use of the Department's resources.

(ii) **Conforming With Electronic Delivery Approaches Adopted by Other Departments and Agencies**

Executive Order 13847 directed the Department to coordinate with the Treasury Department in exploring the potential for broader use of electronic delivery as a way to improve the effectiveness of disclosures and to reduce their associated costs and burdens. Following discussions with Treasury staff, the Department considered as one of its regulatory alternatives adopting an approach similar to 26 CFR 1.401(a)–21 relating to the use of an electronic medium for disclosures.¹¹⁵ As discussed in Section A(5)(iii), above, the Treasury regulation generally provides that a plan may use an electronic medium to provide applicable notices only for a participant who affirmatively consents to receive the notice electronically or who has the “effective ability to access” the electronically delivered notice.¹¹⁶ In the past, a number of parties have encouraged the Department to adopt this approach, which they interpreted to be more flexible than the Department's 2002 safe harbor.¹¹⁷ The proposed rule does not adopt 26 CFR 1.401(a)–21 verbatim. In light of Executive Order 13847 requiring consultation with the Treasury Department, this proposal is intended to align with 26 CFR 1.401(a)–21(c) for applicable notices.

The Department also consulted with other relevant regulators, including the Securities and Exchange Commission. The Department's proposed approach, discussed in Section B above, resembles the “notice and access” approach taken by the Securities and Exchange

Commission for certain investor disclosures.¹¹⁸ The Department believes that this approach significantly modernizes electronic delivery and, importantly, facilitates a layered approach—participants and beneficiaries will be notified directly about the availability of important plan disclosures on a regular basis and can access the full disclosures online at any time. Administrators who wish to furnish disclosures on paper, or electronically in accordance with the 2002 safe harbor, may continue to do so under the proposed alternative method. Although the basic framework of the proposal is similar to the Commission's guidance for furnishing certain disclosures, such as proxy materials and shareholder reports, it also differs, because ERISA disclosures that may be furnished pursuant to the Department's guidance impact a different segment of the population, in a different manner, than the investor disclosures covered by the Commission's guidance. Accordingly, the specific provisions of the proposal in this document are in some ways broader, and in other ways narrower, than the Commission's rules. For example, the Department proposed applying the “notice and access” standard to a larger set of required disclosures. The proposal is structured in its entirety as a safe harbor—administrators will not, under the proposal, be required to make any specific disclosures available on a website (unless otherwise required by different Department rules). Further, paragraph (i) of the Department's proposal includes a provision that permits administrators to furnish one annual notice of internet availability covering a subset of required disclosures, as opposed to requiring in all cases that a separate notice of internet availability be required for each disclosure. Of course, both the Department and the Commission are dedicated to protecting participants and investors, respectively by including appropriate safeguards in their disclosure rules, for example by always permitting them to request paper copies of required disclosures or to opt out of electronic delivery altogether.

(5) **Paperwork Reduction Act**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Department is soliciting comments concerning the proposed information collection requests (ICR) incorporated in the proposed rule relating to use of electronic communication by employee benefit plans. A copy of the ICR may be obtained by contacting the PRA addressee shown below or at <https://www.RegInfo.gov>.

The Department has submitted a copy of the proposed information collection to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of publication of the proposed ICR to ensure their consideration.

¹¹⁵ The Treasury Department and the IRS have issued a series of guidance on electronic delivery of required disclosures, beginning with IRS Notice 99–1 and most recently in 26 CFR 1.401(a)–21(c) issued in 2006 on the “Use of Electronic Media for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents.” See, e.g., Notice 99–1 (1999–2 I.R.B. 8), Announcement 99–6 (1999–4 I.R.B. 24), T.D. 8873, 65 FR 6001 (Feb. 8, 2000), and T.D. 9294, 71 FR 61877 (Oct. 20, 2006).

¹¹⁶ See 26 CFR 1.401(a)–21(b) and (c).

¹¹⁷ For example, in comments submitted to the ERISA Advisory Council in 2017, the Department was encouraged to adopt the Treasury Department's approach. See Davis & Harman LLP, statement to the ERISA Advisory Council, June 7, 2017, p. 8, at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans-hadley-written-statement-06-07.pdf>. See also Groom Law Group, June 7, 2017, p. 4, at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/about-us/erisa-advisory-council/2017-mandated-disclosure-for-retirement-plans-levine-and-winters-written-statement-06-07.pdf>.

¹¹⁸ See 83 FR 29158 (June 22, 2018), permitting issuers to transmit certain shareholder reports by posting on a website specified in a required notice to investors; 70 FR 44722 (Aug. 3, 2005), permitting “access equals delivery” framework for final prospectus; 72 FR 42221 (Aug. 1, 2007), requiring issuers to post proxy materials on a specified website and furnish a notice of internet availability to shareholders; and 75 FR 9073 (Feb. 26, 2010), providing additional flexibility as to the format of the notice of availability for proxy materials.

PRA Addressee: Address requests for copies of the ICR to Joseph Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210. Telephone (202) 693-8410; Fax: (202) 219-5333. These are not toll-free numbers. ICRs submitted to OMB also are available at <https://www.RegInfo.gov>.

Dates: The Department has requested that OMB approve or disapprove the collection of information by December 23, 2019. Comments should be submitted to OMB by November 22, 2019 to ensure their consideration.

As discussed above, the proposed regulation would create two new information collections that are subject to the PRA: The annual notice of internet availability (§ 2520.104b-31(d)(2)) and the initial notification (§ 2520.104b-31(g)). These information collections are discussed below. Also, as discussed below, the proposed rule also would reduce costs for some of the Department's existing information collections.

The Department is unaware of any data source that would directly identify the number of plans that will decide to use the proposed new alternative safe harbor. Therefore, for purposes of this analysis, the Department conservatively assumes that all plans will use the proposed alternative safe harbor for at least some of their covered individuals. As discussed in the Cost Saving section above, the Department has estimated that plans using the proposed new safe harbor would incur a one-time start-up cost to prepare the annual notice of internet availability, and prepare and distribute by paper the initial notification. The proposed rule's impact on the hour and cost burden associated with the Department's information collections are discussed below.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Consent to receive employee benefit plan disclosures electronically.

Type of Review: Revision of currently approved collection of information.

OMB Control Number: 1210-0121.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 750,000.

Responses: 114,548,000.

Estimated Total Burden Hours: 1,209,000.

Estimated Total Costs: \$40,652,000.

The expiration date for this information collection is May 31, 2021.

As discussed earlier in this preamble, on April 9, 2002, the Department

published a notice of final rulemaking on electronic disclosure and recordkeeping issues¹¹⁹ to establish a safe harbor for the use of electronic media to satisfy the general furnishing requirement. Based on public comments, the final regulation expanded the list of disclosures addressed by the safe harbor to disclosures under Title I generally. The final regulation also provided for the receipt of required disclosures at locations other than the workplace. For those participants and beneficiaries offered the opportunity and wishing to receive disclosures via electronic information systems outside the workplace, the final regulation requires advance affirmative consent on the part of the recipient.¹²⁰

Before consenting, the plan administrator must provide a participant or beneficiary with a clear and conspicuous statement indicating: The types of documents to which the consent would apply; that consent may be withdrawn at any time; the procedures for withdrawing consent and updating necessary information; the right to obtain a paper copy, free of charge; and any hardware and software requirements.

The Department is proposing to revise this information collection by adding the information collections that are associated with the alternative safe harbor in this proposal that are discussed above. This will increase the number of respondents for the information collection by 703,000, the responses by 109,756,000, the hour burden by 1,189, and the cost burden by \$40,412.

Although the foregoing discussion pertains to the information collections contained in the existing safe harbor and proposed alternative new safe harbor, the Department's burden estimates for several existing information collections that are covered disclosures also would be affected by the proposal. Specifically, as a result of meeting the conditions of this existing and proposed new alternative safe harbors, the burden associated with the following existing covered disclosures that are information collections covered by the PRA would be reduced: The SPD, the SMM, the SAR, the annual funding notice, disclosures for participant directed individual account plans under ERISA section 404(a)(5), and the QDIA notice. The burden reductions resulting from a wider adoption of electronic delivery of covered disclosures that

would be facilitated by this proposed regulation are estimated based upon cost and hour burdens for the Department's existing ICRs for the covered disclosures as adjusted for the number of plan and participants assumed to rely on the proposed rule to send and receive the covered disclosures electronically. The Department discusses these ICRs and its revised estimates below. The Department has submitted the revised information collections for these covered disclosures to OMB for review in accordance with 44 U.S.C. 3507(d).

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary Plan Description Requirements under the ERISA.

Type of Review: Revised Collection.

OMB Control Number: 1210-0039.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 3,033,000.

Responses: 112,733,000.

Estimated Total Burden Hours: 164,000.

Estimated Total Costs: \$233,051,000.

Description: Section 104(b) of ERISA requires the administrator of an employee benefit plan to furnish plan participants and certain beneficiaries with an SPD that describes, in language understandable to an average plan participant, the benefits, rights, and obligations of participants in the plan. The information required to be contained in the SPD is set forth in section 102(b) of ERISA. To the extent there is a material modification in the terms of the plan or a change in the required content of the SPD, section 104(b)(1) of ERISA requires the plan administrator to furnish participants and specified beneficiaries with a summary of material modifications (SMM) or summary of material reductions (SMR). The Department has issued regulations providing guidance on compliance with the requirements to furnish SPDs, SMMs, and SMRs. These regulations, which are codified at 29 CFR 2520.102-2, 2520.102-3, and 29 CFR 2520.104b-2 and 29 CFR 2520.104b-3, contain information collections for which the Department has obtained OMB approval under OMB Control No. 1210-0039. The current approval is scheduled to expire on October 31, 2022.

The Department estimates that due to plan administrators' use of the proposed alternative safe harbor to provide disclosures to participants who currently are receiving them by mail, the hour burden will be reduced by 125,000 and the cost burden by \$90,969,000.

¹¹⁹ 67 FR 17264.

¹²⁰ This requirement is incorporated at 29 CFR 2520.104b-1(c)(2)(ii)(A), (B), and (C).

Agency: Employee Benefits Security Administration, Department of Labor.
Title: ERISA Summary Annual Report Requirement.

Type of Review: Revised Collection.

OMB Number: 1210–0040.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 744,000.

Responses: 170,629,000.

Estimated Total Burden Hours: 1,817,000.

Estimated Total Costs: \$26,091,000.

Description: ERISA Section 104(b)(3) and the regulation published at 29 CFR 2520.104b–10 require, with certain exceptions, that administrators of employee benefit plans furnish annually to each participant and certain beneficiaries a summary annual report (SAR) meeting the requirements of the statute and regulation. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides current information about the plan and assists those who receive it in understanding the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues. EBSA previously submitted the ICR provisions in the regulation at 29 CFR 2520.104b–10 to OMB, and OMB approved the ICR under OMB Control No. 1210–0040. The ICR approval is scheduled to expire on June 30, 2022.

The Department estimates that due to plan administrators' use of the proposed alternative safe harbor to provide disclosures to participants who currently are receiving them by mail, the cost burden will be reduced by \$23,132,000.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Funding Notice for Defined Benefit Pension Plans.

Type of Review: Amendment of a currently approved collection of information.

OMB Control Number: 1210–0126.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 33,000.

Responses: 69,453,000.

Estimated Total Burden Hours: 713,000.

Estimated Total Costs: \$7,510,000.

Description: Section 101(f) of the ERISA sets forth requirements applicable to furnishing annual funding notices. Before the enactment of the Pension Protection Act of 2006 (PPA), section 101(f) applied only to multiemployer defined benefit plans. The Department has issued multiple

final regulations with regard to this provision, most recently on February 2, 2015 (80 FR 5625). Section 501(a) of the PPA amended section 101(f) of ERISA and made significant changes to the annual funding notice requirements. These amendments require administrators of all defined benefit plans that are subject to Title IV of ERISA, not only multiemployer plans, to provide an annual funding notice to the Pension Benefit Guaranty Corporation (PBGC), to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan. An annual funding notice must include, among other things, the plan's funding percentage, a statement of the value of the plan's assets and liabilities and a description of how the plan's assets are invested as of specific dates, and a description of the benefits under the plan that are eligible to be guaranteed by the PBGC. The ICR was approved by OMB under OMB Control Number 1210–0126, which is scheduled to expire on August 31, 2021.

The Department estimates that due to plan administrators' use of the proposed alternative safe harbor to provide disclosures to participants who currently are receiving them by mail, the cost burden will be reduced by \$12,676,000.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures for Participant Directed Individual Account Plans.

Type of Review: Revised Collection.

OMB Control Number: 1210–0090.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 547,000.

Responses: 669,852,000.

Estimated Total Burden Hours: 6,439,000.

Estimated Total Costs: \$209,764,000.

Description: Plan administrators are required to provide plan- and investment-related fee and expense information to participants and beneficiaries in all participant directed individual account plans (e.g., 401(k) plans) for plan years beginning on or after January 1, 2011. The Department previously requested review of this information collection and obtained approval from OMB under OMB control number 1210–0090. The ICR is scheduled to expire on April 30, 2022.

The Department estimates that due to plan administrators' use of the proposed alternative safe harbor to provide disclosures to participants who

currently are receiving them by mail, the cost burden will be reduced by \$42,307,000.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Participant Directed Individual Account Plans.

Type of Review: Revised collection.

OMB Control Number: 1210–0132.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 276,000.

Responses: 36,250,000.

Estimated Total Burden Hours: 192,000.

Estimated Total Burden Costs: \$1,842,000.

Description: Section 404(c) of ERISA states that participants or beneficiaries who can hold individual accounts under their pension plans, and who can exercise control over the assets in their accounts "as determined in regulations of the Secretary [of Labor]" will not be treated as fiduciaries of the plan. Moreover, no other plan fiduciary will be liable for any loss, or by reason of any breach, resulting from the participants' or beneficiaries exercise of control over their individual account assets.

The Pension Protection Act (PPA), Public Law 109–280, amended ERISA section 404(c) by adding subparagraph (c)(5)(A). The new subparagraph says that a participant in an individual account plan who fails to make investment elections regarding his or her account assets will nevertheless be treated as having exercised control over those assets so long as the plan provides appropriate notice (as specified) and invests the assets "in accordance with regulations prescribed by the Secretary [of Labor]." Section 404(c)(5)(A) further requires the Department of Labor (Department) to issue corresponding final regulations within six months after enactment of the PPA. The PPA was signed into law on August 17, 2006. The Department of Labor issued a final regulation under ERISA section 404(c)(5)(A) offering guidance on the types of investment vehicles that plans may choose as their "qualified default investment alternative" (QDIA). The regulation also outlines two information collections. First, it implements the statutory requirement that plans provide annual notices to participants and beneficiaries whose account assets could be invested in a QDIA. Second, the regulation requires plans to pass certain pertinent materials they receive relating to a QDIA to those participants and beneficiaries with assets invested in

the QDIA as well to provide certain information on request. The ICRs are approved under OMB Control Number 1210-0132, which is scheduled to expire on June 30, 2020.

The Department estimates that due to plan administrators' use of the proposed alternative safe harbor to provide disclosures to participants who currently are receiving them by mail, the cost burden will be reduced by \$8,117,000.

(6) Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.¹²¹ The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104-20, 2520.104-21, 2520.104-41, 2520.104-46 and 2520.104b-10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

Further, while some large employers may have small plans, in general small

employers maintain most small plans. Thus, EBSA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). Therefore, EBSA requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

The Department has determined that this proposed rule is likely to have a significant impact on a substantial number of small entities based on the definition considered appropriate by EBSA as based on section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants. Therefore, the Department provides its IRFA of the proposed rule, below.

(i) Need for and Objectives of the Rule

Pursuant to section 505 of ERISA, the Secretary of Labor has broad authority “to prescribe such regulations as he finds necessary or appropriate to carry out the provisions of [Title I] of ERISA.” As discussed earlier in this preamble, the proposed rule offers a voluntary alternative method to broaden the use of electronic delivery of disclosures and, thus, would reduce the costs and burdens that disclosures impose on employers and other plan fiduciaries responsible for their production and distribution. By reducing printing and mailing costs of covered disclosures, the proposed rule would benefit plans regardless of the size, large and small. Thus, the Department intends and expects that the proposed rule would deliver benefits to the participants of many small plans and their families, as well as many small plans themselves.

(ii) Affected Small Entities

The majority of private retirement plans are small plans with fewer than 100 participants. The 2016 Form 5500 filings show out of total 702,000 private retirement plans approximately 87 percent, 613,000 ERISA-covered retirement plans were small plans with fewer than 100 participants.¹²² However, small plans cover only a fraction of total participants. In 2016, over 136 million individuals participated in private retirement plans. Out of these 136

million participants, over 12 million participants, less than 10 percent, were in these small plans. The Department estimates that slightly more than half of these 12 million participants of small plans already receive disclosures electronically. If this rule is finalized, the remaining half of participants are expected to be covered by this proposed rule, and therefore receive the notice of internet availability, and access the covered disclosures on their plan's website.

(iii) Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed above, by broadening a base of participants who access covered disclosures online, the proposed rule would yield cost savings to retirement plans including small plans. These cost savings could in turn be used to defray other plan-related expenses, and thus lower the overall fees charged to participants. In addition, although not required by the proposed rule, disclosures that effectively use modern technology features can better assist participants with disabilities or limited English skills to understand the content of disclosures, which will allow them to better manage their plan accounts. Both large and small plans would benefit from the cost savings and other benefits that result from wider use of e-disclosure.

As discussed in the preamble, this proposed rule is a voluntary safe harbor. Therefore, plan administrators would not be required to make any specific disclosures available on a website. This proposed rule would simply provide an additional method for plan administrators to deliver covered disclosures to participants and beneficiaries electronically and would not change any underlying reporting, disclosure and recordkeeping compliance requirements of plans under ERISA. Therefore, the Department does not believe this proposed rule would impose any additional reporting and recordkeeping compliance requirements on small entities.

(iv) Duplicate, Overlapping, or Relevant Federal Rules

The proposed rule would provide retirement plans with an alternative method to furnish covered disclosures electronically. In an effort to assess how to best disseminate information electronically to workers participating in employee benefit plans without duplicating or overlapping other relevant regulatory requirements, the Department consulted with other relevant regulators, including the Treasury Department and the Securities

¹²¹ The Department consulted with the Small Business Administration in making this determination as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c).

¹²² Private Pension Plan Bulletin 2016, Employee Benefits Security Administration, Department of Labor.

and Exchange Commission. The Treasury Department has interpretive jurisdiction over certain notices relating to pension plans covered by Title 1 of ERISA, but the covered disclosures under the proposed rule are exclusively in the jurisdiction of the Department. Although the Securities and Exchange Commission has jurisdiction over the issuers of investment products that often are used as ERISA employee retirement plan investments, as well as some service providers to ERISA-covered plans, it has no jurisdiction over ERISA-covered pension plans.

(iv) Significant Alternatives Considered

The RFA directs the Department to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. As discussed above, the Department expects that this proposed rule, as currently drafted, would generate significant cost savings for small plans as well as large plans by eliminating materials, printing and mailing costs.

The Department considered an option to relax the notice of internet availability by emailing the combined notice of internet availability less frequently than on an annual basis. One of the disclosures that can be included in the combined annual notice of internet availability is a Pension Benefit Statement. This pension benefit statement is required to be furnished on a quarterly basis for certain types of plans. If the combined annual notice of internet availability is to be sent less frequently than an annual basis, for example, every other year, some participants may not know their benefit statements are available online, and thus not access them for an extended period of time. In the Department's view, this can have detrimental impacts on participants' retirement savings, while resulting in only minimal cost savings. Therefore, the Department determines that the current proposal is a more balanced approach that provides sufficient protection for participants while generating substantial cost savings. The Department further determines that this current approach does not impose any undue burden on small plans nor place small plans in disadvantaged positions.

(7) Congressional Review Act

The proposed rule is subject to the Congressional Review Act (CRA) provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General

for review. The proposed rule is a "major rule" as that term is defined in 5 U.S.C. 804(2), because it likely would result in an annual effect on the economy of \$100 million or more.

(8) Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal would not include any Federal mandate that the Department expects would result in such expenditures by State, local, or tribal governments, or the private sector. This is because the proposal merely would provide an alternative safe harbor for pension benefit plans subject to the ERISA to use electronic media to furnish required disclosures to participants and beneficiaries.

(9) Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. E.O. 13132 requires Federal agencies to follow specific criteria in forming and implementing policies that have "substantial direct effects" on the States, the relationship between the national Government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the final rule.

In the Department's view, these proposed regulations would not have federalism implications because they would not have a direct effect on the States, the relationship between the national Government and the States, and on the distribution of power and responsibilities among various levels of government. The Department welcomes input from affected States and other interested parties regarding this assessment.

List of Subjects in 29 CFR Part 2520

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor

proposes to amend 29 CFR part 2520 as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The authority citation for part 2520 continues to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–1031, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2011 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–5 also issued under sec. 501 of Pub. L. 109–280, 120 Stat. 780, and sec. 105(a), Pub. L. 110–458, 122 Stat. 5092.

■ 2. Add § 2520.104b–31 to read as follows:

§ 2520.104b–31 Alternative method for disclosure through electronic media—Notice and access.

(a) *Alternative method for disclosure through electronic media—Notice and access.* As an alternative to § 2520.104b–1(c), the administrator of an employee benefit plan satisfies the general furnishing obligation in § 2520.104b–1(b)(1) with respect to covered individuals and covered documents, provided that the administrator complies with the notice, access, and other requirements of paragraphs (b) through (k) of this section, as applicable.

(b) *Covered individual.* For purposes of this section, a *covered individual* is a participant, beneficiary, or other individual entitled to covered documents and who, as a condition of employment, at commencement of plan participation, or otherwise, provides the employer, plan sponsor, or administrator (or an appropriate designee of any of the foregoing) with an electronic address, such as an email address or internet-connected mobile-computing-device (e.g., "smartphone") number. Alternatively, if an electronic address is assigned by an employer to an employee for this purpose, the employee is treated as if he or she provided the electronic address.

(c) *Covered documents.* For purposes of this section, a *covered document* is:

(1) *Pension benefit plans.* In the case of an employee pension benefit plan, as defined in section 3(2) of the Act, any document that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of the Act, except for any document that must be furnished upon request.

(2) [Reserved]

(d) *Notice of internet availability*—(1) *General.* The administrator must furnish to each covered individual a notice of internet availability for each covered document in accordance with the requirements of this section.

(2) *Timing of notice of internet availability.* A notice of internet availability must be furnished at the time the covered document is made available on the website. However, if an administrator furnishes a combined notice of internet availability for more than one covered document, as permitted under paragraph (i) of this section, the requirements of this paragraph (d)(2) are treated as satisfied if the combined notice of internet availability is furnished each plan year, and, if the combined notice of internet availability was furnished in the prior plan year, no more than 14 months following the date the prior plan year's notice was furnished.

(3) *Content of notice of internet availability.* A notice of internet availability furnished pursuant to this section must contain the information set forth in paragraphs (d)(3)(i) through (vii) of this section:

(i) A prominent statement, for example as a title, legend, or subject line that reads, "Disclosure About Your Retirement Plan."

(ii) A statement that: "Important information about your retirement plan is available at the website address below. Please review this information."

(iii) A brief description of the covered document.

(iv) The internet website address where the covered document is available. The website address must be sufficiently specific to provide ready access to the covered document. A website address satisfies the standard in the preceding sentence if the address leads the covered individual directly to the covered document. A website address also satisfies the "sufficiently specific" standard if the address leads the covered individual to a login page that provides, or immediately after a covered individual logs on provides, a prominent link to the covered document.

(v) A statement of the right to request and obtain a paper version of the covered document, free of charge, and an explanation of how to exercise this right.

(vi) A statement of the right to opt out of receiving covered documents electronically, and an explanation of how to exercise this right.

(vii) A telephone number to contact the administrator or other designated representative of the plan.

(4) *Form and manner of furnishing notice of internet availability.* A notice of internet availability must:

(i) Be furnished electronically to the address referred to in paragraph (b) of this section;

(ii) Contain only the content specified in paragraph (d)(3) of this section, except that the administrator may include pictures, logos, or similar design elements, so long as the design is not inaccurate or misleading and the required content is clear;

(iii) Be furnished separately from any other documents or disclosures furnished to covered individuals, except as permitted under paragraph (i) of this section; and

(iv) Be written in a manner calculated to be understood by the average plan participant. A notice that uses short sentences without double negatives, everyday words rather than technical and legal terminology, active voice, and language that results in a Flesch Reading Ease test score of at least 60 satisfies the understandability standard in the preceding sentence.

(e) *Standards for internet website.* (1) The administrator must ensure the existence of an internet website at which a covered individual is able to access covered documents.

(2) The administrator must take measures reasonably calculated to ensure that:

(i) The covered document is available on the website no later than the date on which the covered document must be furnished under the Act;

(ii) The covered document remains available on the website until it is superseded by a subsequent version of the covered document;

(iii) The covered document is presented on the website in a manner calculated to be understood by the average plan participant;

(iv) The covered document is presented on the website in a widely-available format or formats that are suitable to be both read online and printed clearly on paper;

(v) The covered document can be searched electronically by numbers, letters, or words; and

(vi) The covered document is presented on the website in a widely-available format or formats that allow the covered document to be permanently retained in an electronic format that satisfies the requirements of paragraph (e)(2)(iv) of this section.

(3) The administrator must take measures reasonably calculated to ensure that the website protects the confidentiality of personal information relating to any covered individual.

(f) *Right to copies of paper documents or to opt out of electronic delivery.* (1) Upon request from a covered individual, the administrator must promptly furnish to such individual, free of charge, a paper copy of a covered document.

(2) Covered individuals must have the right to opt out of electronic delivery and receive only paper versions of some or all covered documents. Upon request from a covered individual, the administrator must promptly comply with such an election.

(3) The administrator must establish and maintain reasonable procedures governing requests or elections under paragraphs (f)(1) and (2) of this section. The procedures are not reasonable if they contain any provision, or are administered in a way, that unduly inhibits or hampers the initiation or processing of a request or election.

(4) The system for furnishing a notice of internet availability must be designed to alert the administrator of a covered individual's invalid or inoperable electronic address. If the administrator is alerted that a covered individual's electronic address has become invalid or inoperable, such as if a notice of internet availability sent to that address is returned as undeliverable, the administrator must promptly take reasonable steps to cure the problem (for example, by furnishing a notice of internet availability to the covered individual's secondary electronic address that is valid and operable, if available, or obtaining a new valid and operable electronic address for the covered individual) or treat the covered individual as if he or she made an election under paragraph (f)(2) of this section. If the covered individual is treated as if he or she made an election under paragraph (f)(2) of this section, the administrator must furnish to the covered individual, as soon as is reasonably practicable, a paper version of the covered document identified in the undelivered notice of internet availability.

(g) *Initial notification of default electronic delivery and right to opt out.* The administrator must furnish to each individual, prior to the administrator's reliance on this section with respect to such individual, a notification on paper that some or all covered documents will be furnished electronically to an electronic address, a statement of the right to request and obtain a paper version of a covered document, free of charge, and of the right to opt out of receiving covered documents electronically, and an explanation of how to exercise these rights.

(h) *Special rule for severance from employment.* At the time a covered

individual who is an employee severs from employment with the employer, the administrator must take measures reasonably calculated to ensure the continued accuracy of the electronic address described in paragraph (b) of this section or to obtain a new electronic address that enables receipt of covered documents following the individual's severance from employment.

(i) *Special rule for consolidation of certain notices of internet availability.* Notwithstanding the requirements in paragraphs (d)(4)(ii) and (iii) of this section, an administrator may furnish one notice of internet availability that incorporates or combines the content required by paragraph (d)(3) of this section with respect to one or more of the following covered documents:

(1) A summary plan description, as required pursuant to section 104(a) of the Act;

(2) A summary of material modification, as required pursuant to section 104(a) of the Act;

(3) A summary annual report, as required pursuant to section 104(b)(3) of the Act;

(4) An annual funding notice, as required pursuant to section 101(f) of the Act;

(5) An investment-related disclosure, as required pursuant to 29 CFR 2550.404a-5(d);

(6) A qualified default investment alternative notice, as required pursuant to section 404(c)(5)(B) of the Act; and

(7) A pension benefit statement, as required pursuant to section 105(a) of the Act.

(j) *Reasonable procedures for compliance.* The conditions of this section are satisfied, notwithstanding the fact that the covered documents described in paragraph (b) of this section are temporarily unavailable for a period of time in the manner required by this section due to unforeseeable events or circumstances beyond the control of the administrator, provided that:

(1) The administrator has reasonable procedures in place to ensure that the covered documents are available in the manner required by this section; and

(2) The administrator takes prompt action to ensure that the covered

documents become available in the manner required by this section as soon as practicable following the earlier of the time at which the administrator knows or reasonably should know that the covered documents are temporarily unavailable in the manner required by this section.

(k) *Effective and applicability dates—*
(1) *Effective date.* This section shall be effective on [date 60 days after date of publication of final rule].

(2) *Applicability date.* This section shall apply to employee benefit plans on the first day of the first calendar year following [date of publication of final rule].

Signed at Washington, DC, October 16, 2019.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2019-22901 Filed 10-22-19; 8:45 am]

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FEDERAL REGISTER

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October 23, 2019

Part III

The President

Notice of October 22, 2019—Continuation of the National Emergency With Respect to the Democratic Republic of the Congo

Presidential Documents

Title 3—

Notice of October 22, 2019

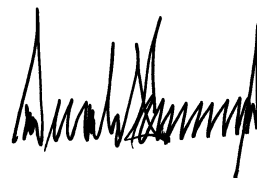
The President

Continuation of the National Emergency With Respect to the Democratic Republic of the Congo

On October 27, 2006, by Executive Order 13413, the President declared a national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo and pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), ordered related measures blocking the property of certain persons contributing to the conflict in that country. The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities and continues to threaten regional stability. The President took additional steps to address this national emergency in Executive Order 13671 of July 8, 2014.

The situation in or in relation to the Democratic Republic of the Congo continues to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13413 of October 27, 2006, as amended by Executive Order 13671 of July 8, 2014, and the measures adopted to deal with that emergency, must continue in effect beyond October 27, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo declared in Executive Order 13413, as amended by Executive Order 13671.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 22, 2019.

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