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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1464

**[Docket ID NRCS–2019–0012]**

**RIN 0560–AA70**

## Regional Conservation Partnership Program; Correction

**AGENCY:** Commodity Credit Corporation (CCC) and Natural Resources Conservation Service (NRCS), USDA.

**ACTION:** Correcting amendment and extension of comment period for interim rule.

**SUMMARY:** CCC is correcting an interim rule that was published in the **Federal Register** on February 13, 2020, to incorporate the 2018 Farm Bill changes to the Regional Conservation Partnership Program (RCPP) program administration. There was an unintentional error that omitted several paragraphs in a certain section in the RCPP rule. CCC and NRCS are also extending the comment period for the interim rule.

**DATES:** *Effective date:* March 17, 2020.

*Comments date:* The comment period for the interim rule published February 13, 2020, at 85 FR 8131, is extended. We will consider comments that we receive by May 12, 2020.

**ADDRESSES:** We invite you to submit comments on the RCPP rule as amended by this correction. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of document. You may submit comments by the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID NRCS–2019–0012. Follow the online instructions for submitting comments.

All written comments received will be publicly available on *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Whitt; (202) 690–2267; email: *michael.whitt@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice only).

**SUPPLEMENTARY INFORMATION:**

### Correcting Amendment to Regulations

The RCPP interim rule was published February 13, 2020, (85 FR 8131–8145) to implement the RCPP regulations. During the final stage of developing the interim rule, several paragraphs were inadvertently omitted in 7 CFR 1464.5. Several paragraphs about producer eligibility and practice standards were mistakenly deleted. This correction adds in the correct text for paragraph (c)(4), adds paragraphs (c)(5), (d), and (e)(1), and renumbers the text that should have been paragraph (e)(2). Paragraph (c) specifies requirements for producer to be eligible for RCPP. Paragraph (d) specifies requirements for land to be considered eligible for enrollment in RCPP. Paragraph (e) specifies requirements for activities to be eligible for RCPP.

### List of Subjects in 7 CFR Part 1464

Agricultural operations, Conservation payments, Conservation practices, Eligible activities, Environmental credits, Forestry management, Natural resources, Resource concern, Soil and water conservation, Wildlife.

For the reasons stated in the preamble, CCC amends 7 CFR part 1464 by making the following correcting amendments:

## PART 1464—REGIONAL CONSERVATION PARTNERSHIP PROGRAM

■ 1. The authority citation for part 1464 continues to read as follows:

**Authority:** 15 U.S.C. 714b and 714c; 16 U.S.C. 3871 *et seq.*

### Subpart A—General Provisions

■ 2. Amend § 1464.5 by revising paragraph (c)(4) and adding paragraphs (c)(5), (d) and (e) to read as follows:

**§ 1464.5 Program requirements.**

* * * * *

(c) * * *

(4) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information that verifies the producer's status as a historically underserved producer, compliance with part 12 of this title, and compliance with adjusted gross income payment eligibility as established by part 1400 of this chapter; and

(5) For producers operating as a legal entity or joint operation, provide a list of all members of the legal entity or joint operation and embedded entities along with each members' tax identification numbers and percentage interest in the entity. However, where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(d) *Eligible land.* Land may be considered eligible for enrollment in RCPP if NRCS determines that:

(1) The land is private or Tribal agricultural land, nonindustrial private forest land, or associated land on which an eligible activity would help achieve the conservation benefits defined for an approved project; or

(2) The land is publicly owned agricultural land or associated land and the enrollment of such land is—

(i) Appropriate for the type of eligible activity, and

(ii) The eligible activity to be implemented on the public land is necessary and will contribute meaningfully to achieving conservation benefits consistent with an approved project.

(e) *Eligible activities.* (1) In each partnership agreement, NRCS will identify the eligible activities that are available to producers and landowners through the project. Eligible activities may include land management, land rental activities, easements, or watershed type projects. Projects may use more than one type of eligible activity.

(2) NRCS may approve interim conservation practice standards or activities if—

(i) New technologies or management approaches that provide a high potential for optimizing conservation benefits have been developed; and

(ii) The interim conservation practice standard or activity incorporates the new technologies and provides financial assistance for pilot work to evaluate and assess the performance, efficiency, and

effectiveness of the new technology or management approach.

* * * * *

**Matthew Lohr,**

*Chief, Natural Resources Conservation Service.*

**Robert Stephenson,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2020–05157 Filed 3–16–20; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–0181; Product Identifier 2019–CE–026–AD; Amendment 39–21030; AD 2020–04–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Daher Aircraft Design, LLC (Type Certificate Previously Held by Quest Aircraft Design, LLC) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Daher Aircraft Design, LLC (type certificate previously held by Quest Aircraft Design, LLC (Quest)) Model KODIAK 100 airplanes. This AD requires revising the pilot's operating handbook and FAA approved airplane flight manual (POH/AFM) or supplement 5 to the POH/AFM. This AD was prompted by incorrect low weight landing distances in the performance section of the POH/AFM and supplement 5 to the POH/AFM. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 1, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 1, 2020.

The FAA must receive comments on this AD by May 1, 2020.

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

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

For service information identified in this final rule, contact Kodiak Aircraft Company, Inc., 1200 Turbine Drive, Sandpoint, Idaho 83864; phone: (208) 263–1111 or (866) 263–1112; email: *KodiakCare@daher.com;* internet: *https://Kodiak.aero/support.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0181.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0181; 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 street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Brian Knaup, Aerospace Engineer, Seattle ACO Branch, FAA, 2200 S 216th St., Des Moines, Washington 98198; telephone and fax: (206) 231–3502; email: *brian.knaup@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

The FAA was notified by Quest (now Daher Aircraft Design, LLC) that the performance section in the Kodiak 100 Series POH/AFM, revisions 8 through 21, and supplement 5, initial release and revision 01, to the POH/AFM were published with incorrect low weight landing distances in the ''Obstacle Landing Distance'' tables. The landing distances for 6,000 lbs., 5,000 lbs., and 4,000 lbs. were incorrectly calculated and show values up to 520 feet shorter than actual expected performance. However, the landing distances for 6,690 lbs. are accurate.

Model Kodiak 100 airplanes were originally type certificated with a gross weight of 6,690 lbs. Under an amended type certificate, serial numbers 100–0035 and subsequent were produced with an increased gross weight configuration of 7,255 lbs. and delivered with a POH/AFM (revisions 8 through 21) that contained limitations and performance data for the increased gross weight. For airplanes with serial numbers produced before 100–0035, Quest issued Service Notice SN–025 as an optional retrofit to increase the gross weight. Airplanes retrofitted with SN–025 were provided a supplement 5 to the POH/AFM (revision 1 through 7) that contained the limitations and performance changes associated with the increased gross weight.

Quest issued revision 22 of the POH/AFM to correct the landing distances data in the ''Obstacle Landing Distance'' table and to correct other errors and inconsistencies throughout the document.

If not corrected, incorrect obstacle landing distances for weights below max gross weight could result in a runway overrun. The FAA is issuing this AD to address the unsafe condition on these products.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed Table 5–19: Obstacle Landing Distance, pages 5_68 and 5_69, of Section 5, Performance, of the KODIAK 100 Series Aircraft Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (Document No: AM901.0), Revision 22, dated April 10, 2019. These pages contain correct landing distance data in the ''Obstacle Landing Distance'' table. 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.

### Other Related Service Information

The FAA reviewed Quest Safety Communique, QSC–011, Revision 00, dated April 1, 2019. This document notifies owner/operators of the incorrect data in the ''Obstacle Landing Distance'' table and recommends they revise their procedures until the corrected data is available.

### FAA's Determination

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

**AD Requirements**

This AD requires revising the performance section of the POH/AFM or supplement 5 to the POH/AFM by removing the existing ''Obstacle Landing Distance'' table and replacing it with the ''Obstacle Landing Distance'' table found in revision 22 of the POH/AFM. This AD specifies that the owner/operator (pilot) may revise the AFM. Revising an AFM is not considered a maintenance action and may be done by a pilot holding at least a private pilot certificate. This action must be recorded in the aircraft maintenance records to show compliance with this AD.

**FAA's Justification and Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a pilot using discrepant obstacle landing distance data could result in overrunning the runway on landing. Since the runway overrun could occur on any landing, the FAA requires compliance with this AD before further flight. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2020–0181 and Product Identifier 2019–CE–026–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this final rule.

**Costs of Compliance**

The FAA estimates that this AD affects 99 airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace the ''Obstacle Landing Distance'' table. | .5 work-hour × $85 per hour = $42.50. | Not applicable | $42.50 | $4,207.50 |

This AD allows the owner/operator (pilot) to replace the affected table in the POH/AFM or supplement 5 to the POH/AFM required by this AD. According to Quest, they will provide one full copy of Quest Aircraft KODIAK 100 Series Aircraft Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (Document No: AM901.0), Revision 22, dated April 10, 2019, to operators. However, the FAA does not control warranty coverage for affected individuals.

**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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

**Regulatory Flexibility Act**

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

**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, and

(2) Will not affect intrastate aviation in Alaska.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2020–04–13 Daher Aircraft Design, LLC (Type Certificate Previously Held by Quest Aircraft Design, LLC):** Amendment 39–21030; Docket No. FAA–2020–0181; Product Identifier 2019–CE–026–AD.

**(a) Effective Date**

This AD is effective April 1, 2020.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Quest Aircraft Design, LLC (type certificate data sheet currently held by Daher Aircraft Design, LLC) Model KODIAK 100 airplanes, serial numbers 100–0001 through 100–0273, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 91, Charts.

**(e) Unsafe Condition**

This AD was prompted by incorrect low weight landing distances in the ''Obstacle Landing Distance'' table, located either in the performance section of the pilot's operating handbook and FAA approved airplane flight manual (POH/AFM) or in supplement 5 to the POH/AFM. The FAA is issuing this AD to prevent pilots from using incorrect obstacle landing distance performance charts for weights below maximum gross weight. The unsafe condition, if not addressed, could result in pilots miscalculating the required landing distance, which could lead to a runway overrun.

**(f) Compliance**

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

**(g) Revise the POH/AFM**

(1) Before further flight after April 1, 2020 (the effective date of this AD), revise the POH/AFM for your airplane by removing the ''Obstacle Landing Distance'' table (2 pages) and replacing it with Table 5–19, Obstacle Landing Distance, pages 5_68 and 5_69, Section 5, Performance, from Quest Aircraft Kodiak 100 Series Aircraft, Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (Document No: AM901.0), Revision 22, dated April 10, 2019.

**Note 1 to paragraph (g)(1) of this AD:** The Obstacle Landing Distance table may be located either in the Performance section (Section 5) of the POH/AFM or in supplement 5 to the POH/AFM, depending on the revision level of your POH/AFM.

(2) The actions required by paragraphs (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

**(h) 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 (i) of this AD.

(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.

**(i) Related Information**

(1) For more information about this AD, contact Brian Knaup, Aerospace Engineer, Seattle ACO Branch, FAA, 2200 S 216th St., Des Moines, Washington 98198; telephone and fax: (206) 231–3502; email: *brian.knaup@faa.gov.*

(2) Quest Aircraft Quest Safety Communique, QSC–011, Revision 00, dated April 1, 2019, contains additional information related to this AD. You may obtain a copy of this document using the contact information in paragraph (j)(3) of this AD.

**(j) Material Incorporated by Reference**

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

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

(i) Table 5–19, Obstacle Landing Distance, pages 5_68 and 5_69, of Section 5, Performance, of the Quest Aircraft Kodiak 100 Series Aircraft Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (Document No: AM901.0), Revision 22, dated April 10, 2019.

(ii) [Reserved]

(3) For Quest Aircraft Company LLC service information identified in this AD, contact Kodiak Aircraft Company Inc. (formerly Quest Aircraft Company LLC), 1200 Turbine Drive, Sandpoint, Idaho 83864; phone: (208) 263–1111 or 1 (866) 263–1112; email: *KodiakCare@daher.com;* internet: *https://Kodiak.aero/support.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on February 27, 2020.

**Patrick R. Mullen,**

*Aircraft Certification Service, Manager, Small Airplane Standards Branch, AIR–690.*

[FR Doc. 2020–05368 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0614; Product Identifier 2019–NE–14–AD; Amendment 39–19878; AD 2020–05–28]**

**RIN 2120–AA64**

## Airworthiness Directives; International Aero Engines LLC Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2019–11–08 for all International Aero Engines, LLC (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1129G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM model turbofan engines. AD 2019–11–08 required the removal of the main gearbox (MGB) assembly and electronic engine control (EEC) software and the installation of a part and software version eligible for installation for engines that operate on extended operations (ETOPS) flights. This AD retains the requirements of AD 2019–11–08 and requires replacement of the MGB assembly and EEC software on engines that do not operate on ETOPS flights. This AD was prompted by multiple reports of in-flight engine shutdowns as the result of high-cycle fatigue causing fracture of certain parts of the MGB assembly. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 21, 2020.

**ADDRESSES:** For service information identified in this final rule, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* 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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0614; 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:** Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–11–08, Amendment 39–19654 (84 FR 27511, June 13, 2019), (''AD 2019–11–08''). AD 2019–11–08 applied to all IAE PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1129G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM model turbofan engines. AD 2019–11–08 required the removal of the MGB assembly and EEC software and the installation of a part and software version eligible for installation for engines that operate on ETOPS flights. AD 2019–11–08 was prompted by multiple reports of in-flight engine shutdowns as the result of high-cycle fatigue causing fracture of certain parts of the MGB assembly.

The NPRM published in the **Federal Register** on October 4, 2019 (84 FR 53082). The actions in AD 2019–11–08 were interim and only addressed engines that operate on 180-minute or 120-minute ETOPS flights. The NPRM proposed to retain and revise the compliance time for those actions and add requirements to replace the MGB assembly and EEC software on affected engines that do not operate on ETOPS flights. The FAA is issuing this AD to address the unsafe condition on these products.

**Comments**

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

**Request To Consider Loss of Load**

An anonymous commenter asked if an assessment had been made to the loss of load and associated possible low-pressure turbine (LPT) overspeed and disk burst when the MGB components fail due to high-cycle fatigue.

The FAA does not agree. The FAA did not perform an assessment of the low-pressure turbine overspeed and disk burst due to the loss of load of the main gearbox because the failure of the MGB components cannot lead directly to an LPT overspeed without some other extremely remote failure of the engine occurring simultaneously. The main rotor speeds of the engine are normally controlled by the engine control system and further protected against overspeed due to abnormal operation by an independent overspeed protection system. The failure of an MGB component will not affect either the normal engine control or the overspeed protection system from safely controlling the rotor speeds. Further, the MGB is powered by the high-pressure rotor system and has no effect on the low-pressure rotor speed. No change to this AD is required.

**Updates to Service Information**

Since the FAA published the NPRM, IAE has updated its service information. The FAA has therefore updated the references to the service information from the original issue discussed in the NPRM to Issue No. 004 in this AD.

**Conclusion**

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

**Related Service Information**

The FAA reviewed Pratt & Whitney (PW) Service Bulletin (SB) PW1000G–C–72–00–0129–00A–930A–D, Issue No. 004, dated January 7, 2020, and PW SB PW1000G–C–73–00–0037–00A–930A–D, Issue No. 004, dated November 4, 2019. PW SB PW1000G–C–72–00–0129–00A–930A–D, Issue No. 004, dated January 7, 2020, contains procedures for replacing the integrated drive generator oil pump drive gearshaft assembly in the MGB assembly. PW SB PW1000G–C–73–00–0037–00A–930A–D, Issue No. 004, dated November 4, 2019, contains procedures for replacing the EEC software to incorporate FCS5.0 software.

**Costs of Compliance**

The FAA estimates that this AD affects 72 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace the MGB assembly | 13 work-hours × $85 per hour = $1,105 | $75,000 | $76,105 | $5,479,560 |
| Replace the EEC software | 3 work-hours × $85 per hour = $255 | 0 | 255 | 18,360 |

The new requirements of this AD add no additional economic burden.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

power and responsibilities among the various levels of government.

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2019–11–08, Amendment 39–19654 (84 FR 27511, June 13, 2019), and adding the following new AD:

**2020–05–28 International Aero Engines LLC:** Amendment 39–19878; Docket No. FAA–2019–0614; Product Identifier 2019–NE–14–AD.

**(a) Effective Date**

This AD is effective April 21, 2020.

**(b) Affected ADs**

This AD replaces AD 2019–11–08, Amendment 39–19654 (84 FR 27511, June 13, 2019).

**(c) Applicability**

This AD applies to all International Aero Engines, LLC (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1129G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM model turbofan engines.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7260, Turbine Engine Accessory Drive.

**(e) Unsafe Condition**

This AD was prompted by multiple reports of in-flight engine shutdowns as the result of high-cycle fatigue causing fracture of certain parts of the main gearbox (MGB) assembly. The FAA is issuing this AD to prevent failure of the MGB assembly. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) Remove the MGB assembly, part number (P/N) 5322505, and install a part eligible for installation as follows:

(i) For engines that operate on 180-minute extended operations (ETOPS) flights, before further flight after the effective date of this AD.

(ii) For engines that operate on 120-minute ETOPS flights, within 120 days from June 28, 2019 (the effective date of AD 2019–11–08), or before further flight after the effective date of this AD, whichever occurs later.

(iii) For engines that do not operate on ETOPS flights, at the next engine shop visit after the effective date of this AD.

(2) For engines with MGB assembly P/N 5322505, within 120 days from June 28, 2019 (the effective date of AD 2019–11–08), or before further flight after the effective date of this AD, whichever occurs later, remove electronic engine control (EEC) software earlier than FCS5.0 from the engine and install EEC software that is eligible for installation.

**(h) Installation Prohibition**

(1) After the effective date of this AD, do not install integrated drive generator (IDG) oil pump drive gearshaft assembly, P/N 5322630–01, into an MGB assembly.

(2) After the effective date of this AD, do not load EEC software earlier than FCS5.0 on any engine identified in paragraph (c) of this AD with an MGB assembly, P/N 5322505.

**(i) Definitions**

(1) For the purpose of this AD, a ''part eligible for installation'' is an MGB assembly with an IDG oil pump drive gearshaft assembly other than P/N 5322630–01.

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

(3) For the purpose of this AD, ''EEC software that is eligible for installation'' is EEC software FCS5.0 and later.

**(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) 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**

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

**(l) Material Incorporated by Reference**

None.

Issued on March 11, 2020.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–05330 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0974; Product Identifier 2019–NM–155–AD; Amendment 39–19856; AD 2020–04–19]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2017–15–01, which applied to certain The Boeing Company Model 777 airplanes. AD 2017–15–01 required replacing the existing mode control panel (MCP) with a new MCP having a different part number. This AD retains the requirements of AD 2017–15–01, expands the applicability to include certain other airplanes, and adds a new requirement for certain airplanes to identify and replace the affected parts. This AD was prompted by a determination that the affected parts may be installed on airplanes outside of the original applicability of AD 2017–15–01. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 21, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 25, 2017 (82 FR 33782, July 21, 2017).

**ADDRESSES:** For service information identified in this final rule, contact

Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, 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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0974.

**Examining the AD Docket**

You may examine the AD docket on the internet at *https://www.regulations.gov*by searching for and locating Docket No. FAA–2019–0974; 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:** Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–15–01, Amendment 39–18961 (82 FR 33782, July 21, 2017) (''AD 2017–15–01''). AD 2017–15–01 applied to certain The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on December 13, 2019 (84 FR 68060). The NPRM was prompted by a determination that the affected parts may be installed on airplanes outside of the original applicability of AD 2017–15–01. The NPRM proposed to retain the requirements of AD 2017–15–01, expand the applicability to include those other airplanes, and add a new requirement for certain airplanes to identify and replace the affected parts. The FAA is issuing this AD to address uncommanded changes to the MCP selected altitude; such uncommanded changes could result in incorrect spatial separation between airplanes, midair collision, or controlled flight into terrain.

**Comments**

The FAA gave the public the opportunity to participate in developing this AD. The FAA has considered the comments received. The Air Line Pilots Association, International (ALPA) and Boeing indicated their support for the NPRM. United Airlines and FedEx had no objection to 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 AD 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 1 CFR Part 51**

This AD requires Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016, which the Director of the Federal Register approved for incorporation by reference as of August 25, 2017 (82 FR 33782, July 21, 2017). 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 231 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replacement (retained actions from AD 2017-15-01) | 2 work-hours × $85 per hour = $170 | Up to $5,800 * | Up to $5,970 * | Up to $1,379,070 *. |
| Inspection/records check (new proposed action) (up to 28 airplanes). | 1 work-hour × $85 per hour = $85 | $0 | $85 | Up to $2,380. |

* Since the FAA has received no definitive data regarding the cost of a new MCP, the FAA has provided costs for the upgrade (modified part) only.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

The FAA has determined that this 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) 2017–15–01, Amendment 39–18961 (82 FR 33782, July 21, 2017), and adding the following new AD:

**2020–04–19 The Boeing Company:** Amendment 39–19856 ; Docket No. FAA–2019–0974; Product Identifier 2019–NM–155–AD.

**(a) Effective Date**

This AD is effective April 21, 2020.

**(b) Affected ADs**

This AD replaces AD 2017–15–01, Amendment 39–18961 (82 FR 33782, July 21, 2017) (''AD 2017–15–01'').

**(c) Applicability**

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 22, Auto flight.

**(e) Unsafe Condition**

This AD was prompted by reports of uncommanded altitude display changes in the mode control panel (MCP) altitude window. The FAA is issuing this AD to address uncommanded changes to the MCP selected altitude; such uncommanded changes could result in incorrect spatial separation between airplanes, midair collision, or controlled flight into terrain.

**(f) Compliance**

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

**(g) New Definitions**

(1) For the purposes of this AD, an affected part is an MCP having part number S241W001–201, S241W001–202, S241W001–251, S241W001–252, or S241W001–261.

(2) For the purposes of this AD, later-approved parts are only those parts that are approved as a replacement for the applicable part identified in Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016; and are approved as part of the type design by the FAA or The Boeing Company Organization Designation Authorization (ODA) after March 3, 2016 (the publication date of Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016).

**(h) Retained Replacement of MCP With Revised Compliance Language**

This paragraph restates the requirements of AD 2017–15–01, with revised compliance language. For airplanes identified in Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016, within 60 months after August 25, 2017, (the effective date of AD 2017–15–01): Do the actions specified in paragraph (h)(1) or (2) of this AD.

(1) Replace the existing MCP part with an MCP having part number S241W001–262, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016.

(2) Install a later-approved part as defined in paragraph (g)(2) of this AD.

**(i) New MCP Identification and Replacement**

For airplanes not identified in paragraph (h) of this AD with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD, do the actions specified in paragraphs (i)(1) and (2) of this AD.

(1) Within 60 months after the effective date of this AD, perform a general visual inspection of the MCP to determine the MCP part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the MCP can be conclusively determined from that review.

(2) If the MCP is an affected part, within 60 months after the effective date of this AD: Do the actions specified in paragraph (i)(2)(i) or (ii) of this AD.

(i) Replace the existing MCP with an MCP having part number S241W001–262, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016.

(ii) Install a later-approved part as defined in paragraph (g)(2) of this AD.

**(j) Parts Installation Prohibition**

As of the effective date of this AD, no person may install an MCP having part number S241W001–201, S241W001–202, S241W001–251, S241W001–252, or S241W001–261, on any airplane.

**(k) 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 (l) 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 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.

(4) AMOCs approved previously for AD 2017–15–01 are approved as AMOCs for the corresponding provisions of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(l) Related Information**

For more information about this AD, contact Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

**(m) 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 August 25, 2017 (82 FR 33782, July 21, 2017).

(i) Boeing Special Attention Service Bulletin 777–22–0034, dated March 3, 2016.

(ii) [Reserved]

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

(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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 25, 2020.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–05362 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### 19 CFR Chapter I

### Transportation Security Administration

### 49 CFR Chapter XII

## Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Countries of the Schengen Area

**AGENCY:** U.S. Customs and Border Protection and U.S. Transportation Security Administration, Department of Homeland Security.

**ACTION:** Notification of arrival restrictions.

**SUMMARY:** This document announces the decision of the Secretary of Homeland Security (DHS) to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the countries of the Schengen Area to arrive at one of the United States airports where the United States Government is focusing public health resources. There are twenty-six countries in the Schengen Area: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. This document also modifies two notifications regarding decisions of the Secretary of DHS: To direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China (excluding the Special Regions of Hong Kong and Macau) to arrive at one of the United States airports where the United States Government is focusing public health resources (effective February 2, 2020); and to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the Islamic Republic of Iran to arrive at one of the United States airports where the United States Government is focusing public health resources (effective March 2, 2020). This document also adds two additional airports to the list of airports where flights subject to the arrival restrictions are permitted to land—Boston Logan International Airport (BOS) and Miami International Airport (MIA).

**DATES:** Flights departing after 11:59 p.m. Eastern Daylight Time on Friday, March 13, 2020, and covered by the arrival restrictions regarding the countries of the Schengen Area are required to land at one of the airports identified in this document. These arrival restrictions will continue until cancelled or modified by the Secretary of DHS and notification is published in the **Federal Register** of such cancellation or modification.

**FOR FURTHER INFORMATION CONTACT:** Matthew S. Davies, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–325–2073.

**SUPPLEMENTARY INFORMATION:**

### Background

Coronaviruses are a large family of viruses that are common in many different species of animals, including camels, cattle, cats, and bats. While it is rare, animal coronaviruses can infect people, and then spread between people (human-to-human) such as with Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome. The United States Government is closely monitoring an outbreak of respiratory illness caused by human-to-human transmission of a novel (new) coronavirus (which has since been renamed ''SARS-CoV–2'' and causes the disease COVID–19), first identified in Wuhan City, Hubei Province, People's Republic of China.

The potential for widespread transmission of this virus by infected individuals seeking to enter the United States threatens the security of our transportation system and infrastructure, and the national security. Noting recent pronouncements by the World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC) for the novel coronavirus outbreak to assist in preventing the introduction, transmission, and spread of this communicable disease globally and in the United States, including the categorization by WHO of COVID–19 as a pandemic on March 11, 2020, DHS, in coordination with CDC and other Federal, state and local agencies charged with protecting the American public, is implementing enhanced protocols to ensure that all travelers seeking to enter the United States with recent travel from, or who were otherwise recently present within, any of the countries of the Schengen Area are provided appropriate public health services.

The enhanced arrival protocols concerning travelers with recent travel from, or who were otherwise recently present within, the People's Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, identified in the documents published at 85 FR 6044 on February 4, 2020 and 85 FR 7214 on February 7, 2020, also remain in place in this notice, except that flights are permitted to land at two additional airports. The enhanced arrival protocols concerning travelers with recent travel from, or who were otherwise present within, the Islamic Republic of Iran, identified in the document published at 85 FR 12731 on March 4, 2020, also remain in place in this notice except that flights are permitted to land at two additional airports.

Enhanced traveler arrival protocols are part of a layered approach used with other public health measures already in place to detect arriving travelers who are exhibiting overt signs of illness. Related measures include reporting ill travelers identified by carriers during travel to appropriate public health officials for evaluation, and referring ill travelers arriving at a U.S. port of entry by CBP to appropriate public health officials in order to slow and prevent the introduction into, and transmission and spread of, communicable disease in the United States.

To ensure that travelers with recent presence in the countries of the Schengen Area are screened appropriately, DHS directs that all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the countries of the Schengen Area arrive at airports where enhanced public health services and protocols have been implemented. Although DHS will continue to work with carriers to ensure that they identify potential persons who traveled from, or who have otherwise recently been present within, the affected areas prior to boarding, carriers shall comply with the requirements of this document in all cases, including when such persons are identified after boarding but prior to takeoff.

On Friday, January 31, 2020, DHS posted a document on the **Federal Register** public inspection page,

announcing the DHS Secretary's decision that arrival restrictions regarding the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau) would go into effect at 5 p.m. Eastern Daylight Time on Sunday, February 2, 2020, at seven airports. The document announcing this decision was published in the **Federal Register** on February 4, 2020 at 85 FR 6044. On Friday, February 7, 2020, DHS published a document adding two airports to the list of airports where flights subject to the arrival restrictions are permitted to land and describing when the arrival restrictions would include those airports. *See* 85 FR 7214. With this document, DHS is adding the following two additional airports to the list of airports where flights subject to the arrival restrictions are permitted to land: Boston Logan International Airport (BOS), and Miami International Airport (MIA).

As with actions related to the People's Republic of China and the Islamic Republic of Iran, DHS anticipates that airlines will be able to fully support implementation of these arrival restrictions.

**Notification of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Countries of the Schengen Area**

Pursuant to 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105, DHS has the authority to limit the locations where all flights entering the U.S. from abroad may land. Under this authority and effective for flights departing after 11:59 p.m. ET on Friday March 13, 2020, I hereby direct all operators of aircraft to ensure that all flights carrying persons who have recently traveled from, or were otherwise present within, any of the countries of the Schengen Area only land at one of the following airports:

- John F. Kennedy International Airport (JFK), New York;
- Chicago O'Hare International Airport (ORD), Illinois;
- San Francisco International Airport (SFO), California;
- Seattle-Tacoma International Airport (SEA), Washington;
- Daniel K. Inouye International Airport (HNL), Hawaii;
- Los Angeles International Airport, (LAX), California;
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia;
- Washington-Dulles International Airport (IAD), Virginia;
- Newark Liberty International Airport (EWR), New Jersey;
- Dallas/Fort Worth International Airport (DFW), Texas;
- Detroit Metropolitan Airport (DTW), Michigan;
- Boston Logan International Airport (BOS), Massachusetts; and
- Miami International Airport (MIA), Florida.

This direction considers a person to have recently traveled from, or otherwise been present within, a country of the Schengen Area if that person departed from, or was otherwise present within, a country of the Schengen Area within 14 days of the date of the person's entry or attempted entry into the United States. The Schengen Area consists of the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

For purposes of this document, crew and flights carrying only cargo (*i.e.,* no passengers or non-crew) are excluded from the applicable measures set forth in this notice.

This direction is subject to any changes to the airport landing destination that may be required for aircraft and/or airspace safety, as directed by the Federal Aviation Administration.

This list of affected airports may be modified by the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation. This list of affected airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov.* The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register**.

For purposes of this **Federal Register** document, ''United States'' means the States of the United States, the District of Columbia, and territories and possessions of the United States (including Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam).

**Chad F. Wolf,**

*Acting Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2020–05606 Filed 3–13–20; 1:30 pm]

**BILLING CODE 9111–14–P; 9110–05–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9888]**

**RIN 1545–BN18**

## Guidance Under Section 355(e) Regarding Predecessors, Successors, and Limitation on Gain Recognition; Guidance Under Section 355(f); Correcting Amendment

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to Treasury Decision 9888, which was published in the **Federal Register** on Wednesday, December 18, 2019. Treasury Decision 9888 contained final regulations providing guidance regarding the distribution by a distributing corporation of stock or securities of a controlled corporation without the recognition of income, gain, or loss.

**DATES:** This correction is effective on March 17, 2020. For dates of applicability, see § 1.355–8(i).

**FOR FURTHER INFORMATION CONTACT:** W. Reid Thompson, (202) 317–5024, or Richard K. Passales, (202) 317–5024 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations (TD 9888) that are the subject of this correction are issued under section 355 of the Internal Revenue Code.

### Need for Correction

As published December 18, 2019 (84 FR 69308), the final regulations (TD 9888; FR Doc. 2019–27110) contained an error that needs to be corrected.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Correction of Publication

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

## PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.355–8 is amended by revising the seventh sentence of paragraph (h)(8)(ii)(A) to read as follows:

**§ 1.355–8 Definition of predecessor and successor and limitations on gain recognition under section 355(e) and section 355(f).**

* * * * *

(h) * * *

(8) * * *

(ii) * * *

(A) * * * The Reflection of Basis Requirement is satisfied because that C stock had a basis prior to the Distribution that was determined in whole or in part by reference to the basis of Separated Property (Asset 1 and Asset 2, respectively), and was neither distributed in a distribution to which section 355(e) applied nor transferred in a transaction in which the gain on that C stock was recognized in full during the Plan Period prior to the Distribution. * * *

* * * * *

**Martin V. Franks,**

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

[FR Doc. 2020–05040 Filed 3–16–20; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9888]**

**RIN 1545–BN18**

## Guidance Under Section 355(e) Regarding Predecessors, Successors, and Limitation on Gain Recognition; Guidance Under Section 355(f); Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains a correction to final regulations (TD 9888) that were published in the **Federal Register** on Wednesday, December 18, 2019. The final regulations provide guidance regarding the distribution by a distributing corporation of stock or securities of a controlled corporation without the recognition of income, gain, or loss.

**DATES:** This correction is effective on March 17, 2020. For dates of applicability, see § 1.355–8(i).

**FOR FURTHER INFORMATION CONTACT:** W. Reid Thompson, (202) 317–5024, or Richard K. Passales, (202) 317–5024 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations (TD 9888) (84 FR 69308, Dec. 18, 2019) that are the subject of this correction are issued under section 355 of the Internal Revenue Code.

### Need for Correction

As published, the final regulations (TD 9888), contain an error that needs to be corrected.

### Correction of Publication

Accordingly, the final regulations (TD 9888), that are the subject of FR Doc. 2019–27110, appearing on page 69308 in the **Federal Register** of Wednesday, December 18, 2019, are corrected as follows:

1. On page 69312, in the third column, the eighth line from the bottom of the first full paragraph, ''8T(b)(2)(vi)(B)(*2*)'' is corrected to read ''8T(b)(2)(vi)''.

**Martin V. Franks,**

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

[FR Doc. 2020–05041 Filed 3–16–20; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[Docket ID: DOD–2018–HA–0028]**

**RIN 0720–AB72**

## TRICARE; Addition of Physical Therapist Assistants and Occupational Therapy Assistants as TRICARE-Authorized Providers

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is publishing this final rule to add licensed or certified physical therapist assistants (PTAs) and occupational therapy assistants (OTAs) as TRICARE-authorized providers to engage in physical therapy or occupational therapy under the supervision of a TRICARE-authorized licensed registered physical therapist or occupational therapist in accordance with Medicare's rules for supervision and qualification. This rule aligns TRICARE with Medicare's policy, which permits PTAs or OTAs to provide physical or occupational therapy when supervised by a licensed registered physical therapist or occupational therapist.

**DATES:** This rule is effective April 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** Erica Ferron, Defense Health Agency, Medical Benefits and Reimbursement Section, 303–676–3626 or *erica.c.ferron.civ@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary and Overview

*A. Purpose of the Final Rule*

This final rule implements section 721 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA–18), and advances two of the components of the Military Health System's quadruple aim of improved readiness and better health. The TRICARE Basic benefit currently includes physical therapy (PT) and occupational therapy (OT) services rendered by TRICARE-authorized providers within the scope of their license when prescribed and monitored by a physician, certified physician assistant, or certified nurse practitioner. Allowing licensed registered physical therapists and occupational therapists to include those services of qualified assistants performing under their supervision as covered services may increase access to PT and OT services, and increase beneficiary choice in provider selection. Adding coverage of services by authorized therapy assistants may increase access at the same time the Agency anticipates that an active and aging beneficiary population will increasingly use these services.

*B. Summary of the Major Provisions of the Final Rule*

The major provisions of the final rule are:

- The addition of licensed or certified PTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 Code of Federal Regulations (CFR) 484.115 or successor regulation). Services must be furnished under the supervision of a TRICARE-authorized licensed registered physical therapist.
- The addition of licensed or certified OTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 CFR 484.115 or successor regulation). Services must be furnished under the supervision of a TRICARE-authorized licensed registered occupational therapist.

*C. Costs and Benefits*

PT and OT services are covered benefits of the TRICARE program, authorized at 32 CFR 199.4. We estimate

that as a result of this rule, there will be a one-percent increase in the use of PT and OT services. The cost of increased utilization, along with first-year implementation costs of $350,000, is estimated at $20 million over five years.

The financial effect of this rule is not in the nature of economic costs or imposition of private expenditures to comply with Federal regulations. Rather, the rule involves fairly modest changes in federal health benefits payments. Consistent with OMB Circular A–4, such economic effects are considered ''transfer payments'' caused by Federal budget action, rather than regulatory benefits or costs that require additional analysis.

**II. Discussion of Final Rule**

*A. Introduction and Background*

Title 32 CFR 199.4(c)(3)(x) states that assessment and treatment services of a TRICARE-authorized physical therapist or occupational therapist may be cost-shared under certain conditions when prescribed and monitored by a physician, certified physician assistant, or certified nurse practitioner. In addition, 32 CFR 199.6(c)(3)(iii)(K)(*2*) recognizes licensed registered physical therapists and occupational therapists as TRICARE-authorized providers when PT and OT services meet the conditions and are prescribed and monitored as described in the previous sentence. This rule extends coverage of PT and OT services, as required by NDAA–18, to include services provided by licensed or certified PTAs or OTAs operating under the supervision of a TRICARE-authorized licensed registered physical therapist or occupational therapist.

PTAs—Qualifications

PTAs typically hold an associate's degree in PT and are licensed by the state in which they practice. This rule ties the qualifications of PTAs under the TRICARE program to Medicare's requirements as codified at 42 CFR 484.115 (or successor regulation).

PTAs—Supervision Requirements

Under this rule, TRICARE's supervision requirements match, to the extent practicable, Medicare's. The Defense Health Agency (DHA) intends, in implementing instructions, to follow Medicare's requirements as found within Medicare's policy instructions. DHA will rely primarily on Medicare Benefit Policy Manual 100–02 Chapter 15, Covered Medical and Other Health Services, Sections 220 and 230, but will also refer to other related issuances and manuals, including facility-specific chapters of the Medicare Benefit Policy Manual.

Direct supervision will be required in a private practice setting. The supervising physical therapist will be required to be in the office suite where the PTA is located and immediately available to furnish assistance and direction throughout the performance of the procedure. The supervising physical therapist will not be required to be in the room with the PTA while the procedure is performed.

General supervision will be required in all settings other than private practice. General supervision will require that procedures be performed by the PTA under the physical therapist's overall direction and control, but the physical therapist's presence will not be required during the performance of the procedure. Under general supervision, the training of the PTA who actually performs the procedure and maintenance of the necessary equipment and supplies will be the continuing responsibility of the physical therapist. Medicare's supervision requirements vary further by setting and DHA intends, where appropriate, to follow these setting-specific requirements.

In cases where state or local supervision laws are more stringent, the DHA will require physical therapists and the PTAs they supervise to follow state or local laws. Services provided by PT aides or other personnel, even if under the supervision of a TRICARE-authorized licensed registered physical therapist or PTA, are not covered. Services provided by PTAs incident to services provided by physicians or other licensed or qualified providers other than physical therapists are not covered, as only physical therapists can supervise PTAs. If Medicare makes changes to its supervision requirements, the DHA will evaluate the changes and determine whether to make similar changes; any changes deemed appropriate shall be added to the implementing instructions.

PTAs—Reimbursement Requirements

TRICARE is required by statute (Title 10 United States Code (U.S.C.) chapter 55, § 1079(h)(1)) to reimburse like Medicare, to the extent practicable. PT services will continue to be reimbursed under existing TRICARE reimbursement methodology, including the CHAMPUS Maximum Allowable Charge (CMAC) methodology and applicable diagnosis-related groups, except that any Medicare reimbursement requirements specific to services provided by PTAs will also be adopted, when practicable. Services provided by a PTA above the skill-level of a PTA shall not be reimbursed. This includes, but is not limited to, evaluations and re-evaluations. Services provided by a PTA beyond the scope permitted by state or local law shall not be reimbursed.

OTAs—Qualifications

OTAs typically hold an associate's degree and are licensed by the state in which they practice. This rule ties the qualifications of OTAs under the TRICARE program to Medicare's requirements as codified at 42 CFR 484.115 (or successor regulation).

OTAs—Supervision Requirements

Under this rule, TRICARE's supervision requirements match, to the extent practicable, Medicare's. The DHA intends, in implementing instructions, to follow Medicare's requirements as found within the Medicare's policy instructions. DHA will rely primarily on Medicare Benefit Policy Manual 100–02 Chapter 15, Covered Medical and Other Health Services, Sections 220 and 230, but will also refer to other related issuances and manuals including facility-specific chapters of the Medicare Benefit Policy Manual.

Direct supervision will be required in a private practice setting. The supervising occupational therapist will be required to be in the office suite where the OTA is located and immediately available to furnish assistance and direction throughout the performance of the procedure. The supervising occupational therapist will not be required to be in the room with the OTA while the procedure is performed.

General supervision will be required in all settings other than private practice. General supervision will require that procedures be performed by the OTA under the occupational therapist's overall direction and control, but the occupational therapist's presence will not be required during the performance of the procedure. Under general supervision, the training of the OTA who actually performs the procedure and maintenance of the necessary equipment and supplies will be the continuing responsibility of the occupational therapist. Medicare's supervision requirements vary further by setting and DHA intends, where appropriate, to follow those setting-specific requirements.

In cases where state or local supervision laws are more stringent, the DHA will require occupational therapists and the OTAs they supervise to follow state or local laws. Services provided by OT aides or other personnel, even if under the supervision

of a TRICARE-authorized licensed registered occupational therapist or OTA, are not covered. Services provided by OTAs incident to services provided by physicians or other licensed or qualified providers other than occupational therapists are not covered, as only occupational therapists can supervise OTAs. If Medicare makes changes to its supervision requirements, the DHA will evaluate the changes and determine whether to make similar changes; any changes deemed appropriate shall be added to the implementing instructions.

OTAs—Reimbursement Requirements

TRICARE is required by statute (10 U.S.C. 55, § 1079(h)(1)) to reimburse like Medicare, to the extent practicable. OT services will continue to be reimbursed under existing TRICARE reimbursement methodology, including the CMAC and applicable diagnosis-related groups, except that any Medicare reimbursement requirements specific to services provided by OTAs will also be adopted, when practicable. Services provided by an OTA above the skill-level of an OTA shall not be reimbursed. This includes, but is not limited to, evaluations and re-evaluations. Services provided by an OTA beyond the scope permitted by state or local law shall not be reimbursed.

Updated Referral Definition

In order to fully implement section 721 of the NDAA for 2018, DHA is updating the definition of referrals to remove the limitation that only physicians can make referrals and to distinguish between necessary referrals for general benefit coverage and referrals required under TRICARE Prime for Prime enrollee care. All referral requirements are provided in the regulations and in the implementing instructions. No new referral authority is granted with this change; rather, it makes the referral definition consistent with existing referral authorities including that certified nurse practitioners and certified physician assistants can make referrals to licensed registered physical therapists and occupational therapists.

## III. Public Comments

The TRICARE proposed rule on the addition of PTAs and OTAs as TRICARE-authorized providers (83 FR 65323) was published on December 20, 2018, and provided a 60-day public comment period. As a result of publication of the proposed rule, DHA received 681 comments, most of which strongly supported adding PTAs and OTAs as authorized providers under TRICARE. Following is a summary of the public comments and our responses.

*1. Provisions of the Proposed Rule*

A. The proposed rule proposed to add licensed or certified PTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 Code of Federal Regulations (CFR) 484.4). Services were required to be furnished under the supervision of and billed by a licensed or certified TRICARE-authorized physical therapist.

B. The proposed rule proposed to add licensed or certified OTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 CFR 484.4). Services were required to be furnished under the supervision of and billed by a licensed or certified TRICARE-authorized occupational therapist.

*2. Analysis of Major Public Comments*

A. Terminology

*Comment 1:* We received many comments requesting DHA refer to assistants to physical therapists as physical therapist assistants, not physical therapy assistants.

*Response:* We concur with this comment and have revised the rule using of the term physical therapist assistants throughout. This term has been corrected throughout the preamble and in the one place in the regulatory text where it occurred (§ 199.6(c)(3)(iii)(K)(*2*)(*i*)).

*Comment 2:* Many commenters requested DHA remove the term ''certified'' in front of physical therapists.

*Response:* The rule has been revised to use licensed registered physical therapists throughout, consistent with language in the existing regulation. This edit does not appear in the regulatory text but has been corrected in the preamble of this final rule.

*Comment 3:* Many commenters were supportive of DHA using Medicare's requirements for qualifications of PTAs and OTAs. Some commentators requested DHA revise the rule to correct the location of Medicare's codification for PTA and OTA qualifications, which is 42 CFR 484.115, not § 484.4.

*Response:* The NDAA–18 mandated DHA follow Medicare's qualifications for PTAs and OTAs as found in 42 CFR 484.4 or successor regulation. After passage of the NDAA, Medicare revised its regulations, resulting in a new citation for the qualifications of PTAs and OTAs. DHA has revised the rule and regulation to contain the new regulatory citation (§ 484.115), and has added verbiage pointing to ''or successor regulation'' to avoid future concerns if Medicare revises its qualification regulations.

*Comment 4:* Two commenters noted that the Medicare Benefit Policy Manual Chapter cited in the proposed rule was incorrect. They requested this citation be updated to clarify that Medicare Benefit Policy Manual Chapter 15 Sections 220 and 230 would be followed.

*Response:* DHA acknowledges the error and has corrected the reference in the final rule. The Medicare Benefit Policy Manual Chapter DHA intends to reference in developing most of its implementing instructions on PTAs and OTAs is Medicare Benefit Policy Manual 100–02 Chapter 15, Covered Medical and Other Health Services, Sections 220 and 230. In some cases, the DHA will turn to other issuances or manuals for clarifying information, including facility-specific chapters of the Medicare Benefit Policy Manual. If Medicare revises, renumbers, or otherwise relocates its guidance on PTAs and OTAs, DHA will use the new policy information, where appropriate.

B. Supervision of PTAs and OTAs

*Comment 5:* Many commenters were supportive of matching TRICARE's supervision requirements to Medicare's. Many commenters requested DHA clarify whether direct supervision would require the supervising physical therapist or occupational therapist to be in the room with the PTA or OTA, or whether the supervising therapist would only be required to be in the office suite.

*Response:* DHA intends to use Medicare's definition of direct supervision. That is, the physical therapist or occupational therapist will be required to be in the office suite where the PTA or OTA is located and immediately available to furnish assistance and direction throughout performance of the procedure. The supervising physical therapist or occupational therapist will not be required to be in the room with the PTA or OTA while the procedure is performed.

*Comment 6:* Some commenters requested DHA clarify the supervision requirements for specific types of facilities (*e.g.,* rehabilitation settings).

*Response:* Providing specific supervision requirements for each facility type that provides PT or OT under the TRICARE program within this final rule could negate the DHA's authority to promptly recognize by administrative policy, rather than the much longer CFR amendment process, changes to supervision requirements

when enacted by Medicare. The DHA intends to follow Medicare's supervision requirements to the extent practicable; those requirements are currently available at the Medicare Benefit Policy Manual 100–02 Chapter 15 sections 220 and 230, along with Medicare Benefit Policy Manuals for specific facilities types (home health agencies, combined outpatient rehabilitation facilities, etc.).

*Comment 7:* Some commenters disagreed with using Medicare's supervision requirements because Medicare requires direct supervision in private practice, while allowing general supervision in all other settings. These commenters requested DHA consider allowing all PTAs and/or OTAs to operate under general supervision. They argued that requiring direct supervision for private practice in rural areas would create long wait lists and otherwise impact patient care.

*Response:* The decision to match TRICARE's PTA and OTA supervision requirements to Medicare's was made so that providers operating under both programs would only have to follow one set of rules (to the extent practicable); additionally, Medicare's rules have been in place for many years and have the benefit of having been field-tested. It is simpler and more appropriate to follow Medicare's requirements. Should Medicare revise its supervision requirements for therapists in private practice (or other settings), the DHA will evaluate and revise its requirements in implementing instructions, where appropriate.

*Comment 8:* One commenter expressed concern over adding OTAs as authorized providers or reimbursing other than skilled practitioners. In particular, this commenter was concerned with giving assistants the ability to treat without direct supervision.

*Response:* In determining which providers to authorize to provide services to TRICARE beneficiaries, DHA weighs a number of factors, including the quality of care provided by the provider type and beneficiary access to needed care. In adopting Medicare's supervision and qualification requirements, beneficiaries will have increased access to care that has been quality tested through the many years of PTA and OTA authorization under Medicare. If, after implementation, the DHA becomes aware of issues with the quality of care provided by PTAs or OTAs, the DHA will have the regulatory flexibility to determine that it is no longer practicable to mirror Medicare's supervision requirements and make changes accordingly.

C. Scope of Practice of PTAs and OTAs

*Comment 9:* Two commenters expressed concern over the use of examples of services provided by PTAs and OTAs in the proposed rule, arguing that these examples could be seen as limiting the services of PTAs and OTAs. One commenter expressed concern over limiting OTAs to less complex and/or simpler tasks.

*Response:* The provided examples were not intended to be a comprehensive list of services provided by PTAs and OTAs. However, the DHA is sensitive to concerns about inadvertent limiting of the scope of practice of the providers under TRICARE and has removed reference to specific tasks performed by PTAs and OTAs. PTAs and OTAs will continue to be prohibited from performing services outside their scope of practice or license.

D. Billing and Reimbursement

*Comment 10:* Many commenters requested the DHA clarify when services should be billed under the supervising physical therapist or occupational therapist's national provider identification (ID) number, and when services should be billed under the facility or organization's provider ID number. One commenter supported requiring PTAs to be billed under the physical therapist's provider ID number.

*Response:* DHA's intention in stating within the rule that services of therapy assistants would be required to be billed under the supervising therapist was intended to apply to professional services and to indicate that therapy assistants could not bill under their own national provider ID number. In response to concerns raised by the commenters, DHA has removed reference to billing requirements under the final rule. Billing of therapy services will continue as they have under existing TRICARE policy and regulation, with the exception that professional services shall not be billed by a PTA or OTA under his or her own provider ID, but shall instead be billed under the provider ID of the supervising therapist.

*Comment 11:* One commenter requested DHA clarify that billing OTA services under the occupational therapist's provider ID does not mean that OTA services are included in the bill for the occupational therapist's services.

*Response:* DHA concurs that the existing regulatory language was confusing and has removed reference to therapy assistant services being included in the services of the supervising therapist. When a therapist and therapy assistant separately provide services to a beneficiary (*i.e.,* not at the same time), those services are separately reimbursable if they would have otherwise been reimbursable should both therapy sessions have been provided by the therapist.

*Comment 12:* One commenter requested DHA reimburse PTAs at the same rate as physical therapists rather than using Medicare's reimbursement methodology.

*Response:* The DHA is required by statute (10 U.S.C. 1079(h)(1)) to reimburse like Medicare where practicable. It is practicable to follow Medicare reimbursement for these services. The final rule language has been edited to make clear TRICARE's statutory requirement and intent to follow Medicare's reimbursement methodologies.

E. Referral Definition

*Comment 13:* Several commenters requested clarification on changes to the referral definition. One commenter asked how it applied to non-physician practitioners (NPPs) and asked whether NPPs would now be able to make referrals and sign orders. One commenter asked if PTs and OTs would now be allowed to give referrals. One commenter requested DHA clarify the anticipated impact of updating the referral definition. One commenter expressed concern that the proposed language could be misinterpreted to require physician referrals in most cases and offered alternative language.

*Response:* The updated referral definition confers no new referral authority, but makes language consistent with existing regulatory restrictions regarding referrals. Historically, a physician was required to make all referrals under the TRICARE program. However, in recent years, changes to the regulation have been made to extend the right to make referrals to other provider types. Of note, certified nurse practitioners and certified physician assistants were given the right to refer patients to licensed registered physical therapists and occupational therapists, and licensed registered speech therapists. Prior to this final rule, the referral definition continued to limit referrals to physicians, which was not consistent with these previously approved changes.

The updated referral definition does not give physical therapists or occupational therapists the ability to make referrals, as they do not otherwise have referral authority under the regulations. The DHA does not expect updating the referral definition to have

any impact on the TRICARE Program itself, but will remove an existing inconsistency within the regulation. One commenter's proposal to change the language to ''generally, when a referral is required to qualify health care as a covered benefit, a TRICARE-authorized provider may make such a referral as allowed within the scope of the provider's license'' cannot be adopted as it does not comply with program requirements, and could be seen as authorizing providers to make referrals inconsistent with other restrictions within the program. A separate proposed rule (see 84 FR 13855) proposes to extend those providers which can refer to licensed registered physical therapists, occupational therapists, and speech therapists.

*Comment 14:* One comment expressed concern about DHA regulating who can make referrals, and argued this is an encroachment on clinical decisions and state licensure/practice acts.

*Response:* DHA's enacting statute permits only a specific list of providers to treat or diagnose injuries or illnesses under the TRICARE program (10 U.S.C. 1079(a)(12)). In order for providers beyond that list to perform services under TRICARE, one of the statutorily authorized providers must refer to the provider and oversee and manage the episode of care. Physical therapists and occupational therapists are not listed in 10 U.S.C. 1079(a)(12) and so can only provide care when referred to and managed by a physician, certified physician assistant, or certified nurse practitioner. Setting referral requirements falls within the authority Congress envisioned when it gave DHA the authority to create the TRICARE program.

*Comment 15:* One commenter requested DHA revisit the remaining regulations that require physician referrals and determine if those requirements were still appropriate.

*Response:* Revision of referral requirements beyond the limited revision to the referral definition is beyond the scope of this final rulemaking action.

F. Coverage of Other Assistants

*Comment 16:* One comment was received that requested DHA analyze potential coverage of other assistants.

*Response:* Consideration of assistants other than PTAs and OTAs is beyond the scope of this final rulemaking action.

*3. Provisions of the Final Rule*

This final rule is consistent with the proposed rule. Clarifications have been made to terminology and references, the definitions of direct and general supervision, and regarding DHA's intention to reimburse like Medicare, where practicable.

## IV. Regulatory Impact

*Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a non-significant rule under E.O. 12866 and has not been reviewed by the Office of Management and Budget.

*Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs''*

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis of transfer payments under OMB Circular A–4, this final rule does not involve regulatory costs subject to E.O. 13771.

*Congressional Review Act (5 U.S.C. 801, et seq.)*

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).

*Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''*

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current threshold is approximately $140 million. We do not expect this final rule to result in any one-year expenditure that would meet or exceed this amount.

*Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)*

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

This final rule does not contain a ''collection of information'' requirement, and does not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

*Executive Order 13132, ''Federalism''*

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this final rule does not have federalism implications, as set forth in E.O. 13132.

**List of Subjects in 32 CFR Part 199**

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

## PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2 is amended by revising the definition of ''referral.''

**§ 199.2 Definitions.**

* * * * *

*Referral.* The act or an instance of referring a TRICARE beneficiary to another authorized provider to obtain necessary medical treatment. Generally, when a referral is required to qualify health care as a covered benefit, only a

TRICARE-authorized physician may make such a referral unless this regulation specifically allows another category of TRICARE-authorized provider to make a referral as allowed within the scope of the provider's license. In addition to referrals which may be required for certain health care to be a covered TRICARE benefit, the TRICARE Prime program under § 199.17 generally requires Prime enrollees to obtain a referral for care through a primary care manager (PCM) or other authorized care coordinator to avoid paying higher deductible and cost-sharing for otherwise covered TRICARE benefits.

* * * * *

■ 3. Section 199.6 is amended by revising paragraph (c)(3)(iii)(K)(*2*)(*i*), redesignating paragraph (c)(3)(iii)(K)(*2*)(*ii*) as paragraph (c)(3)(iii)(K)(*2*)(*iii*), and adding a new paragraph (c)(3)(iii)(K)(*2*)(*ii*) to read as follows:

**§ 199.6 TRICARE-authorized providers.**

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(K) * * *

(*2*) * * *

(*i*) Licensed registered physical therapist (PT), including a licensed or certified physical therapist assistant (PTA) performing under the supervision of a TRICARE-authorized PT. PTAs shall meet the qualifications specified by Medicare (42 CFR 484.115, or successor regulation) and the Director, DHA, shall issue policy adopting, to the extent practicable, Medicare's requirements for PTA supervision.

(*ii*) Licensed registered occupational therapist (OT), including a licensed or certified occupational therapy assistant (OTA) performing under the supervision of a TRICARE authorized OT. OTAs shall meet the qualifications specified by Medicare (42 CFR 484.115, or successor regulation) and the Director, DHA, shall issue policy adopting, to the extent practicable, Medicare's requirements for OTA supervision.

Dated: March 6, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2020–04957 Filed 3–16–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 329

**[Docket ID: DOD–2019–OS–0053]**

**RIN 0790–AK73**

## National Guard Bureau Privacy Program

**AGENCY:** National Guard Bureau, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes DoD's regulation concerning the National Guard Bureau Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

**DATES:** This rule is effective on March 17, 2020.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Nikolaisen at 703–601–6884.

**SUPPLEMENTARY INFORMATION:** DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The NGB Privacy Act Program regulation at 32 CFR part 329, last updated on February 5, 2014 (79 FR 6809), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR part 310, or are publicly available on the Department's website. To the extent that NGB internal guidance concerning the implementation of the Privacy Act within the NGB is necessary, it will be issued in an internal document.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

**List of Subjects in 32 CFR Part 329**

Privacy.

**PART 329—[REMOVED]**

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 329 is removed.

Dated: March 9, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2020–05049 Filed 3–16–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2020–0052]**

## Drawbridge Operation Regulation; Long Creek, Nassau, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary test deviation from the operating schedule that governs the Loop Parkway Bridge across Long Creek, mile 0.7 at Nassau, New York. This deviation will test a change to the drawbridge operation schedule to determine if the proposed operating schedule changes will meet the reasonable needs of maritime traffic and vehicular traffic. Coast Guard is seeking comments from the public about the impact to both train and vessel traffic generated by this change.

**DATES:**

*Effective date:* This deviation is effective without actual notice from March 17, 2020 through 11:59 p.m. on July 27, 2020. For purposes of enforcement actual notice will be used from12:01 a.m. on January 30, 2020, until March 17, 2020.

*Comment date:* Comments and related material must reach the Coast Guard on or before April 16, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0052 using Federal e-Rulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the

**SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Ms. Stephanie E. Lopez, First Coast Guard District, Project Officer, telephone 212–514–4335, email *Stephanie.E.Lopez@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register

**I. Background, Purpose and Legal Basis**

The Loop Parkway Bridge at mile 0.7, across Long Creek, Nassau, New York, has a vertical clearance of 21 feet at mean high water and 25 at mean low water. Horizontal clearance is approximately 75.5 feet. The waterway users include recreational and commercial vessels including fishing vessels. The existing drawbridge operating regulations are listed at 33 CFR 117.799(f).

In 2005, the owner of the bridge, New York State Department of Transportation, requested a temporary test deviation for an alternate drawbridge operation regulation; however, it was never followed up with a rulemaking. The bridge owner assumed since the temporary deviation was a success they made new signage reflecting the temporary deviation and have been operating the bridge under this temporary deviation for the past 15 years. After a recent construction operation the bridge operator began operating the bridge under the original 2005 regulation and USCG Sector Long Island Sound received several complaints from mariners who were upset the bridge was no longer operating under the old temporary test deviation. Based on the data that was provided by the bridge owner, the number of requested bridge openings has decreased over the years, while the vehicular traffic has increased. The schedule restricts bridge openings during vehicular rush hours allowing openings twice per hour. This schedule allows less congestion build up for vehicular traffic while providing mariners with a reliable, consistent time they can request a bridge opening. The Coast Guard is publishing this temporary deviation to test the proposed change to the bridge's operating schedule and determine whether a permanent change to the schedule is necessary to better balance the needs of marine and rail traffic.

Under this deviation, commercial vessels engaged in commerce, the draw shall open Monday thru Friday from 6:20 a.m. to 9:50 a.m. and 3:20 p.m. to 7:20 p.m. on signal at 20 and 50 minutes after the hour, and on signal at all other times. For all other vessels, the draw shall open on Monday thru Friday from 6:20 a.m. to 7:20 p.m. on signal at 20 and 50 minutes after the hour, and the draw shall open on Saturday, Sunday and Federal holidays from 7:20 a.m. to 8:20 p.m. on signal at 20 and 50 minutes after the hour, and on signal at all other times. The reason for these changes is to minimize excessive bridge openings which were a direct cause of accelerated deterioration of the bridge.

Vessels able to pass through the bridge in the closed position may do so at any time. There are no alternate routes. The bridge will be able to open for emergencies.

The Coast Guard will also inform the users of the waterways through our 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.

**II. 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 the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this notification as being available in this 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.

Dated: March 10, 2020.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2020–05140 Filed 3–16–20; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2019–0809]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Chelsea River, Chelsea, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Chelsea Street Bridge across the Chelsea River, mile 1.3, at Chelsea, Massachusetts. The bridge owner, Massachusetts Department of Transportation (MassDOT), submitted a request to allow the bridge to open to 139 feet above mean high water instead of the full open position of 175 feet unless a full bridge opening is requested. It is expected that this change to the regulations will create efficiency in drawbridge operations and better serve the needs of the community while continuing to meet the reasonable needs of navigation.

**DATES:** This rule is effective April 16, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Type USCG–2019–0809 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 Mr. Jim Rousseau, First Coast Guard District, Project Officer, telephone (617) 223–8619, email *James.L.Rousseau2@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget

NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
MassDOT Massachusetts Department of Transportation

## II. Background Information and Regulatory History

On November 29, 2019, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Chelsea River, Chelsea, MA, in the **Federal Register** (84 FR 65728). We received six supportive comments in response to the NPRM.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499. The Chelsea Street Bridge at mile 1.3, across the Chelsea River, at Chelsea, Massachusetts, has a vertical clearance in the closed position of 9.33 feet at mean high water. Horizontal clearance is approximately 225 feet. The waterway users include recreational and commercial vessels, including tugboat/barge combinations and tankers.

The existing drawbridge operating regulations are listed at 33 CFR 117.593. In September of 2019, the owner of the bridge, MassDOT, requested a change to the drawbridge operation regulations to allow the Chelsea Street Bridge to open to 139 feet above mean high water, which is an acceptable height for all vessels requesting openings on the Chelsea River. The change in drawbridge operations is due to the increased volume of traffic across the bridge during peak commuting hours, making bridge openings up to 175 feet impractical. This change in opening height reduces the opening time by 2–6 minutes per opening. The Chelsea Street Bridge will perform a full bridge opening of 175 feet above mean high water when requested to do so. The regulations require the bridge to open immediately on signal.

MassDOT reached out to the maritime stakeholders with the change and received no objections.

## IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided 60 days for comment regarding this rule and received seven comments all in support of the change.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The Coast Guard will change the Chelsea River Bridge regulation so it can open to 139 feet, except when a requested to open to 175 feet.

Due to the unique nature of the drawbridge operation for this bridge, MassDOT needs to alter the lighting requirements to better meet the needs of navigation at this drawbridge. In accordance with 33 CFR 118.85, the center of the navigational channel under the operable span will be marked by a range of two green lights when the vertical span is open to navigation. MassDOT will change lighting to allow one solid green light and one flashing green light when the bridge is at the 139 footmark and two solid green lights when the bridge is fully opened to 175 feet.

The rule will continue to meet the reasonable needs of navigation while also improving drawbridge efficiency of operation Coast Guard will change the Chelsea River Bridge regulation so it can open to 139 feet, except when a requested to open to 175 feet.

## V. Regulatory Analyses

The Coast Guard has 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 fact that this bridge will open for all vessel traffic when requested and provide vertical clearance for all vessels when opened and thus should not impact maritime traffic. We believe that this proposed change to the drawbridge operation regulations at 33 CFR 117.593(b) will meet the reasonable needs of navigation.

### *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 comment 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.

The bridge provides 139 feet and 175 feet of vertical clearance when opened on demand that should accommodate all the present vessel traffic with 9.33 feet vertical clearance in the closed position at MHW. 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** 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 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. 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.

*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 Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has 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 promulgates the operating regulations or procedures for drawbridges and 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 § 117.593 to read as follows:

**§ 117.593 Chelsea River.**

(a) All drawbridges across Chelsea River shall open on signal. The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal is three prolonged blasts when the draw can be opened immediately and is two prolonged blasts when the draw cannot be open or is open and must be closed.

(b) The draw of the Chelsea Street Bridge, mile 1.3, at Chelsea, shall open as follows:

(1) The draw shall open on signal to 139 feet above mean high water for all vessel traffic unless a full bridge opening to 175 feet above mean high water is requested.

(2) The 139 foot opening will be signified by a range light display with one solid green light and one flashing green light and the full 175 foot opening will be signified with two solid green range lights.

Dated: Feburary 12, 2020.

**A.J. Tiongson,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 2020–04965 Filed 3–16–20; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2020–0011]**

**RIN 1625–AA87**

## Security Zone; Limetree Bay Terminals, St. Croix, U.S. Virgin Islands

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the name and locating of an existing security zone in St. Croix, U.S. Virgin Islands. This rule adjusts the coordinates of the security zone and updates the facility name from HOVENSA Refinery to Limetree Bay Terminals. The rule continues to prohibit persons and vessels from entering the security zone, unless authorized by the Captain of the Port San Juan or a designated representative. This action is necessary to better meet the safety and security needs of Limetree Bay Terminals in St. Croix, USVI.

**DATES:** This rule is effective April 16, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0011 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 Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2374, email *Pedro.L.Mendoza@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

COTP Captain of the Port
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
USVI U.S. Virgin Islands

### II. Background Information and Regulatory History

On November 21, 2019, the Coast Guard received a request to extend the regulated area of the security zone and update the facility name to Limetree Bay Terminals. The existing regulation in 33 CFR 165.770, contains a fixed security zone around the HOVENSA Refinery on the south coast of St. Croix, USVI. Limetree Bay Terminals recently installed a Single Point Mooring system to enable deep draft vessel traffic to transfer to and from the facility. The location of the Single Point Mooring systems falls outside of the existing security zone. In response, on January 27, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Security Zone; Limetree Bay Terminals, St. Croix, U.S. Virgin

Islands'' (85 FR 4619). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this the Limetree Bay Terminals security zone. During the comment period that ended February 26, 2020, we received no comments.

## III. Legal Authority and Need for Rule

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters surrounding Limetree Bay Terminals. The Coast Guard is establishing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 27, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule amends the existing fixed security zone in 33 CFR 165.770 to expand the regulated area and to update the facility name. This rule increases the regulated area by approximately 880 yards (.5 mile) to encompass the new mooring system location installed by the facility. We updated the facility name to Limetree Bay Terminals to reflect its current ownership. Vessels may seek permission from the COTP to transit through the security zone.

## 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 [provide factual reasons related to the waterway, duration of rule, etc.].

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the security 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.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves expanding an existing security zone and updating the facility name. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

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

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. Revise § 165.770 to read as follows:

### § 165.770 Security Zone; Limetree Bay Terminals, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* The Coast Guard is establishing a security zone in and around Limetree Bay Terminals on the south coast of St. Croix, U.S. Virgin Islands. This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1 in position 17°41′48″ N, 064°44′26″ W; Point 2 in position 17°40′00″ N, 064°43′36″ W; Point 3 in position 17°39′36″ N, 064°44′48″ W; Point 4 in position 17°41′33″ N, 064°45′08″ W; then tracing the shoreline along the water's edge to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Regulations.* (1) Under § 165.33, entry into or remaining within the regulated area in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port San Juan or vessels have a scheduled arrival at Limetree Bay Terminals, St. Croix, in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

(2) Persons desiring to transit the area of the security zone may contact the COTP San Juan or designated representative at telephone number 787–289–2041 or on VHF–FM Channel 16. If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

Dated: March 9, 2020.

**E.P. King,**

*Captain, U.S. Coast Guard, Captain of the Port San Juan.*

[FR Doc. 2020–05158 Filed 3–16–20; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2019–0103; FRL–10006–20–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Infrastructure Requirements for the 2015 Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia. Whenever new or revised national ambient air quality standards (NAAQS or standards) are promulgated, the Clean Air Act (CAA) requires states to make an initial SIP submission to provide for the implementation, maintenance, and enforcement of such NAAQS. This submission is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. This type of SIP revision is commonly referred to as an ''infrastructure'' SIP and elements addressed in such a submission are referred to as infrastructure requirements. West Virginia made a submittal addressing most of the infrastructure requirements for the 2015 ozone NAAQS and later supplemented the submittal to address the interstate transport elements; EPA is not acting on the interstate transport elements at this time. EPA is approving these revisions in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on April 16, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0103. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2021. Mr. Schulingkamp can also be reached via electronic mail at *schulingkamp.joseph@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 18, 2019 (84 FR 69349), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of most portions of West Virginia's infrastructure SIP revision for the 2015 ozone NAAQS. The State submitted the infrastructure SIP on September 14, 2018 through the Department of Environmental Protection (WVDEP); this State later supplemented this submission on February 4, 2019 to address the interstate transport elements of CAA section 110(a)(2)(D)(i)(I). Additional background on West Virginia's submittal, infrastructure SIPs, and the ozone NAAQS can be found in the NPRM.

### II. Summary of SIP Revision and EPA Analysis

West Virginia's September 14, 2018 infrastructure SIP submittal addressed the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The SIP submittal did not address the portion of element (C) which pertains to nonattainment new source review requirements, or element (I) which pertains to the nonattainment requirements of part D, title I of the CAA, because states are not required to address these elements by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process.

EPA has analyzed the SIP submission and is making a determination that the submittal meets the requirements of the identified elements. A detailed summary of EPA's review and rationale for approving West Virginia's submittal may be found in the technical support

document (TSD) for the NPRM which is available online at *www.regulations.gov,* docket number EPA–R03–OAR–2019–0103. Other specific requirements and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

## III. Response to Comments

EPA received three sets of anonymous comments in response to the NPRM. Two of the comments were difficult to interpret but did not appear to support EPA's proposed approval. EPA's best effort to interpret and respond to these two comments are also below.

*Comment 1:* The first commenter disagreed with EPA's proposed action with regard to whether the State has adequate resources. The commenter stated that EPA must review financial records and determine whether the State has adequate funding and if the funding is capable of sustaining the number of employees on the State's staff.

*Response 1:* EPA disagrees with the comment. The comment does not provide any specific facts or analysis to support the concern about insufficient resources. An audit of the State's financial records is not required in order for EPA to determine that a state has met the requirements of CAA section 110(a). The CAA section 110(a)(2)(E)(i) requires that the State provide to EPA ''necessary assurances'' that it will have adequate funding and personnel to implement the relevant NAAQS. In accordance with CAA section 110(a)(2)(E), which requires that the State provide necessary assurances that it has adequate resources and personnel, EPA has concluded that the State has provided the necessary assurances of adequate resources and personnel in accordance with CAA section 110(a)(2)(E), as explained in the TSD included in the docket for this rulemaking action.

For example, West Virginia described in its submission that under State statutory authority it ''employs adequate personnel and retains specialists under W.Va. Code section 22–5–4(a)(8) that are 'necessary, incident or convenient' to accomplish its statutory mandate to carry out'' the West Virginia SIP, and currently maintains a staff of approximately 80 full time employees. West Virginia does not anticipate any changes in necessary resources for the five years following this submission. West Virginia indicates that the State has regulatory legal authority to establish fees to cover permitting costs beyond those already covered by its federally approved Title V operating permit program under 45CSR22, and that it receives revenue from fines and enforcement settlements (Air Pollution Control Fund). West Virginia also receives federal funds under CAA section 103 (Research, investigation, training, and other activities) and section 105 (Grants for support of air pollution planning and control programs), 42 U.S.C. 7403 and 7405. The State air pollution control programs also receive state general fund appropriations. Therefore, EPA has determined that West Virginia has provided necessary assurances that it has sufficient funding and personnel to meet the requirements of section 110(a)(2)(E) for the 2015 ozone NAAQS.

*Comment 2:* The second comment stated that EPA should disapprove West Virginia's infrastructure SIP submission because ''the committee's position was supported by the oil and gas industry.'' The comment also suggested ''[t]he SIP could be suspended because of its non-enforcement.'' The comment concluded by saying ''[t]he infrastructure SIP should be disapproved immediately to stop it being used to bully corporations and public officials and allow another bill to be passed without the new part of the bill being gutted!''

*Response 2:* EPA disagrees with the comment. The commenter did not provide any information beyond its assertion in the comment as to why EPA should disapprove West Virginia's infrastructure SIP submission. The comment also failed to identify any part of the West Virginia SIP that the State is not enforcing. The Administrative Procedures Act does not require that EPA change its decision based on ''comments consisting of little more than assertions that in the opinions of the commenters the agency got it wrong,'' when submitted without supporting data. *International Fabricare Institute* v. *E.P.A.,* 972 F.2d 384 (D.C. Cir. 1992). EPA's review of the infrastructure SIP submission, as explained in the TSD for this rulemaking action, shows that West Virginia has provided the necessary assurances that the State has the unambiguous authority to enforce its SIP and the measures contained therein. It is also unclear what the commenter was referring to in regard to some party using the infrastructure SIP to ''bully corporations and public officials.'' An infrastructure SIP is simply a SIP submission to establish that the state's existing EPA approved SIP, or the existing SIP as revised in the infrastructure SIP submission, meets the applicable requirements to implement, maintain, and enforce a new or revised NAAQS. The infrastructure SIP is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the new or revised standard.

*Comment 3:* The third comment suggested that EPA should disapprove West Virginia's infrastructure SIP submission in full, stating, ''[m]uch of the infrastructure SIP could be used by the federal government for any purpose.'' The commenter also suggested that EPA has not been meeting legislative deadlines and that some members of Congress are not aware of the purpose of infrastructure SIP submissions.

*Response 3:* EPA disagrees with the comment to the extent that it calls for disapproving West Virginia's infrastructure SIP, because the commenter did not provide any information or basis to support such a disapproval. Although the commenter alleges EPA missed legislative deadlines, the commenter did not identify which deadlines EPA missed or why those deadlines would be relevant to this rulemaking. The Administrative Procedures Act does not require that EPA change its decision based on ''comments consisting of little more than assertions that in the opinions of the commenters the agency got it wrong,'' when submitted without supporting data. *International Fabricare Institute* v. *E.P.A.,* 972 F.2d 384 (D.C. Cir. 1992). Nothing in the comment calls into question EPA's evaluation of West Virginia's infrastructure SIP for the 2015 ozone NAAQS for each applicable requirement in CAA section 110(a)(2), with the exception of section 110(a)(2)(D)(i)(I) which EPA is not acting on at this time, and concludes the State has met the applicable requirements.

## IV. Final Action

EPA is approving West Virginia's September 14, 2018 infrastructure submittal as a revision to the West Virginia SIP. EPA is approving the West Virginia's September 14, 2018 SIP revision as meeting the requirements of section 110(a)(2) of the CAA to implement, maintain, and enforce the 2015 ozone NAAQS, including specifically section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for this NAAQS. This final rulemaking action does not include action on section 110(a)(2)(I) or portions of section 110(a)(2)(C) referring to the permit program under part D, title I of the CAA. This rulemaking action also does not address section 110(a)(2)(D)(i)(I) which pertains to the interstate transport of emissions

addressed by West Virginia's February 4, 2019 supplemental SIP revision; EPA will act on West Virginia's supplemental SIP revision in a later separate action.

## V. Statutory and Executive Order Reviews

*A. General Requirements*

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to West Virginia's infrastructure requirements for the 2015 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 24, 2020.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart XX—West Virginia

■ 2. In § 52.2520, amend the table in paragraph table (e) by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2015 ozone NAAQS'' at the end of the table to read as follows:

**§ 52.2520 Identification of plan.**

* * * * *

(e) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * * | * | * | * * | * * |
| Section 110(a)(2) Infrastructure Requirements for the 2015 ozone NAAQS. | Statewide ..... | 9/14/18 | 3/17/20, **Federal Register**. | Docket #2019–0103. This action addresses the following CAA elements of section 110(a)(2): A, B, C, D(i)(II), D(ii), E, F, G, H, J, K, L, and M. |

[FR Doc. 2020–04856 Filed 3–16–20; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[EPA–R03–OAR–2019–0162; FRL10006–19–Region 3]**

# Approval and Promulgation of Air Quality Implementation Plans; Virginia; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision formally submitted by the Commonwealth of Virginia. Whenever EPA promulgates a new or revised national ambient air quality standard (NAAQS or standard), the Clean Air Act (CAA) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. These infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is approving Virginia's submittal addressing the following infrastructure elements, or portions thereof, of section 110(a)(2) of the CAA for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is approving Virginia's submittal as a SIP revision in accordance with the requirements of section 110(a) of the CAA.

**DATES:** This final rule is effective on April 16, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0162. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2043. Ms. Calcinore can also be reached via electronic mail at *calcinore.sara@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Summary of SIP Revision and EPA Analysis

On December 4, 2019 (84 FR 66361), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's January 28, 2019 submittal addressing the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). A detailed summary of EPA's review and rationale for approving Virginia's submittal may be found in the Technical Support Document (TSD) for EPA's December 4, 2019 NPRM and will not be restated here.[1]

## II. Public Comments and EPA Response

EPA received one comment on the December 4, 2019 NPRM. The comment is included in the docket for this action, available online at *www.regulations.gov,* Docket ID: EPA–R03–OAR–2019–0162.

*Comment:* On January 3, 2020, EPA received an anonymous comment on the December 4, 2019 NPRM. The commenter suggests that EPA not approve Virginia's January 28, 2019 submittal addressing the infrastructure requirements, or portions thereof, for the 2015 ozone NAAQS. The commenter claims that pursuant to a court holding, which the commenter does not identify, EPA must demonstrate that ''it can find the necessary source from which to draw its authority.'' The commenter also references greenhouse gases and CAA section 111(d) as the basis for the objection.

*Response:* EPA evaluated Virginia's January 28, 2019 submittal in accordance with the statutory requirements of CAA section 110(a)(2), as applicable. As explained in the NPRM and TSD, Virginia's SIP revision met the applicable requirements of CAA section 110(a)(2) for the following infrastructure elements: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The evaluation of Virginia's SIP submittal does not involve greenhouse gases or CAA section 111(d). The commenter has submitted ''comments consisting of little more than assertions that in the opinions of the commenters the agency got it wrong,'' without also submitting supporting information for EPA to evaluate. *International Fabricare Institute* v. *E.P.A.,* 972 F.2d 384 (D.C. Cir. 1992). Accordingly, EPA has not been persuaded by the comment that it should change its decision to approve this SIP submittal.

## III. Final Action

EPA finds that Virginia's January 28, 2019 submittal satisfies the following infrastructure requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Therefore, EPA is approving Virginia's January 28, 2019 submittal addressing the infrastructure requirements for the 2015 ozone NAAQS as a revision to the Virginia SIP.

## IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a

[1] The TSD for EPA's December 4, 2019 NPRM is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2019–0162.

clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Virginia's submittal addressing the infrastructure requirements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 24, 2020.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS'' at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

* * * * *

(e) * * *

(1) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS. | Statewide ..... | 1/28/2019 | 3/17/2020, [Insert **Federal Register** citation]. | This action addresses the following CAA elements: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). |

* * * * *

[FR Doc. 2020–04853 Filed 3–16–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2019–0695; FRL–10005–36–Region 1]**

### Air Plan Approval; Massachusetts; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard

*Correction*

In Rule document 2020–03203, appearing on pages 13748–13755, in the issue of Tuesday, March 10, 2020, make the following correction:

■ This document was inadvertently published and is hereby withdrawn.

[FR Doc. C1–2020–03203 Filed 3–16–20; 8:45 am]

**BILLING CODE 1301–00–D**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 200227–0066 and 200221–0062; RTID 0648–XY076]**

### Fisheries of the Exclusive Economic Zone off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

**ACTION:** Temporary rule; opening.

**SUMMARY:** NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program. The season will open 1200 hours, Alaska local time (A.l.t.), March 14, 2020, and will close 1200 hours, A.l.t., November 15, 2020. This period is the same as the 2020 commercial halibut fishery opening dates adopted by the International Pacific Halibut Commission. The IFQ and CDQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures.

**DATES:** Effective 1200 hours, A.l.t., March 14, 2020, until 1200 hours, A.l.t., November 15, 2020.

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

**SUPPLEMENTARY INFORMATION:** Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, adopted by the International Pacific Halibut Commission (IPHC). The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hours, A.l.t., March 14, 2020, and will close 1200 hours, A.l.t., November 15, 2020. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ and CDQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

#### 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 opening of the sablefish

fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of March 11, 2020.

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 § 679.23 and is exempt from review under Executive Order 12866.

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

Dated: March 12, 2020.

**Karyl K. Brewster-Geisz,**

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

[FR Doc. 2020–05446 Filed 3–12–20; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 85, No. 52
Tuesday, March 17, 2020

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 331

### 9 CFR Part 121

**[Docket No. APHIS–2019–0018]**

**RIN 0579–AE52**

## Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Advance notice of proposed rulemaking and request for comments.

**SUMMARY:** In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are soliciting public comment regarding the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act requires the biennial review and republication of the list of select agents and toxins and the revision of the list as necessary. Accordingly, we are soliciting public comment on the current list of select agents and toxins in our regulations and suggestions regarding any addition or reduction of the animal or plant pathogens currently on the list of select agents.

**DATES:** We will consider all comments that we receive on or before May 18, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0018.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0018* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading Room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Sally Rejas, Program Analyst, Agriculture Select Agent Services, Strategy & Policy, VS, APHIS, 4700 River Road, Riverdale, MD 20716; (301) 851–3384.

**SUPPLEMENTARY INFORMATION:**

### Background

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 provides for the regulation of certain biological agents and toxins that have the potential to pose a severe threat to human, animal, and plant health, or to animal and plant products. The Animal and Plant Health Inspection Service (APHIS) has the primary responsibility for implementing the provisions of the Act within the U.S. Department of Agriculture (USDA). Veterinary Services (VS) select agents and toxins, listed in 9 CFR 121.3, are those that have been determined to have the potential to pose a severe threat to animal health or animal products. Plant Protection and Quarantine (PPQ) select agents and toxins, listed in 7 CFR 331.3, are those that have been determined to have the potential to pose a severe threat to plant health or plant products. Overlap select agents and toxins, listed in 9 CFR 121.4, are those that have been determined to pose a severe threat to public health and safety, to animal health, or to animal products. Overlap select agents are subject to regulation by both APHIS and the Centers for Disease Control and Prevention (CDC), which has the primary responsibility for implementing the provisions of the Act for the Department of Health and Human Services.

Title II, Subtitle B of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (which is cited as the ''Agricultural Bioterrorism Protection Act of 2002'' and referred to below as the Act), section 212(a), provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products.

In determining whether to include an agent or toxin in the list, the Act requires that the following criteria be considered:

- The effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;
- The pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants;
- The availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin;
- Whether such inclusion would have a substantial negative impact on the research and development of solutions for the animal and plant disease caused by the agent or toxin and whether the negative impact would substantially outweigh the risk posed by the agent or toxin to animal or plant health if it is not included on the list (added by the 2018 Farm Bill); and
- Any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.

Paragraph (a)(2) of section 212 of the Act requires the Secretary to review and republish the list of select agents and toxins every 2 years and to revise the list as necessary. To fulfill this statutory mandate, PPQ and VS each convene separate interagency working groups in order to review the lists of PPQ and VS select agents and toxins, as well as any overlap select agents and toxins, and develop recommendations regarding possible changes to the list using the five criteria for listing found in the Act. In this document, we are asking for comments on the current list [1] of select agents and toxins and on any other significant pathogens so as to inform the working groups as they begin the biennial review process.

As detailed below, we are considering removing one PPQ select agent, one VS select agent, and four overlap select

[1] You may view the lists of select agents and toxins on the internet at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0018.*

agents. CDC is publishing a notice concurrently which also lists the overlap agents under consideration. Proposed select agent removals are as follows:

PPQ Select Agents

• *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*): This agent is only able to survive and reproduce in the host plant and requires specific environmental conditions to become infectious, for which mitigations exist.

VS Select Agents

• *African horse sickness virus:* This virus is difficult to successfully disseminate and effectively transmit. An effective vaccine exists.

Overlap Select Agents

• *Bacillus anthracis* (Pasteur strain): This agent presents little economic or animal health risk due to low mortality rates, low virulence, and minimal risk of farm-to-farm transmission due to modern production practices (*e.g.,* physical separation of groups of animals on farms and robust quarantine protocols in the face of any infection).

• *Brucella abortus:* This agent presents little economic or animal health risk as it is unlikely to result in large-scale population introduction due to the high concentration of the agent necessary to produce disease as well as modern cattle production processes that limit animal-to-animal transmission routes. There is an efficacious vaccine, moderate immunity status within vulnerable populations, limited farm-to-farm transmission risk, and effective quarantine procedures.

• *Brucella melitensis:* This agent, which primarily affects goats and sheep, is of lesser concern because the low farm-to-farm transmission risk due to modern production practices limits the chance of introduction on a scale large enough to impact domestic production.

• *Brucella suis:* This agent presents a low to moderate animal health risk due to limited farm-to-farm transmission risk as a result of modern production practices which reduce the risk of a large-scale introduction.

• *Venezuelan equine encephalitis virus:* An effective vaccine exists for this agent, which contributes to a high level of immunity within vulnerable populations. Furthermore, large-scale production and efficient dissemination would be difficult due to the virus' limited ability to persist in the environment outside of an infected animal or mosquito host.

At the conclusion of the comment review process, we will publish another document in the **Federal Register** either republishing the lists of select agents and toxins in 7 CFR 331.3, 9 CFR 121.3, and 9 CFR 121.4 or proposing changes to one or more of the lists.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

**Authority:** 7 U.S.C. 8401; 7 CFR 2.22, 2.80, 371.3, and 371.4.

Done in Washington, DC, this 25th day of February 2020.

**Greg Ibach,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2020–05499 Filed 3–16–20; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–0136; Project Identifier MCAI–2019–00114–E]**

**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) 2018–18–02, which applies to certain Austro Engine GmbH model E4 engines and to all Austro Engine E4P engines. AD 2018–18–02 requires replacement of the timing chain and amending certain airplane flight manuals (AFMs) to limit the use of windmill restarts only as an emergency procedure. Since the FAA issued AD 2018–18–02, Austro Engine GmbH revised the applicable Airworthiness Limitation Section (ALS) including the limitation required by AD 2018–18–02 for the timing chain subjected to a windmill restart. This proposed AD would require amendment of certain existing AFMs to limit the use of windmill restarts and remove the timing chain replacement requirement that exists in AD 2018–18–02. The timing chain replacement requirement in accordance with new life limits defined in the revised ALS will be proposed in a new and separate AD. 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 May 1, 2020.

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

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12 140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For Austro Engine GmbH 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; website: *www.austroengine.at.* For Diamond Aircraft Industries service information identified in this NPRM, contact Diamond Aircraft Industries, N. A., Otto-Straβe 5, A–2700 Wiener Neustadt, A2700, Austria; phone: +43 2622 26700; fax: +43 2622 26780; website: *www.diamondaircraft.com.* 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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0136; 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), 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:** Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7743; fax: 781–238–7199; email: *Mehdi.Lamnyi@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### 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–2020–0136; Project Identifier MCAI–2019–00114–E''

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.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

**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 NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Discussion**

The FAA issued AD 2018–18–02, Amendment 39–19381 (83 FR 53802, October 25, 2018), (''AD 2018–18–02''), for certain Austro Engine GmbH model E4 engines and for all Austro Engine E4P engines. AD 2018–18–02 requires replacement of the timing chain and amending certain AFMs to limit the use of windmill restarts. AD 2018–18–02 resulted from reports of considerable wear of the timing chain on these engines. The FAA issued AD 2018–18–02 to prevent failure of the engine timing chain.

**Actions Since AD 2018–18–02 Was Issued**

Since the FAA issued AD 2018–18–02, the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017–0103R1, dated February 25, 2019 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Considerable wear of the timing chain has been detected on some engines. This may have been caused by windmilling restarts, which are known to cause high stress to the timing chain. This condition, if not detected and corrected, could lead to failure of the timing chain and consequent engine power loss, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, AE included instructions in the engine maintenance manual to periodically inspect the condition of the timing chain and, depending on findings, to replace the timing chain and the chain wheel. The operation manual was updated to allow windmilling restart only as an emergency procedure. AE also published Mandatory Service Bulletin (MSB) MSB–E4–017/2, providing instructions to replace the timing chain for engines with known windmilling restarts, and EASA issued AD 2017–0103, requiring replacement of the timing chain for engines with known windmilling restarts, and amendment of the applicable Aircraft Flight Manual (AFM). Since that [EASA] AD was issued, AE revised the applicable Airworthiness Limitation Section (ALS) including, among others, the limitation required by that AD. Consequently, EASA published AD 2019–0041, requiring accomplishment of the actions specified in the ALS.
>
> For the reason described above, this [EASA] AD is revised accordingly, removing the requirement of timing chain replacement. This action remain required through EASA AD 2019–0041.

This proposed AD, which supersedes AD 2018–18–02, retains the AFM amendment requirements and removes the timing chain replacement requirement. The timing chain replacement requirement in accordance with new life limits defined in the revised ALS will be mandated by a proposed new and separate AD.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0136.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Diamond Aircraft (DA) Temporary Revision (TR) TR–MÄM–42–973, dated August 12, 2016, for the Diamond Aircraft Industries (DAI) model DA 42 NG Airplane Flight Manual (AFM) and DA TR TR–MÄM–62–240, dated August 12, 2016, for the DAI model DA 62 NG AFM. These TRs define the removal of the normal operation procedure for windmilling restart for the respective airplanes. 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 certain requirements of AD 2018–18–02. This proposed AD would retain the requirement for amending certain AFMs to limit the use of windmill restarts to emergency procedures and would remove the requirement for replacing the timing chain.

**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 |
|---|---|---|---|---|
| Amend AFM | 1 work-hour × $85 per hour = $85 | $0 | $85 | $17,935 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2018–18–02, Amendment 39–19381 (83 FR 53802, October 25, 2018), and adding the following new AD:

**Austro Engine GmbH:** Docket No. FAA–2020–0136; Project Identifier MCAI–2019–00114–E.

**(a) Comments Due Date**

The FAA must receive comments by May 1, 2020.

**(b) Affected ADs**

This AD replaces AD 2018–18–02, Amendment 39–19381 (83 FR 53802, October 25, 2018).

**(c) Applicability**

This AD applies to Austro Engine GmbH model E4 engines with serial numbers that have a ''-B'' or ''-C'' configuration and to model E4P engines, all serial numbers.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 8520, Reciprocating Engine Power Section.

**(e) Unsafe Condition**

This AD was prompted by reports of considerable wear of the timing chain on the affected engines. The FAA is issuing this AD to prevent failure of the engine timing chain. The unsafe condition, if not addressed, could result in failure of the engine timing chain, 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 30 days after the effective date of this AD, under the Emergency Procedures chapter, amend the applicable airplane flight manual (AFM) by adding the information in Figure 1 to paragraph (g)(1) of this AD to limit the use of a windmilling restart to only an emergency procedure.

**Figure 1 to Paragraph (g)(1) –** *Restart In-Flight by Windmilling*

Restart In-Flight by Windmilling

In case of an engine malfunction, determine the root cause and only continue if a safe restart is possible.

1. Max. demonstrated altitude for immediate restart by windmilling: 15,000 ft.
2. Max. demonstrated altitude for restart after 10 min. and ambient air temperature higher than ISA by windmilling: 10,000 ft.
3. Max. demonstrated altitude for restart after 5 min. and ambient air temperature between ISA and ISA minus 10°C by windmilling: 10,000 ft.
4. Max. demonstrated altitude for restart after 2 min. and ambient air temperature below ISA minus 10°C by windmilling: 10,000 ft.
5. Airspeed: See applicable Aircraft Flight Manual.
6. Power Levers – "IDLE"
7. Engine Master – "ON"

Move power lever slightly forward to a power rating that assures the referring engine is delivering thrust as a rotating propeller is not a guarantee for a running engine.

(2) For affected Austro Engine GmbH model E4 engines installed on Diamond Aircraft Industries (DAI) model Diamond Aircraft (DA) 42 NG and DA 42 M–NG airplanes, and for Austro Engine GmbH model E4P engines installed on DAI model DA 62 airplanes, using AFM Temporary Revision (TR) TR–MÄM–42–973, and AFM TR TR–MÄM–62–240, both dated August 12, 2016, updating the applicable AFM is an acceptable method to comply with paragraph (g)(1) of this AD.

**(h) Credit for Previous Actions**

You may take credit for actions required by paragraph (g) of this AD if you amended the AFM for the affected engine before the effective date of this AD in accordance with AD 2018–18–02.

**(i) Alternative Methods of Compliance (AMOCs)**

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

**(j) Related Information**

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

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2017–0103R1, dated February 25, 2019, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0136.

(3) For Austro Engine GmbH 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; website: *www.austroengine.at.* For Diamond Aircraft Industries service information identified in this AD, contact Diamond Aircraft Industries, N. A., Otto-Straβe 5, A–2700 Wiener Neustadt, A2700, Austria; phone: +43 2622 26700; fax: +43 2622 26780; website: *www.diamondaircraft.com.* 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 on March 10, 2020.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–05290 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2019–0317]**

**RIN 1625–AA00**

## Safety Zones; Northern California and Lake Tahoe Area Annual Fireworks Events, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to amend and establish several permanent safety zones in the Captain of the Port San Francisco zone. This action is necessary to provide for the safety of life on the navigable waters of the San Francisco Bay, Carquinez Strait, Mare Island Strait, Sacramento River, Lake Tahoe, and Monterrey Bay during annual fireworks displays. This proposed rulemaking would prohibit persons and vessels from entering the safety zones unless authorized by the Captain of the Port San Francisco 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 May 18, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG–2019–0317 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone 415–399–3585, email *SFWaterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background, Purpose, and Legal Basis

Fireworks displays in 33 CFR part 165.1191 are held annually on the navigable waters within the Captain of the Port San Francisco (COTP) zone. After conducting a review of the fireworks displays listed in 33 CFR part 165.1191, the specifications for eight of the events listed in the table no longer accurately reflect the actual event parameters, and three annual fireworks displays are not listed in the table. The COTP has determined that potential hazards associated with the fireworks used in these displays would be a safety concern for anyone within the safety zones during the fireworks displays. The purpose of this rulemaking is to ensure safety on the navigable waters within the safety zones for the fireworks displays before, during, and after the scheduled events. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

## III. Discussion of Proposed Rule

The COTP is proposing to amend Table 1 to § 165.1191. Eight fireworks displays will be amended, and three fireworks displays will be added.

The fireworks events we propose to amend are listed numerically in Table 1 of this section as item 7, ''San Francisco Independence Day Fireworks,'' item 8, ''Fourth of July Fireworks, Berkeley Marina,'' item 9, ''Fourth of July Fireworks, City of Richmond,'' item 19, ''Red, White, and Tahoe Blue Fireworks, Incline Village, NV,'' item 22, ''Monte Foundation Fireworks,'' item 24, ''San Francisco New Years Eve Fireworks,'' item 25, ''Sacramento New Years Eve Fireworks,'' and item 27, ''Feast of Lanterns Fireworks.''

The display locations for items 7, 8, 9, 25, and 27 no longer accurately reflect the display locations for the events, so this rule proposes to insert updated location descriptions into the table.

The name of item 19 has changed from ''Red, White, and Tahoe Blue Fireworks, Incline Village, NV'' to ''Incline Village Independence Day Fireworks'' and would be updated in the table to reflect the name change.

The display dates listed in items 22, 24, and 27 do not accurately reflect the display dates for the fireworks displays, so this rule proposes to update them as follows. Item 22, ''Monte Foundation Fireworks'' currently states the date as the second Saturday in October, but the fireworks have occurred on the second Saturday or Sunday in October. Item 24, ''San Francisco New Years Eve Fireworks'' currently states it occurs on New Years Eve, but the event has lasted into the early hours of New Year's Day, so we propose adding January 1st as a display date as well to be more accurate. Item 27, ''Feast of Lanterns Fireworks'' currently states it occurs on the last Saturday of July, but due to the variance in the event dates, we are amending the dates to say a Saturday or Sunday in July. As stated in § 165.1191(a), the Coast Guard will provide exact dates, times, and other details concerning the fireworks listed in table 1 to § 165.1191 in the Local Notice to Mariners at least 20 days prior to the event.

The Regulated Area description for item 22, ''Monte Foundation Fireworks'', would be revised to clarify the safety zone will be in the navigable waters around and under the Capitola Pier.

This rule proposes to add three safety zones covering three reoccurring fireworks events to Table 1 in 33 CFR 165.1191. The three new fireworks events would be listed in Table 1 of this section as item 31, ''Fourth of July Fireworks, City of Benicia,'' item 32, ''Fourth of July Fireworks, City of Vallejo,'' and item 33 ''Berkeley Winter on the Waterfront Fireworks.'' All three of these fireworks displays occurred in previous years 2017, 2018, and 2019. Both the Benicia, CA fireworks and the City of Vallejo, CA fireworks will occur annually on the Fourth of July. The Berkley, CA fireworks displays will occur annually on the second Saturday or Sunday in December. The Coast Guard believes it is beneficial to include these additional fireworks displays in the list of reoccurring permanent regulations to increase public awareness of when safety zones would be enforced in these marine areas. 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 limited duration and narrowly tailored geographic areas of the safety zones. Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because the local waterway users will be notified via public Notice to Mariners to ensure the safety zones will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

*B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator for the following reasons: (i) This rule will encompass only a small portion of each affected waterway for a limited period of time for each fireworks event, and (ii) the maritime public will be advised in advance of these safety zones via Notice to Mariners.

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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zones of limited sizes and durations. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. 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 *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

## List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise Item 7, Item 8, Item 9, Item 19, Items 22, Item 24, Item 25, and Item 27, and add Item 31, Item 32, and Item 33 in Table 1 to § 165.1191 to read as follows:

**§ 165. 1191 Northern California and Lake Tahoe Area Annual Fireworks Events.**

TABLE 1 TO § 165.1191

| | |
|---|---|
| * * * * * * * | |
| **7. San Francisco Independence Day Fireworks** | |
| Sponsor | The City of San Francisco. |
| Event Description | Fireworks Display. |
| Date | July 4th. |
| Location 1 | A barge located approximately 1000 feet off San Francisco Pier 39. |
| Location 2 | A barge located approximately 700 feet off of the San Francisco Municipal Pier at Aquatic Park. |
| Regulated Area | 100-foot radius around each fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1000-foot radius upon commencement of the fireworks display. |
| * * * * * * * | |
| **8. Fourth of July Fireworks, Berkeley Marina** | |
| Sponsor | Berkeley Marina. |
| Event Description | Fireworks Display. |
| Date | July 4th. |
| Location | A barge located near the Berkeley Marina Pier. |
| Regulated Area | 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1000-foot radius upon commencement of the fireworks display. |
| * * * * * * * | |
| **9. Fourth of July Fireworks, City of Richmond** | |
| Sponsor | Various Sponsors. |
| Event Description | Fireworks Display. |
| Date | Week of July 4th. |
| Location | A barge located in the Richmond Harbor in Richmond, CA. |
| Regulated Area | 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 560-foot radius upon commencement of the fireworks display. |
| * * * * * * * | |
| **19. Incline Village Independence Day Fireworks** | |
| Sponsor | Various Sponsors. |
| Event Description | Fireworks Display. |
| Date | Week of July 4th. |
| Location | 500–1000 feet off Incline Village, NV in Crystal Bay. |
| Regulated Area | 100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display. |
| * * * * * * * | |
| **22. Monte Foundation Fireworks** | |
| Sponsor | Monte Foundation. |
| Event Description | Fireworks Display. |
| Date | Second Saturday or Sunday in October. |
| Location | Capitola Pier in Capitola, CA. |
| Regulated Area | 1000-foot radius safety zone in the navigable waters around and under the Capitola Pier. |
| * * * * * * * | |
| **24. San Francisco New Year's Eve Fireworks** | |
| Sponsor | City of San Francisco. |
| Event Description | Fireworks Display. |
| Date | December 30th through January 1st. |
| Location | 1000 feet off the Embarcadero near the Ferry Plaza in San Francisco, CA. |

TABLE 1 TO § 165.1191—Continued

| | |
|---|---|
| Regulated Area | 100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display. |

* * * * * * *

**25. Sacramento New Year's Eve Fireworks**

| | |
|---|---|
| Sponsor | Various Sponsors. |
| Event Description | Fireworks Display. |
| Date | New Year's Eve, December 31st. |
| Location | Near the Tower Bridge, Sacramento River, Sacramento, CA. |
| Regulated Area | The navigable waters of the Sacramento River within 700 feet of the two shore-based launch locations near the Tower Bridge in Sacramento, CA and the bridge-based launch location on the Tower Bridge in Sacramento, CA. |

* * * * * * *

**27. Feast of Lanterns Fireworks**

| | |
|---|---|
| Sponsor | Feast of Lanterns, Inc. |
| Event Description | Fireworks Display. |
| Date | A Saturday or Sunday in July. |
| Location | Near Lover's Point Park in Pacific Grove, CA. |
| Regulated Area | The area of navigable waters within a 1000-foot radius of the launch platform located on the beach near Lover's Point Park. |

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**31. Benicia Fourth of July Fireworks**

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|---|---|
| Sponsor | City of Benicia, CA. |
| Event Description | Fireworks Display. |
| Date | July 4th. |
| Location | Carquinez Strait, Benicia, CA. |
| Regulated Area | 1000-foot radius safety zone around the fireworks launch platform located on the Benicia First Street Pier. |

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**32. Vallejo Fourth of July Fireworks**

| | |
|---|---|
| Sponsor | City of Vallejo, CA. |
| Event Description | Fireworks Display. |
| Date | July 4th. |
| Location | Mare Island Strait, Vallejo, CA. |
| Regulated Area | 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1000-foot radius upon commencement of the fireworks display. |

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**33. Berkeley Winter on the Waterfront Fireworks**

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|---|---|
| Sponsor | City of Berkeley, CA. |
| Event Description | Two Fireworks Displays. |
| Date | Second Saturday or Sunday in December. |
| Location | Near the entrance to the Berkeley Marina in Berkeley, CA. |
| Regulated Area | 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 500-foot radius upon commencement of the first fireworks display and remains in effect until after the conclusion of the second fireworks display. |

Dated: March 9, 2020.

**Howard H. Wright,**

*Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.*

[FR Doc. 2020–05174 Filed 3–16–20; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 73

**[Docket No. CDC–2020–0024]**

**RIN 0920–AA71**

## Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Advance notice of proposed rulemaking and request for comments.

**SUMMARY:** In accordance with section 351a of the Public Health Service Act, the Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS; hereafter referred to as HHS/CDC) has initiated a review of the HHS list of biological agents and toxins that have the potential to pose a severe threat to public health and safety (HHS select agents and toxins). This review was initiated within two years of the completion of the previous review. In reviewing the list, HHS/CDC is considering whether to propose amending the HHS list of select agents and toxins.

**DATES:** Comments should be received on or before May 18, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0024 or Regulation Identifier Number (RIN) 0920–AA71, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–7, Atlanta, Georgia 30329, ATTN: RIN 0920–AA71.

*Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Docket Access:* For access to the docket to read background documents or comments received, or to download an electronic version of the advance notice of proposed rulemaking, go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road NE, Atlanta, GA, 30329. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Select Agents and Toxins (DSAT) to schedule your visit. Please be aware that comments and other submissions from members of the public are made available for public viewing without changes.

**FOR FURTHER INFORMATION CONTACT:** Samuel S. Edwin Ph.D., Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–7, Atlanta, Georgia 30329. Telephone: (404) 718–2000.

**SUPPLEMENTARY INFORMATION:** The preamble to this advance notice of proposed rulemaking is organized as follows:

I. Public Participation
II. Background
III. Modifications to the List of Select Agents and Toxins Being Considered
*A.* Agents and Toxins Under Consideration
*i.* Botulinum Neurotoxin Producing Species of *Clostridium*
ii. Coxiella burnetii
iii. Rickettsia prowazekii
iv. *Bacillus anthracis* (Pasteur Strain)
v. *Brucella Abortus, Brucella Melitensis,* and *Brucella Suis*
vi. Venezuelan Equine Encephalitis Virus (VEEV) 1AB and 1C
vii. Short, Paralytic Alpha Conotoxins
viii. Diacetoxyscirpenol
ix. *Staphylococcal* Enterotoxins
x. New World Hantaviruses:
1. Sin Nombre Virus
2. Andes Virus
xi. Old World Hantaviruses:
1. Hantaan Virus
2. Dobrava Virus
B. Toxins Being Considered for Revision to Exclusion Amounts (*i.e.,* the Amount Below Which the Toxin Is Not Subject to Regulatory Oversight)
i. Saxitoxin
ii. Tetrodotoxin
iii. Botulinum neurotoxin
C. Designating Nipah Virus as a Tier 1 Select Agent
IV. References

## I. Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Comments are welcomed on any topic related to this advance notice of proposed rulemaking.

In addition, HHS/CDC invites comments specifically as to whether there are additional biological agents or toxins that should be added or removed from the HHS list of select agents and toxins based on the following criteria outlined under 42 U.S.C. 262a(a)(1)(B):

(1) ''The effect on human health of exposure to the agent or toxin''
(2) ''The degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans''
(3) ''The availability and effectiveness of pharmacotherapies to treat or immunizations to prevent any illness resulting from infection by the agent or exposure to the toxin''
(4) ''Any other criteria including the needs of children and other vulnerable populations'' and any other criteria that the commenter believes should be considered.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Commenters should not include any information in their comments or supporting materials that they consider confidential or inappropriate for public disclosure. HHS/CDC will carefully consider all comments submitted.

## II. Background

Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Response Act) (42 U.S.C. 262a(a)(1)), the HHS Secretary must establish by regulation a list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. In determining whether to include a biological agent or toxin on the list, the Bioterrorism Response Act (42 U.S.C. 262a(a)(1)(B)) requires that the HHS Secretary consider the following criteria: The effect on human health of exposure to an agent or toxin; the degree of contagiousness of the agent and the methods by which the agent or toxin is transferred to humans; the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent illnesses resulting from an agent or toxin; and any other criteria including the needs of children and other vulnerable populations that the HHS Secretary deems relevant.

Under 42 U.S.C. 262a(a)(2), the HHS Secretary must review and republish the list of HHS select agents and toxins at least biennially. For this review, HHS/CDC evaluated as discussed below each agent and toxin based on: The degree of pathogenicity (ability of an organism to cause disease); dissemination efficacy; aerosol stability; matrix stability; ease of production; ability to genetically manipulate or alter; severity of illness; case fatality rate; long-term health effects; rate of transmission; available treatment; status of host immunity (*e.g.* whether an individual has already been

exposed to the agent and generated an immune response); vulnerability of special populations; decontamination and restoration (the extent remediation efforts are needed due to agent persistence in the environment and population); and the burden or impact on the health care system.

The results of the previous biennial review, discussed in a final rule published in the **Federal Register** on January 19, 2017 (82 FR 6278), were that HHS/CDC would make no changes to the list of HHS select agents and toxins at that time. Given that HHS/CDC is again considering whether to remove select agents and toxins as proposed in a previous notice of proposed rulemaking (81 FR 2805, January 19, 2016), HHS/CDC will consider the 35 public comments received from that notice as part of this biennial review. The current list of HHS select agents and toxins can be found at 42 CFR 73.3 (HHS select agents and toxins) and 42 CFR 73.4 (Overlap select agents and toxins), and is available at *https://www.selectagents.gov/SelectAgentsandToxinsList.html.*

As noted above, the list of HHS select agents and toxins is divided into two sections. The biological agents and toxins listed in 42 CFR 73.3 (HHS select agents and toxins) have the potential to pose a severe threat to human health and safety and are regulated only by HHS. The biological agents listed in § 73.4 (overlap select agents and toxins) have not only the potential to pose a severe threat to human health and safety; but have been determined by the USDA, pursuant to USDA's authority under the Agriculture Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), to have the potential to pose a severe threat to animals and animal products. Accordingly, these biological agents are jointly regulated by HHS and USDA as ''overlap'' select agents. The Bioterrorism Response Act defines the term ''overlap agent or toxin'' to mean a biological agent or toxin that is listed pursuant to 42 U.S.C. 262a and is listed pursuant to 7 U.S.C. 8401. See 7 U.S.C. 8411. If HHS/CDC removes any overlap select agents from its list, these agents might still be regulated as USDA select agents dependent on the outcome of USDA biennial review.

## III. Modifications to the List of Select Agents and Toxins Being Considered

The purpose of this advance notice of proposed rulemaking is to seek public comment on potential changes to the current list of HHS and overlap select agents and toxins. Specifically, we are providing an opportunity for interested persons to submit comments, including peer reviewed research data, that will better inform us as to whether there are: (1) Any biological agents or toxins that should be added to the select agents and toxin list because they have the potential to pose a severe threat to public health and safety; and (2) biological agents or toxins currently on the list that should be removed because they would no longer be considered to have the potential to pose a severe threat to public health and safety.

In addition, HHS/CDC is seeking comment on the following specific changes to the list of HHS and overlap select agents under consideration:

### *A. Select Agents and Toxins Under Consideration*

#### i. Botulinum Neurotoxin Producing Species of *Clostridium*

Botulism is a serious paralytic disease caused by a neurotoxin produced during the growth of the spore-forming bacterium *Clostridium botulinum* (or rarely, *C. argentinense* (Puig de Centorbi et al., 1997), *C. butyricum,* or *C. baratii*) (Sobel, 2005). As such, the organism itself does not normally cause disease. HHS/CDC is seeking any information that will help inform our deliberations regarding if *Clostridium botulinum* should be treated consistently with the regulation of other select toxins in which a toxin is regulated but not the organism that produces the toxin. For example, *Staphylococcus aureus* is not listed as a select agent, yet Staphylococcal enterotoxins A,B,C,D,E subtypes are regulated toxins.

Should Botulinum neurotoxin producing species of *Clostridium* be removed or retained as an HHS select agent? Please provide a detailed explanation for your response.

#### ii. Coxiella burnetii

Q fever is a disease caused by the bacteria *Coxiella burnetii.* Q fever is an acute febrile disease that varies in severity and duration. Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information not included below to help inform our deliberations regarding *C. burnetii:*

- Q fever has a low mortality rate (≤2%) with antibiotic treatment (Rolain et al., 2005). *C. burnetii* is susceptible to a number of readily available antibiotics including tetracycline or doxycycline (Rolain et al., 2005).
- Only 0.2–0.5% of the Q fever cases progress past the acute infection stage (Cutler, 2007).
- A whole-cell killed vaccine (Q-Vax) is licensed in Australia and has been used to vaccinate U.S. researchers who were at risk (Seqiris Pty Ltd PV, 2014).

Should *C. burnetii* be removed or retained as an HHS select agent? Please provide a detailed explanation for your response.

#### iii. Rickettsia prowazekii

*Rickettsia prowazekii* causes epidemic typhus, which is a louse-borne disease. In 2012, HHS/CDC decided to retain *R. prowazekii* based in part in anticipation of studies being conducted that would help HHS/CDC to better understand the potential risk of an intentional release of this organism. As of 2019, these studies had not been conducted. Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information not included below to help inform our deliberations regarding *R. prowazekii:*

- Transmissibility from person-to-person is low because *R. prowazekii* is usually transmitted via blood, although it can be spread through inhalation of louse feces ($ID_{50}$), the concentration for human inhalation routes is unknown, but is estimated to be $10^3$–$10^6$ organisms based on non-human primate and other animal studies (Eremeeva et al., 2005, Pike, 1976 and Walker, 2003, Reynolds et al., 2003 and International Cooperation in Animal Biologics, 2004).
- This agent is difficult to grow and purify in quantities that would make it a viable biological weapon (Woodman et al., 1977).
- *R. prowazekii* is susceptible to readily available antibiotics and can be treated with a single dose of doxycycline when symptoms are present (Raoult et al., 1991).
- When grown in a laboratory, it is difficult to maintain the stability of the organism and therefore it would be difficult to disseminate efficiently to cause mass exposure or disease that would have a significant public health impact (Bovarnick et al., 1950).

Should *R. prowazekii* be removed or retained as an HHS select agent? Please provide a detailed explanation for your response.

#### iv. Bacillus anthracis (Pasteur Strain)

*Bacillus anthracis* is the bacteria that causes anthrax, an acute disease in animals and humans. In order to cause the disease anthrax, *B. anthracis* requires two plasmids, pX01 and pX02, which carry toxin and capsule genes (Luna et al., 2006). *B. anthracis* (Pasteur strain) lacks the pX01 plasmid that is needed to cause the disease (Ivins et al., 1986). HHS/CDC excluded the *B. anthracis* (Sterne strain) in 2003 because the strain lacks the pX02

plasmid that encodes for the capsule. However, HHS/CDC has retained *B. anthracis* (Pasteur strain) to date because of a concern that someone working in a laboratory could combine the Pasteur strain with the Sterne strain to produce the wild type phenotype *B. anthracis de novo,* a select agent. Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information to help inform our deliberations regarding if *B. anthracis* (Pasteur strain) should be removed or retained as an HHS select agent? Please provide a detailed explanation for your response.

v. Brucella abortus, Brucella melitensis, and Brucella suis

Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information not included below to help inform our deliberations regarding *B. abortus, B. melitensis,* and *B. suis:*

- *Brucella* infections have a low case fatality rate, with an untreated fatality rate usually ranging from 1–2% of those identified with the infection (Spickler, 2018).
- Disease caused by these bacteria is treatable with antibiotics (Spickler, 2018).
- There is no indication that *Brucella* is transmitted between people by casual contact under ordinary condition. Humans are typically infected from exposure to animal reservoirs or animal products; transmission to humans from wildlife is a rare event unless an individual directly handles infected animals, such as in butchering meat (Godfroid et al., 2013).
- Brucellosis causes mild clinical symptoms (flu-like illness); incubation periods typically range from 1 to 4 weeks, but can extend to 6 months (Olsen et al., 2018).

Should *B. abortus, B. melitensis,* and *B. suis* be removed or retained as an HHS select agent? Please provide a detailed explanation for your response.

vi. Venezuelan Equine Encephalitis Virus (VEEV) 1AB and 1C

VEEV usually causes mild to severe influenza-like symptoms. Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information not included below to help inform our deliberations regarding VEEV 1AB and 1C:

- Case fatality rate is less than 0.7%. Serosurvey data from the 1995 Venezuelan 1C outbreak indicated that, of 75,000 estimated human cases, one-third reported to a clinic or hospital, and 3,000 (4%) were hospitalized for neuroinvasive disease (sequelae), demonstrating that two-thirds of the cases [in the 1995 outbreak] were mild or asymptomatic (Rivas et al., 1997).
- While it is theoretically possible for VEEV to be spread between humans since the virus is found in the pharynx of 6 to 40% of acutely ill patients, there is no documented evidence of human-to-human transmission (Smith et al., 2009).
- An effective equine vaccine is available and a range of humanized monoclonal antibodies are currently available for emergency use (Weaver et al., 1996). Restricted animal movement, insecticide application, and equine vaccinations are a part of effective control measures to contain VEE outbreaks and mitigate the spread of disease from equine to humans.

Should VEEV 1AB and 1C be removed or retained as an HHS select agent? Please provide a detailed explanation for your response.

vii. Short, Paralytic Alpha Conotoxins

Predatory cone snails (genus *Conus*) produce a rich array of venoms (conotoxins) that collectively contain an estimated 100,000 small, disulfide-rich peptides neurotoxins (Bulaj, 2008). Short, paralytic alpha conotoxins containing the following amino acid sequence $X_1CCX_2PACGX_3X_4X_5X_6CX_7$ are a group of neurotoxic peptides isolated from the venom of the marine cone snail, genus *Conus.* Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information not included below to help inform our deliberations regarding short, paralytic alpha conotoxins:

- Production of pure preparations (chemical synthesis of larger quantities of appropriately folded peptides) is a challenge due to the thermodynamic instability of many conotoxins (Purcell et al., 2012) and most alpha-conotoxins harvested from the venom bulbs of cone snails are inactive precursors that are not in the functional form of the select toxin. To generate the functional form, soluble peptides of the appropriate amino acid sequence must be treated with proteases to properly fold and activate the toxin, which requires higher-level technical expertise and is a slow process involving several months (Wu et al., 2013).
- The optimal route of exposure for toxicity for conotoxins is through injection. However, even though there is currently no published literature to support conotoxins being administered via the inhalation route to achieve a toxic effect, the $LD_{50}$ (dose required to kill half the members of a tested population after a specified test duration) is estimated at 20 µg/kg by inhalation (Thapa et al., 2014).

Should conotoxins (short, paralytic alpha conotoxins containing the following amino acid sequence $X_1CCX_2PACGX_3X_4X_5X_6CX_7$) be removed or retained as a select toxin? If retained, should the exclusion amount for conotoxins be increased or decreased? Please provide a detailed explanation for your response.

viii. Diacetoxyscirpenol (DAS)

DAS, a derivative of tetracyclic sesquiterpenes called trichothecenes, is produced from strains of *Fusarium sambucinum* and related species that grow on barley, corn, oats, rye, or wheat. In 2005, HHS/CDC retained DAS because of limited understanding of the risk at the time of whether DAS has the potential to pose a severe threat to public health. The estimated $LD_{50}$ of DAS for rodents is 2 to 16 mg/kg (Knutsen, H.K., et al., 2018).

Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information to help inform our deliberations regarding DAS. Should DAS be removed or retained as a select toxin? If retained, should the DAS exclusion amount be increased or decreased? Please provide a detailed explanation for your response.

ix. Staphylococcal Enterotoxins

*Staphylococcus aureus* produces a number of exotoxins, one of which is Staphylococcal enterotoxin B, or SEB. SEB normally exerts its effect on the intestines and therefore is referred to as an enterotoxin. SEB is one of the pyrogenic toxins (causing fever) that commonly causes food poisoning in humans after the toxin is produced in improperly handled foodstuffs and subsequently ingested. Based on the criteria for listing select agents specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information not included below to help inform our deliberations regarding Staphylococcal enterotoxins:

- The estimated annual number of domestically acquired foodborne hospitalization (6% hospitalization rate) and deaths (<0.1% death rate) caused by *S. aureus* is low. (Scallan et al., 2011).
- The $ED_{50}$ (concentration of a drug that produces a biological response) for Staphylococcal enterotoxins:
  - *Intravenously:* $ED_{50}$ 0.03 µg/kg (rhesus monkeys) (Bergdoll, 1979)

○ *Ingestion:* $ED_{50}$ 1 μg/kg (rhesus monkeys) (Bergdoll, 1979)

○ *Intragastrically:* $ED_{50}$ 1.7 μg/kg (5 ug/monkey for 3 kg rhesus monkeys) (Donnelly et al., 1967)

Should Staphylococcal enterotoxins be removed or retained as a select toxin? If retained, should the Staphylococcal enterotoxins exclusion amount be increased or decreased? Please provide a detailed explanation for your response.

*B. Biological Agents Under Consideration for Being Added to the HHS Select Agent and Toxin List*

i. New World Hantaviruses

Some New World Hantaviruses can cause Hantavirus Pulmonary Syndrome (HPS) in humans. HPS is an acute febrile illness with a symptoms consisting of fever, chills, myalgia, headache, and gastrointestinal symptoms (Hooper et al., 2013). Based on the results of the ISATTAC evaluation of New World Hantaviruses, HHS/CDC is considering the addition of Sin Nombre virus (SNV) and Andes virus to the list of select agents because:

- The average case fatality rate in the United States from 1993 to 2016 is 36% (Centers for Disease Control and Prevention, 2017).
- Andes virus is capable of person-to-person transmission (Martinez et al., 2005 and Vitek et al., 1996).
- The infectious and lethal doses are very low. For Andes virus in hamsters, the infectious dose is estimated to be between 1–10 virus particles, and the lethal dose is estimated to be between 10–100 virus particles (Hooper et al., 2001 and Hooper et al., 2008).
- There are no FDA-approved vaccines or drugs to prevent or treat infection with Andes or SNV. Supportive care is the only current method of treatment for patients with HPS (Avsic-Zupanc et al., 2019).

Should Sin Nombre virus and Andes virus be added to the select agent list? Should other New World Hantaviruses be regulated as HHS select agents? In addition, HHS/CDC is seeking comments regarding the potential burden and time needed for an entity possessing SNV or Andes virus to come into compliance with the select agents and toxins regulatory requirements. Please provide a detailed explanation for your response.

ii. Old World Hantaviruses

Some highly pathogenic Old World Hantaviruses can cause severe Hemorrhagic Fever with Renal Syndrome (HFRS). HFRS is a generalized infection, and the severity of the disease as well as clinical patterns can manifest as mild, moderate or severe disease, depending upon the causative virus. HFRS caused by Hantaan and Dobrava viruses is more severe, while HFRS caused by Seoul virus is more moderate and by Puumala virus is mild (Jonsson et al., 2010). The clinical picture for Dobrava virus is severe with more hemorrhagic complications, shock (21 to 28%), oliguric renal failure (30 to 47%), and abdominal and pleural effusions (Maes et al., 2009). Due to the severity of disease with Hantaan virus and Dobrava virus, HHS/CDC is considering the addition of Hantaan virus and Dobrava virus to the list of select agents because:

- HFRS caused by Hantaan and Dobrava viruses are more severe than infection caused by other Old World Hantaviruses such as Seoul, Puumala, Sangassou, and Saaremma viruses (Maes et al., 2009 and Avsic-Zupanc et al., 2019).
- For Hantaan viruses, inhalation infectious dose ($ID_{50}$), is very low and in rats was 0.3–0.7 plaque-forming unit (Nuzum et al., 1988).

Should Hantaan virus and Dobrava virus be added to the select agent list? Should other Old World Hantaviruses be regulated as select agents? In addition, HHS/CDC is seeking comments regarding the potential burden and time needed for an entity possessing the Hantaan or Dobrava virus to come into compliance with the select agents and toxins regulatory requirements. Please provide a detailed explanation for your response.

*C. Exclusion Limits Being Considered for the Following Toxins*

Based on the criteria for listing select toxins specified under 42 U.S.C. 262a(a)(1)(B), HHS/CDC is seeking comments from the public to provide any information that will help inform our deliberations regarding this biennial review including increasing or decreasing the exclusion limit for the following toxins:

- Saxitoxin based on the $LD_{50}$ by ingestion is estimated as 0.3–1.0 mg/person (Burrows et al., 1999) and estimated mortality rate of 15% for Paralytic Shellfish Poisoning (Rodrique, et al., 1990 and Hallegraeff, et al. 1995)
- Tetrodotoxin based on $LD_{50}$ estimated 15–60 μg/kg by ingestion (Burrows et al., 1999); 2 μg/kg by inhalation; 8–14 μg/kg by injection (mouse, dog, rabbit) (Bane et al., 2014) and the recent puffer fish poisoning in 2008 Bangladesh involved 141 cases with 17 deaths (Islam et al., 2011)
- Botulinum neurotoxin estimated at 1 ug/kg by ingestion; 0.01–0.012 ug/kg by inhalation; 0.0013–0.0024 ug/kg by injection (Guzman et al., 2001)

*D. Designating Nipah Virus as a Tier 1 Select Agent*

Executive Order 13546 ''Optimizing the Security of Biological Select Agents and Toxins in the United States'' directed the HHS Secretary to designate a subset of the select agents and toxins list that present the greatest risk of deliberate misuse with the most significant potential for mass casualties or devastating effects to the economy, critical infrastructure, or public confidence. This subset of select agents and toxins is identified as Tier 1. HHS/CDC is seeking public comment on whether Nipah virus should be identified as a Tier 1 select agent. HHS/CDC is considering whether the Nipah virus should be designated as a Tier 1 agent because the public health threat posed by Nipah virus is similar to that of Marburg and Ebola viruses which are both currently Tier 1, with characteristics such as:

- Human transmissibility (person-to-person transmission has occurred) (Centers for Disease Control and Prevention, 2014; Gurley et al., 2007; Luby et al., 2012; and Luby et al., 2009).
- High case fatality rate (estimated between 40–100%) (World Health Organization, 2017 and Harcourt et al., 2004).
- Low infectious dose (ranging from 100–$10^7$ plaque forming units depending on route of infection) (DeWit et al., 2014; Geisbert et al., 2010; and Mathieu et al., 2012).
- High severity of illness (fever, headache, dizziness, vomiting, cough, reduced levels of consciousness, respiratory distress, and death) (Hoh et al., 2000; Hossain et al., 2008; and Lo et al., 2008).
- Severe long-term effects (neurological sequelae including encephalopathy, cranial nerve palsies, and dystonia) (Sejvar et al., 2007 and Lo et al., 2008). For entities that are currently registered to possess Nipah virus, they are also in possession of other Tier 1 select agents. Therefore, designating Nipah virus as Tier 1 select agent would not require an entity to meet additional requirements associated with Tier 1 agents. Should Nipah virus be identified as a Tier 1 select agent? Please provide a detailed explanation for your response.

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Dated: February 21, 2020.

**Alex M. Azar II,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 54

**[AU Docket No. 20–34; WC Docket Nos. 10–90, 19–126; FCC 20–21; FRS 16543]**

## Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Rural Digital Opportunity Fund Auction (Auction 904)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; proposed auction procedures.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes and seeks comment on the procedures to be used for Phase I of the Rural Digital Opportunity Fund auction, designated as Auction 904.

**DATES:** Comments are due on or before March 27, 2020, and reply comments are due on or before April 10, 2020.

**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 904 Comment Public Notice* must refer to AU Docket No. 20–34; WC Docket No. 19–126; and WC Docket No. 10–90. The Commission strongly encourages interested parties to file comments electronically.

- *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 numbers, AU Docket No. 20–34; WC Docket No. 19–126; WC Docket No. 10–90.
- *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 further information regarding this proceeding, contact Mark Montano in the Auctions Division of the Office of Economics and Analytics at (202) 418–0660 or Heidi Lankau in the Telecommunications Access and Policy Division, Wireline Competition Bureau, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document (*Auction 904 Comment Public Notice*), AU Docket No. 20–34; WC Docket Nos. 19–126 and 10–90; FCC 20–21, adopted on February 28, 2020 and released on March 2, 2020. The complete text of this document 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 *http://www.fcc.gov/auction/904/* or by using the search function for AU Docket No. 20–34, WC Docket 19–126, or WC Docket 10–90 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 904 Comment Public Notice* in AU Docket No. 20–34; WC Docket 19–126; and WC Docket 10–90.

### I. Introduction

1. By the *Auction 904 Comment Public Notice,* the Commission initiates the pre-auction process for Phase I of the Rural Digital Opportunity Fund auction (auction or Auction 904). The auction will award up to $16 billion over 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks. Bidding is expected to begin on October 22, 2020.

2. Auction 904 will be the Commission's second auction to award ongoing high-cost universal service support through competitive bidding in a multiple-round, reverse auction and follows the successful Connect America Fund (CAF) Phase II auction (Auction 903) that was completed in 2018. As with the CAF Phase II auction, the Commission intends to maximize the value the American people receive for the universal service dollars the Commission spends, balancing the need for future-proofed networks and higher-quality services against cost efficiencies. Therefore, the Commission will again use an auction mechanism designed to select bids from providers that would deploy high-speed broadband and voice services in unserved communities for lower relative levels of support.

3. The pre-auction and bidding procedures and processes proposed for this auction are similar to those that proved effective in the CAF Phase II auction. The Commission is proposing some new pre-auction and bidding procedures and processes that would be expected to materially improve upon the Auction 904 based upon its experience with Auction 903.

4. The Commission proposes and seeks comment in this Public Notice on the procedures to be used in Auction 904, including (i) how an applicant can become qualified to participate in the auction, (ii) how bidders will submit bids, and (iii) how bids will be processed to determine winners and assign support amounts. The Commission also seeks comment on,

among other things, how to aggregate eligible areas into larger geographic units for bidding (''biddable areas'') and making auction information available to bidders and the public. Commenters advocating a particular procedure are asked to provide specific details regarding the costs and benefits of that procedure and explain how that procedure would improve upon the Commission's and the public's experience in Auction 903.

5. The Commission will announce final procedures and other important information concerning Auction 904 after considering comments provided in response to the *Auction 904 Comment Public Notice.* Even though many interested parties may be familiar with the Commission's systems and processes from their participation in the CAF Phase II auction, the Commission will again provide timely educational materials and hands-on practice opportunities to help all potential bidders understand the procedures ultimately adopted to govern the auction.

## II. Minimum Geographc Area for Bidding

6. The Commission first seeks comment on the appropriate minimum geographic area for Phase I of the Rural Digital Opportunity Fund. In the interest of providing bidders flexibility in aligning their bidding strategies with future expansion and construction plans in Auction 903, the Commission adopted census block groups as the minimum biddable area. Although the Commission determined that support would be available only for specific eligible census blocks, the Commission determined that support would be available only for specific eligible census blocks, the Commission concluded it was appropriate to aggregate those eligible census blocks into their respective census block groups for purposes of bidding.

7. In the *Rural Digital Opportunity Fund Order,* the Commission concluded that support would be available only to specific eligible census blocks, but indicated that the minimum geographic area for bidding would be no smaller than a census block group containing one or more eligible census blocks, and reserved the option to select tracts, or other groupings of areas, when the Commission finalized the auction design to limit the number of discrete biddable units. Based on the decisions the Commission made in the *Rural Digital Opportunity Fund Order* regarding the areas that will be eligible for bidding, the Commission estimates that prior to the challenge process, there will be more that 66,000 census block groups containing eligible census blocks and more that 33,000 census tracts containing eligible census blocks based on FCC Form 477 data as of December 31, 2018. In comparison, for the CAF Phase II auction, where the Commission adopted census block groups as the minimum geographic area for bidding, there were approximately 30,300 census block groups containing eligible census blocks.

8. The Commission seeks comment on whether to retain census block groups or use census tracts as the minimum biddable area for Phase I of the Rural Digital Opportunity Fund. Do potential bidders foresee any difficulties manipulating and uploading large bidding files into the bidding system if the Commission uses census block groups for the minimum geographic area, which could be more than 66,000? The Commission also seek comment on alternative biddable areas it should consider and how they impact administrability of the auction and flexibility for bidders participating in it.

9. The Wireless Competition Bureau will release a list and map of initially eligible census blocks, and these census blocks will be subject to a limited challenge process. Additionally, if more recent data become available for this purpose when the specific procedures for Auction 904 are adopted, the Commission will use the more recent data to determine the eligible areas. After the challenge process is completed, the Commission will publish a final list and map of eligible census blocks.

10. The Commission proposes to round the reserve price for each biddable area to the nearest dollar consistent with its rounding approach for the CAF Phase II auction. In the *Rural Digital Opportunity Fund Order,* the Commission adopted a methodology for calculating area-specific reserve prices. Because the Commission expects that auction participants will place bids for annual support amounts, the Commission proposes to multiply the monthly reserve price for a biddable area by 12 and round that figure to the nearest dollar. Thus, any biddable area that has an annual reserve price of less than $0.50 would be ineligible for the Rural Digital Opportunity Fund auction.

## III. Proposed Application Requirements

11. The *Rural Digital Opportunity Fund Order* adopted a two-stage application filing process for the auction. The two stages consist of a pre-auction short-form application and a post-auction long-form application. In its short-form application, a potential bidder must establish its eligibility to participate in the auction. After the auction, and upon receipt of a winning bidder's long-form application, Commission staff will conduct a more extensive review of the winning bidder's technical and financial qualifications before authorizing support.

12. *Short-form Application.* Commission rules require each applicant seeking to participate in the auction to provide in its short-form application basic ownership information, and certifications regarding its qualifications to receive support, and information regarding its operational and financial capabilities. The short-form application rules also provide for the collection of such additional information as the Commission may require to evaluate an applicant's qualifications to participate in the auction.

13. Commission staff will review all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all required information concerning its qualifications for bidding. After this review, the Office of Economics and Analytics (OEA), in conjunction with the Wireline Competition Bureau (Bureau), will issue a public notice identifying the applications that are complete and those that are incomplete. Applications that are incomplete because of minor defects may be corrected, and the public notice will set a deadline for the resubmission of corrected applications. After reviewing the resubmitted applications, and in advance of the start of bidding in Auction 904, OEA, in conjunction with the Bureau, will announce all qualified bidders for the auction. Qualified bidders are those applicants that submitted short-form applications deemed timely-filed, complete, and meeting the requirements to bid. However, the finding from Commission staff that a short-form application is complete and that an applicant is qualified to bid only qualifies the applicant to participate in the bidding; it does not authorize a winning bidder to receive Rural Digital Opportunity Fund support.

14. *Long-form Application.* After Auction 904 concludes, each winning bidder must submit a long-form application that Commission staff will review to determine whether the winning bidder meets the eligibility requirements for receiving Rural Digital Opportunity Fund support and has the financial and technical qualifications to meet the obligations associated with

such support. Each winning bidder must submit information about its qualifications, funding and the network it intends to use to meet its obligations. Prior to being authorized to receive Rural Digital Opportunity Fund support, each winning bidder must demonstrate that it has been designated as an eligible telecommunications carrier (ETC) in the area(s) where it was awarded support and must obtain a letter of credit from a bank meeting the Commission's eligibility requirements. If a winning bidder is not authorized to receive a Rural Digital Opportunity Fund support (*e.g.,* the bidder fails to file or prosecute its long-form application or its long-form application is dismissed or denied), the winning bidder is in default and therefore subject to forfeiture.

*A. Applicants and State Selections*

15. The Commission proposes to require each applicant to identify in its short-form application each state in which it intends to bid for support in the Rural Digital Opportunity Fund auction. An applicant will be able to place bids for eligible areas only in the states identified in its application.

16. In Auction 903, the Commission allowed entities that were commonly controlled to file separate applications so long as they did not select the same state(s), and if they were qualified, to bid separately. The Commission considers a different approach and proposes to prohibit the submission of more than one application by commonly controlled entities for Auction 904 under any circumstances.

17. To identify commonly controlled entities, the Commission proposes to use the same definition of a controlling interest as the Commission used in the CAF Phase II auction. The Commission proposes to define a ''controlling interest'' for purposes of the Rural Digital Opportunity Fund auction as an individual or entity with positive or negative *de jure* or *de facto* control of the applicant.

18. The Commission expects to adopt a Divide Winning Bids process for this auction similar to that employed in Auction 903. During the long-form application process, a winning bidder would have the opportunity to assign some or all of its winning bids to related operating companies. As in Auction 903, while the Commission would permit a winning bidder to assign winning bids to more than one operating company in each state, the Commission proposes that a winning bidder would not be allowed to split any winning bid among multiple operating companies. In addition, the Commission proposes that any operating company that is assigned one or more winning bids will be required to file a long-form application in its own name to seek authorization for Rural Digital Opportunity Fund support. The Commission would require that entities filing the long-form application be operating companies or consortium/joint venture members that were named in the short-form application or newly formed entities that are controlled by the applicant or one or more of its members. Further, the Commission proposes that the identified operating company be the entity that is designated as the ETC by the relevant states in the areas covered by the winning bids and is named in the letter of credit applicable to the specific winning bids for which it becomes authorized for support.

19. If during short-form application review Commission staff identifies separate applicants that are commonly controlled, the Commission proposes that all such applications would be deemed to be incomplete on initial review. The applicants would be informed of the issue, and only one applicant would ultimately be deemed qualified to bid, assuming that there were no remaining issues with its application. Because the rule prohibiting certain communications in section 1.21002(b) would prohibit the affected applicants from communicating with respect to their determination of which entity would be the single applicant, commonly controlled entities should coordinate on the submission of one application before the short-form application deadline.

20. The Commission proposes to ban applicants from entering into joint bidding arrangements for Auction 904, consistent with its practice in spectrum auctions. For purposes of this prohibition, the Commission would define ''joint bidding arrangements'' as it did for Auction 903 as arrangements between or among applicants that (1) relate to any eligible area in the Rural Digital Opportunity Fund auction, and (2) address or communicate bids or bidding strategies, including arrangements regarding Rural Digital Opportunity Fund support levels (*i.e.,* bidding percentages) and specific areas on which to bid, as well as any arrangements relating to the post-auction market structure in an eligible area. As a result, if two or more applicants are parties to an agreement that falls within this definition, they would be prohibited from bidding in the Rural Digital Opportunity Fund auction. To aid in the identification of such arrangements, the Commission proposes requiring an applicant to provide in its short-form application a brief description of any agreement related to the applicant's participation in the Rural Digital Opportunity Fund auction.

21. The Commission would limit its proposal to auction applicants. The Commission cautions non-applicant entities that any joint venture, consortium, or other arrangement into which they enter must be consistent with the antitrust laws and must otherwise not be prohibited by law.

22. The Commission proposes to require each applicant to certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the Rural Digital Opportunity Fund auction, other than those disclosed in the short-form application. The Commission further proposes requiring each winning bidder to submit in its long-form application any updated information regarding the agreements, arrangements, or understandings related to its Rural Digital Opportunity Fund auction support disclosed in its short-form application. A winning bidder may also be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement into which it has entered and the agreement itself.

23. The rule prohibiting certain communications in universal service support auctions contains an exception for applicants that are members of a joint bidding arrangement that is identified on the short-form application. The Commission seeks comment on its authority to prohibit joint bidding arrangements between or among applicants for Auction 904, which would render that exception to the prohibited communications rule inapplicable.

24. The Commission is proposing no further modifications with respect to the applicability of the prohibited communications rule for Auction 904. As set forth in section 1.21002 of the Commission's rules, an applicant in Auction 904 (and any party that controls or is controlled by an applicant) is prohibited from cooperating or collaborating with any other applicant with respect to its own or any other applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own or any other applicant's bids or bidding strategies during the prohibition period.

25. The Commission observes that NTCA asserts that an attestation made by a third-party consultant assisting multiple bidders could address its

concerns regarding collusive conduct by auction applicants. Even with such an attestation, however, the Commission would continue to be wary of the potential harm to competition in the auction from a third-party individual who is aware of one bidder's bids or bidding strategies while advising another bidder. Accordingly, the Commission proposes that the guidance in the *Auction 903 Procedures Public Notice* regarding the significant risk of applicants violating the prohibited communications by employing the same third party for bidding advice would continue to apply.

26. The Commission seeks comment on these proposals and whether they efficiently and effectively promote straightforward bidding and safeguard the integrity of the auction.

*B. Eligibility To Bid for Performance Tier and Latency Combinations*

27. In general, the Commission proposes to collect the same information and use the same process that was used for the CAF Phase II auction for Commission staff to determine, at the short-form application stage and in advance of the start of bidding in the auction, each applicant's eligibility to bid for the performance tier and latency combinations it has selected in its application. The Commission seeks comment on specific improvements to the CAF Phase II auction short-form application and the process used for that auction based on lessons learned to ensure that the Commission collects sufficient information to assess an applicant's technical qualifications to bid for specific performance tier and latency combinations while minimizing the burdens on applicants and Commission staff.

28. In the *Rural Digital Opportunity Fund Order,* the Commission concluded that it would accept bids for four performance tiers with varying speed and usage allowances and, with respect to each tier, would provide for bids at either high or low latency. Each applicant for the Rural Digital Opportunity Fund auction must indicate in its short-form application the performance tier and latency combinations for which it intends to bid and the technologies it intends to deploy to meet the relevant public interest obligations. Additionally, each Rural Digital Opportunity Fund auction applicant must indicate whether it has at least two years' experience providing a voice, broadband, and/or electric distribution or transmission service and must submit certain financial information. The Commission's rules also require each applicant to submit any additional information that the Commission may require to establish its eligibility for the selected performance tier and latency combinations.

29. The Commission intends to use the short-form application to assess the likelihood that an applicant would default if selected as a winning bidder. If the applicant becomes qualified to bid in the Rural Digital Opportunity Fund auction and subsequently becomes a winning bidder, Commission staff will evaluate the information submitted in the long-form application and will rely on the applicant's letter of credit to determine whether an applicant is capable of meeting its Rural Digital Opportunity Fund auction obligations in the specific areas where it has been selected as a winning bidder. Accordingly, a determination at the short-form stage that an applicant is eligible to bid for a performance tier and latency combination would not preclude a determination at the long-form application stage that an applicant does not meet the technical qualifications for the performance tier and latency combination and thus will not be authorized to receive Rural Digital Opportunity Fund support. In addition, the Commission's adoption of certain non-compliance measures in the event of default—both before a winning bidder is authorized for support and if a winning bidder does not fulfill its Rural Digital Opportunity Fund obligations after it has been authorized—should encourage each applicant to select performance tier and latency combinations with public interest obligations that it can reasonably expect to meet.

30. *Operational Information.* The Commission seeks comment on proposals for implementing its decision to collect high-level operational information from each applicant to enable its staff to determine whether the applicant is expected to be reasonably capable of meeting the public interest obligations (*e.g.,* speed, usage, latency, and build-out milestones) for each performance tier and latency combination that it selected in its application. Each applicant seeking to participate in the Rural Digital Opportunity Fund auction is required to make certain certifications in its short-form application, including a certification that it is technically qualified to meet the public interest obligations in each tier and in each area for which it seeks support, and a certification regarding its experience in providing voice, broadband, and/or electric distribution or transmission service. The Commission's rules also require an applicant to submit certain information in its short-form application in connection with those certifications.

31. The Commission proposes making such determinations on a state-by-state basis. Accordingly, for each selected performance tier and latency combination, an applicant will be required to independently demonstrate how it intends to provision service if awarded support and that it is reasonably capable of meeting the relevant public interest obligations for each state it selects.

32. The Commission proposes to require each applicant to answer the questions listed in Appendix A to the Public Notice for each state it selects in its application. The questions are substantially similar to the questions that were included in the CAF Phase II auction short-form application. The Commission found that in most instances the questions elicited information at a sufficient level of detail for its staff to verify that each applicant had developed a preliminary design or business case for meeting the public interest obligations for its selected performance tier and latency combinations, without imposing undue burdens on applicants or staff. However, the Commission proposes some edits to the questions to improve clarity and better elicit information that the Commission found useful in making eligibility determinations for the CAF Phase II auction. The Commission also proposes providing examples for the types of information the Commission would expect an applicant to submit. The Commission seeks comment on the questions proposed and whether there are other changes or clarifications the Commission should make, or additional questions the Commission should ask.

33. *Assumptions.* The Commission seeks comment on the assumptions an applicant will need to make about network usage and subscription rates when determining whether it can meet the public interest obligations for its selected performance tier and latency combination(s). For example, the Commission's rules require that each long-form applicant provide in its long-form application a certification by a professional engineer that the applicant's proposed network can deliver the required service to at least 95% of the required number of locations. Because Rural Digital Opportunity Fund support recipients will ultimately be required to offer service to 100% of the actual locations in their service areas and offer service to newly built locations upon reasonable request that were built prior to milestone year eight, the Commission proposes that its staff also review the

information provided in the short-form and long-form applications to verify the applicant has the plans and capability to scale the network if necessary.

34. The Commission also seeks comment on the proposal to require each service provider to assume a subscription rate of at least 70% for both voice services and broadband services when determining whether it can meet the public interest obligations for its selected performance tier and latency combinations. This subscription rate is consistent with the assumptions made in the Connect America Cost Model (CAM) when calculating the amount of support made available and is also the subscription rate assumption required for CAF Phase II auction applicants.

35. The Commission seeks comment on these assumptions and on whether the Commission should set any other parameters for assumptions about the network that will be used to meet Rural Digital Opportunity Fund obligations.

36. *Spectrum Access.* The Commission seeks comment on the spectrum bands—both licensed and unlicensed—that could be used to meet Rural Digital Opportunity Fund public interest obligations. The Rural Digital Opportunity Fund auction rules require a short-form applicant that plans to use radiofrequency spectrum to demonstrate that it has (1) the proper spectrum use authorizations, if applicable; (2) access to operate on the spectrum it intends to use; and (3) sufficient spectrum resources to cover peak network usage and meet the minimum performance requirements to serve the fixed locations in eligible areas. For the described spectrum access to be sufficient as of the date of the short-form application, the applicant must have obtained any necessary approvals from the Commission for the spectrum, if applicable. The Rural Digital Opportunity Fund auction short-form application rules also require an applicant to certify that it will retain such authorizations for 10 years.

37. In Appendix B to the Public Notice, the Commission identifies the licensed and unlicensed spectrum bands that could be used by a service provider operating in these bands to, at a minimum, offer service meeting the requirements for the minimum performance tier provided that the service provider is using sufficient bandwidth in the spectrum band(s) and a technology that can operate on these spectrum bands consistent with applicable rules and regulations. This is a non-exhaustive list of spectrum bands that an applicant could potentially use to meet its public interest obligations. The Commission updated the spectrum band chart used for the CAF Phase II auction to include some additional frequencies for the Upper Microwave Flexible Use Service.

38. The Commission seeks comment on whether the individual bands proposed in Appendix B—or, in some cases, the blocks within them, individually or in combination with each other—provide sufficient uplink or downlink bandwidth to support the wireless technologies that a provider may use to meet the Rural Digital Opportunity Fund obligations. Are there other spectrum bands that can offer sufficient uplink or downlink bandwidth—individually or in combination—to meet the various performance tier and latency combination qualifications? If so, what last mile technologies and corresponding last mile network architecture can be used in those spectrum bands?

39. The Commission also seeks comment on how an applicant can demonstrate that it has sufficient access to spectrum if it intends to participate in auction proceedings that are occurring around the same time of the Rural Digital Opportunity Fund short-form application process. In the *Rural Digital Opportunity Fund Order,* the Commission would permit an applicant that plans to operate on the 3550–3650 MHz band using a priority access license that will be subject to auction with bidding scheduled to begin in June 2020 to indicate the status of its participation in that auction (consistent with auction procedures regarding the disclosure of non-public auction-related information) as long as it provides alternatives for how it intends to meet its obligations if it were not awarded a license. But this is not the only spectrum auction with proceedings taking place this year. For example, the Commission has Spectrum Frontiers auction proceedings in various stages and the 2.5 GHz Rural Tribal Priority Window this year. As such, the Commission proposes allowing an applicant that intends to participate in any of these proceedings the same option of indicating the status of its participation and providing alternatives for if it does not ultimately obtain a license. Should the Commission also provide this option to an applicant that intends to participate in any other upcoming spectrum auction proceedings?

40. *Collection and Use of Identifiers Associated with Information Submitted to the Commission in Other Contexts.* In addition to information provided in a short-form application, the Commission proposes to allow its staff to consider any information that a provider has submitted to the Commission in other contexts when determining whether a service provider is reasonably capable of meeting the public interest obligations for its selected performance tier and latency combinations. This other information would include but potentially not be limited to data reported in FCC Form 477 Voice Telephone Services and internet Access Services Reports (FCC Form 477), FCC Form 481 Carrier Annual Reporting Data Collection Form (FCC Form 481), FCC Form 499–A Annual Telecommunications Reporting Worksheet (FCC Form 499–A), and any public information. For example, Commission staff may consider whether an applicant already offers service that meets the public interest obligations associated with its selected performance tier and latency combinations and the number of subscribers to that service.

41. The Commission proposes to collect information in the short-form application about the unique identifiers a provider uses to submit this data to the Commission. Specifically, the Commission proposes to collect in the short-form application for any applicant or its parent company (or in the case of a holding company applicant, its operating companies): (1) Any FCC Registration Numbers (FRNs) used to submit their FCC Form 477 data for the past two years; (2) any associated study area codes (SAC) that indicate the applicant, its parent company, or its operating companies are an existing ETC; and (3) any FCC Form 499 filer identification numbers used to file an FCC Form 499–A in the past year, if applicable.

42. The Commission reminds all interested parties that because FCC Form 477 data are used to verify an applicant's operating history and current service offerings as well as to identify areas that are eligible for the auction, they should ensure that they have filed and will timely file all required FCC Form 477 data.

43. The Commission seeks comment on its proposed collection and use of these various identifiers, and on whether there are other ways its staff can leverage data that are already reported to the Commission to assess the qualifications of Rural Digital Opportunity Fund applicants.

44. *Limiting Eligibility to Bid for Certain Performance Tier and Latency Combinations.* The Commission proposes adopting prohibitions and presumptions for applicants selecting certain performance tier and latency combinations that may be inconsistent with the technologies they intend to use

to meet their Rural Digital Opportunity Fund auction public interest obligations.

45. First, the Commission proposes prohibiting providers that intend to use geostationary or medium earth orbit satellites from selecting low latency in combination with any of the performance tiers. Some service providers that use these satellite technologies have acknowledged that they cannot meet the low latency requirement that 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds. In contrast, SpaceX contends that its low-earth orbit satellite service can meet the low-latency threshold. The Commission seeks comment on whether such providers should also be prohibited from selecting low latency in combination with any of the performance tiers. Should applicants proposing to use any other types of technologies be prohibited from selecting low latency?

46. Second, the Commission proposes prohibiting geostationary satellite providers from bidding in the Gigabit performance tier and the Above Baseline performance tier. The Commission sees no evidence that geostationary satellite providers already offer service that meets all the requirements for these performance tiers. An applicant that bids in the Gigabit tier must commit to offering broadband at speeds of at least 1 Gbps/500 Mbps with a monthly usage allowance of at least 2 terabytes, and an applicant that bids in the Above Baseline tier must commit to offering broadband at speeds of at least 100/20 Mbps with a monthly usage allowance of at least 2 terabytes. Viasat is the only geostationary satellite provider that reports offering downstream speeds of 100 Mbps in FCC Form 477 data (as of December 31, 2018) to consumers in certain areas, and it reports associated upload speeds of only 4 Mbps. Notably, Viasat bid to provide service at speeds of 10/1 Mbps and 25/3 Mbps in the CAF Phase II auction. While both Viasat and Hughes offer unlimited data plans in some areas, consumers may experience lower speeds once they exceed a certain data limit as low as 150 GB. The Commission also seeks comment on whether to more generally prohibit any service provider that intends to place a high-latency bid from selecting either the Gigabit or Above Baseline performance tier. Are there any high-latency technologies that could reasonably be expected to meet the requirements for the Gigabit and Above Baseline performance tiers? Viasat was the only service provider that bid in the high-latency tier in the CAF Phase II auction.

47. Third, the Commission proposes precluding any applicant that intends to use fixed wireless or DSL technologies from bidding in the Gigabit tier if the applicant has not reported offering Gigabit broadband service in its FCC Form 477 data. Based on FCC Form 477 data as of December 31, 2018, 98% of fixed wireless and DSL providers have not reported offering Gigabit speeds, and only 17% have reported offering speeds of 100 Mbps or above. By contrast, 82% of optical carrier/fiber-to-the-end-user providers report offering broadband at 100 Mbps speeds. No service provider proposing to use either fixed wireless or DSL qualified to bid in the Gigabit tier for the CAF Phase II auction. Given the continued lack of widespread reported deployment at higher speeds, it appears unreasonable to expect that an applicant choosing to use either fixed wireless or DSL would be able to offer Gigabit speeds by the first service milestone unless it has a reported history of offering such speeds.

48. The Commission seeks comment on the proposals for determining an applicant's eligibility to bid on the performance tier and latency combination(s) selected in its short-form application. Should the Commission adopt any additional prohibitions or presumptions for applicants intending to use other types of technologies? A party submitting alternative proposals should explain how its proposal appropriately balances the Commission's objectives of assessing an applicant's capability to meet the Rural Digital Opportunity Fund public interest obligations and not imposing undue costs on applicants or Commission staff.

49. The Commission is not inclined to adopt performance tier and latency prohibitions for nascent technologies. Rather, the Commission proposes that its staff review applications from providers using nascent technologies on a case-by-case basis to determine whether they can reasonably be expected to meet the specific requirements of the Rural Digital Opportunity Fund. In such cases—as in all cases—Commission staff would have the authority to determine the specific performance tier(s) and latency for which an applicant would be qualified, if any.

50. *Evaluating Eligibility to Bid on Selected Performance Tier and Latency Combinations.* The Commission proposes that its staff review the information submitted by an applicant in its short-form application and any other relevant information available to staff to determine whether the applicant has planned how it would provide service if awarded support and is therefore expected to be reasonably capable of meeting the public interest obligations for its selected performance tier and latency combinations in its selected states. The Commission proposes that if staff finds that an applicant is reasonably expected to be capable of meeting the relevant public interest obligations in a state, the applicant would be eligible to bid for its selected performance tier and latency combinations in that state.

51. If Commission staff, in its initial review, is unable to find that an applicant can reasonably be expected to meet the relevant public interest obligations based on the information submitted in its short-form application, Commission staff would deem the application incomplete, and the applicant would have another opportunity during the application resubmission period to submit additional information to demonstrate that it meets this standard. Commission staff would notify the applicant that additional information is required to assess the applicant's eligibility to bid for any or all of the specific states and performance tier and latency combinations selected in its short-form application. During the application resubmission period, an applicant would be able to submit additional information to establish its eligibility to bid for the relevant performance tier and latency combinations. An applicant would also have the option of selecting a lesser performance tier and latency combination for which it might be more technically qualified. The Commission would consider this to be a permissible minor modification of the short-form application. Once the application resubmission period has ended, Commission staff would make its final determination of an applicant's eligibility to bid for any or all of the specific states and performance tier and latency combinations selected in its application, and then notify each applicant in which states and for which performance tier and latency combinations it is eligible to bid. The bidding system will be configured to permit a bidder to bid only in the state(s) and for the performance tier and latency combinations on which it is deemed eligible to bid.

52. The Commission seeks comment on its proposals to use the same process as in the CAF Phase II auction and on whether any changes should be made to the standard of review or eligibility determination process to account for lessons learned.

*C. Financial Qualifications*

53. In the *Rural Digital Opportunity Fund Order,* the Commission required all applicants to submit financial statements with their short-form applications. An applicant certifying that it has provided voice, broadband, and/or electric transmission or distribution services for at least two years and that it is audited in the ordinary course of business must submit audited financial statements from the prior fiscal year that have been audited by an independent certified public accountant, including balance sheets, and statements of net income and cash flow along with a financial statement audit opinion letter. If such an applicant is not audited in the ordinary course of business, it has the option of submitting audited financial statements with the long-form application by a certain deadline if it is announced as a winning bidder, but the applicant must submit unaudited financial statements with the short-form application. If an applicant cannot certify that it has provided voice, broadband, and or electric transmission or distribution services for at least two years, it must submit (1) audited financial statements for the three most recent consecutive fiscal years, including balance sheets, and statements of net income, and cash flow, and (2) a letter of interest from a qualified bank with terms acceptable to the Commission, stating that the bank would provide a letter of credit to the bidder if the bidder were selected for certain levels of support.

54. The Commission seeks comment on how it should review the financial statements that an applicant submits with its short-form application. Based on its experience with the CAF Phase II auction, the Commission proposes to deviate from the approach it previously took during the short-form application process of requiring each applicant to identify specific metrics from its financial statements and scoring applications based on those metrics.

55. The Commission proposes instead that an applicant submitting audited financial statements with its short-form application will be required to identify whether it has a clean opinion letter on its audited financial statements. The Commission will consider an opinion letter to be clean if it has an unmodified opinion without an emphasis-of-matter paragraph regarding whether there is a going concern. An unmodified opinion is one where ''the auditor concludes that the [audited] financial statements are presented fairly, in all material respects, in accordance with the applicable financial reporting framework.'' An auditor's findings regarding an entity's inability to remain in business for a reasonable period of time would be reflected in a modified opinion or the opinion letter would include an emphasis-of-matter paragraph regarding going concern.

56. An applicant that submits the required audited financial statements and has a clean opinion letter on the submitted audited financial statements would be deemed financially qualified to participate in the auction.

57. For an applicant that does not have a clean opinion letter, Commission staff would first review whether the issue is material to the applicant's participation in the auction. If so, any such applicants—and any applicants that submit unaudited financial statements—would be subject to a review of the full set of financial statements submitted with the short-form application, as well as other information submitted with the application and/or information submitted to the Commission in other contexts (*e.g.,* financials filed with a FCC Form 481, revenues reported in FCC Form 499, etc.). To the extent this information does not sufficiently demonstrate that an applicant is financially qualified, the application will be deemed incomplete and the Commission may request further information from the applicant during the application resubmission period.

58. While the proposed approach may subject more applicants to a more in-depth financial review, a more tailored financial review of each relevant application and other available information would help the Commission to better identify the applicants that may have difficulty meeting the relevant public interest obligations due to various factors including their financial situation. Although Commission staff would take into account the financial metrics in an applicant's financial statements as part of this review, those metrics would not by themselves definitively qualify or disqualify applicants. The Commission would decline to define specific parameters for the review of an applicant that does not have a clean opinion letter on its audited financial statements or an applicant that submits unaudited financial statements because the Commission observed for the CAF Phase II auction that each applicant's financial circumstances differ. Instead, the Commission would seek to tailor the review to each applicant's circumstances and determine based on the totality of information available whether it is reasonable to expect that the applicant is financially capable of fulfilling the Rural Digital Opportunity Fund obligations should it become a winning bidder. The Commission seeks comment on this proposed approach and also seek proposals for equitable and efficient approaches it could take to review submitted financial statements. How could the Commission further streamline its review of financial statements but still adequately verify an applicant's financial qualifications?

59. The Commission staff's determination at the short-form stage that an applicant is financially qualified to bid would not preclude a determination at the long-form application review stage that an applicant is not authorized to receive Rural Digital Opportunity Fund support. The Commission's rules require that, during the long-form application stage, a winning bidder: (1) Certify that it will have available funds for all project costs that exceed the amount of Rural Digital Opportunity Fund support for the first two years, (2) submit a description of how the required construction will be funded, and (3) obtain a letter of credit from a bank meeting the Commission's requirements.

*D. Long-Form Application Requirements*

60. The Commission proposes to require each winning bidder (or its designee) to submit certain information in its long-form application to aid Commission staff in evaluating whether the winning bidder (or its designee) is technically and financially qualified to meet the relevant Rural Digital Opportunity Fund public interest obligations in the areas where it was awarded support. A long-form applicant must also provide in its long-form application more in-depth information regarding the networks it intends to use to meet its Rural Digital Opportunity Fund obligations and how it intends to fund such networks. Among other things, the Commission proposes to require each applicant to provide in its long-form application any updates to its spectrum authorizations or spectrum access and to certify in its long-form application that it will retain access to the spectrum for at least 10 years from the date of the funding authorization. The Commission seeks comment on these proposals.

61. The Commission also would provide guidance in a future public notice regarding the specific types of information the Commission expects each long-form applicant to include in its long-form application to successfully meet the requirement to provide a description of the technology and system design it will use to meet its Rural Digital Opportunity Fund public

interest obligations and a network diagram. The Commission invites parties to comment on whether and how the guidance it provided for the CAF Phase II auction should be updated or clarified for the Rural Digital Opportunity Fund auction.

## IV. Proposed Bidding Procedures

62. The Commission will use a descending clock auction to identify the providers that will be assigned to receive Rural Digital Opportunity Fund support and to establish the amount of support that each bidder will be eligible to receive, subject to post-auction application review. In the *Rural Digital Opportunity Fund Order,* the Commission concluded that bids for different areas at specified performance tier and latency levels will be compared to each other based on the percentage each bid represents of their respective areas' reserve prices; however, once the budget has cleared, the Commission will prioritize bids with lower tier and latency weights. The Commission also directs OEA, in conjunction with the Bureau, to release a guide that provides further technical and mathematical detail regarding the bidding, assignment, and support amount determination procedures proposed here. In addition, the Commission seeks comment on what types of additional information (*e.g.,* fact sheets and user guides) it could make available to help educate parties, particularly those that have never participated in a Commission auction. The Commission also seeks comment on whether the Commission's Office of Communications Business Opportunities should engage with small providers interested in the auction process.

63. The auction will be conducted over the internet, and bidders will upload bids in a specified file format for processing by the bidding system. The bidding system will announce a clock percentage before each round. The clock percentage is used to delimit the range of acceptable bid percentages in each round of the auction and as a common unit to compare bids for different performance tiers and latencies, which were assigned weights (''T+L weights'') in the *Rural Digital Opportunity Fund Order.*

64. The Commission proposes to have the clock percentage begin at a high level, implying a support amount that is equal to or close to the full reserve price, even for bids at the largest T+L weight, and descend from one round to the next. In a round, a bidder can submit a bid for a given area at a specified performance tier and latency combination at any percentage that is greater than or equal to the round's clock percentage and less than the previous round's clock percentage. A bid indicates that the bidder is willing to provide service to the area that meets the specified performance tier and latency requirements in exchange for support that is no less than the support amount implied by the bid percentage.

65. The clock percentage will continue to descend in a series of bidding rounds, implying diminishing support amounts, until the aggregate amount of requested support represented by the bids placed in a round at the clock percentage is no greater than the budget. At that point, when the budget ''clears,'' the bidding system will begin to assign support, prioritizing bids with lower T+L weights according to the proposed bid processing procedures. Bidding will continue for areas that were bid at the round's clock percentage and have not been assigned, and the clock will continue to descend in subsequent rounds. When there is no longer competition for any area, the auction will end. Because of the second-price rule, a winning bidder will be assigned support in amounts at least as high as the support amounts corresponding to its bid percentages.

66. The bidding procedures the Commission proposes for the Rural Digital Opportunity Fund auction are the same as those used in the CAF Phase II auction, with several modifications. As adopted in the *Rural Digital Opportunity Fund Order,* once the budget has cleared, the bid processing procedures will prioritize bids with lower T+L weights. In line with this modification, the Commission proposes to require all areas within a package bid to be bid at the same T+L weight. The Commission also proposes to set a maximum amount of implied support for which a bidder may bid in a round, and the Commission proposes to set that limit at 100% of the Rural Digital Opportunity Fund budget. The Commission further proposes that the bidding system will consider bids submitted at the clock percentage of the previous round, if bid processing procedures in the clearing round cannot assign the full budget to bids submitted in the clearing round. Finally, the Commission seeks comment on a modification to the information available to bidders during the auction that would make available after each round the lowest T+L weight in each bidding area that has two or more bids at the prior round's clock percentage.

### *A. Bid Collection*

#### 1. Round Structure

67. The Commission proposes that the Rural Digital Opportunity Fund descending clock auction will consist of sequential bidding rounds according to an announced schedule providing the start time and closing time of each bidding round. The Commission proposes to retain the discretion to change the bidding schedule—with advance notice to bidders—in order to foster an auction pace that reasonably balances speed with giving bidders sufficient time to study round results and adjust bidding strategies. OEA may modify the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending on bidding activity and other factors. The Commission seeks comment on this proposal. Commenters suggesting alternatives to this proposal should address any other means to manage the auction pace.

#### 2. Clock Percentages and Implied Support Amounts Based on Performance Tier and Latency Weights

68. The Commission proposes that under the descending clock auction format, the clock will be denominated in terms of a percentage, which will be decremented for each round. To determine the annual support amount for an area implied at each percentage, the percentage is multiplied by the reserve price of the area, adjusted for the T+L weight of the bid.

69. In the *Rural Digital Opportunity Fund Order,* the Commission concluded that it would accept bids for four performance tiers with varying speed and usage allowances and, for each performance tier, would provide for bids at either high or low latency. The Commission also decided to consider all bids simultaneously so that bidders proposing varying performance standards would be competing directly against each other for the limited Rural Digital Opportunity Fund budget, but to provide an assignment preference for bids with lower T+L weights once the budget has cleared. In addition, the Commission decided that bidders would bid for support expressed as a fraction of an area's reserve price.

70. In the *Rural Digital Opportunity Fund Order,* the Commission adopted weights to compare bids for the different performance tiers and latency combinations. The Commission determined that Minimum performance tier bids will have a 50 weight; Baseline performance tier bids will have a 35 weight; Above Baseline performance tier bids will have a 20 weight; and Gigabit

performance tier bids will have zero weight. Moreover, high-latency bids will have a 40 weight and low latency bids will have zero weight added to their respective performance tier weight. The lowest possible weight for a performance tier and latency is 0, and the highest possible weight is 90. Each weight uniquely defines a performance tier and latency combination, as shown in the table.

WEIGHTS FOR PERFORMANCE TIERS AND LATENCIES

| Minimum | | Baseline | | Above baseline | | Gigabit | |
|---|---|---|---|---|---|---|---|
| High latency | Low latency | High latency | Low latency | High latency | Low latency | High latency | Low latency |
| 90 | 50 | 75 | 35 | 60 | 20 | 40 | 0 |

The Commission's proposal for a clock auction format with a clock percentage and weights for performance tier and latency combinations implements these Commission decisions and provides a simple way to compare bids of multiple types. The Commission seeks comment on this proposal.

71. The Commission proposes that the clock percentage in each round will imply a total amount of annual support in dollars for each area available for bidding, based on the area's reserve price and the T+L weight specified in the bid. The annual support amount implied at the clock percentage will be the smaller of the reserve price and the annual support amount obtained by using a formula that incorporates the T+L weights. Specifically:

$$\text{Implied Annual Support Amount (at the clock percentage)} = \min\left\{R, \left(\frac{C-(T+L)}{100}\right)R\right\}$$

where:

R denotes the area's reserve price
$T$ denotes the tier weight
$L$ denotes the latency weight
$C$ denotes the clock percentage

72. Because the highest implied support amount can never exceed an area's reserve price, when the clock percentage is greater than 100, the total implied annual support for lower weighted performance tier and latency combinations may remain at an area's reserve price for one or more rounds, while the total implied annual support of one or more higher weighted performance tier and latency combinations may be lower than an area's reserve price. When the clock percentage is decremented below 100, the implied annual support for any performance tier and latency combination will be below an area's respective reserve price.

73. The ''implied support formula'' can be used to determine the implied support at any price point percentage by substituting a given percentage for the clock percentage. The Commission seeks comment on these proposals.

3. Acceptable Bid Amounts

74. The Commission proposes that, in the first round, a bidder may place a bid at any price point percentage equal to or greater than the clock percentage and equal to or less than the opening percentage, specified up to two decimal places. In each subsequent round, a bidder may place a bid at any price point percentage equal to or greater than the clock percentage and less than the previous round's clock percentage, specified up to two decimal places. This proposal will reduce the likelihood of ties and allow bids to correspond to smaller increments in annual support amounts. The Commission seeks comment on this proposal.

75. The Commission proposes that bids must imply a support amount that is one percent or more of an area's reserve price to be acceptable. For a given performance tier and latency combination, when the price point percentage equals T+L, the formula implies that the annual support amount is zero. When the price point percentage equals T+L+1, the formula implies an annual support amount that is one percent of the area's reserve price. Hence, a bid percentage must be at least T+L+1 for the bid to be accepted by the bidding system. The Commission seeks comment on this proposal.

76. The Commission anticipates that the ability to submit bids at price points other than the clock percentage, as proposed, will be especially useful to a bidder when the lowest support amount it will accept for an area corresponds to a percentage between the clock percentages for two consecutive rounds. In such a case, the proposed option will allow the bidder to more precisely indicate the point at which it wishes to drop out of bidding for the area. In contrast, a bidder still willing to accept a support amount equal to or less than that implied by the clock percentage will simply bid at the clock percentage. In rounds before the budget clears, a bidder may bid at an intermediate price point in one round and then bid again for the same area in a subsequent round, but its ability to do so is limited. In rounds after the budget clears, a bidder is not permitted to switch the areas for which it is bidding.

4. Bidding for Geographic Areas

77. The Commission seeks comment on the appropriate minimum geographic area for bidding. A bid in a minimum geographic area is a bid for support for the locations within all eligible census blocks within that area.

78. The Commission proposes to allow a bidder to place only one bid on a given geographic area in a round, whether that area is bid on singly or included in a package bid.

79. The Commission further proposes that the total implied support of a single bidder's bids in any round not exceed the total Rural Digital Opportunity Fund budget. The proposed clock auction procedures are intended to encourage straightforward bidding, and it would not be possible for a single entity to win support that exceeds the full budget. The Commission seeks comment on this proposal. Should the Commission impose a different limit instead?

a. Bid for a Single Area

80. A bid is an offer to serve all locations in eligible census blocks within the indicated minimum biddable area at the indicated performance tier and latency combination for a total annual amount of support that is not less than the implied annual support at the price point percentage specified by the bidder and not more than the reserve price. In each round, a bid for a single available biddable area with reserve price *R* consists of two pieces: A T+L weight and a price point that is a percentage not less than the current round's clock percentage and is less than the previous round's clock percentage. For a given round, a biddable area can be included in at most one bid—whether a bid on a single area or a package bid on multiple areas—made by a bidder, and a bidder can only bid on areas that are in states that the bidder selected on its application.

81. The Commission proposes not to allow a bidder to change the performance tier and latency combination in a bid for a particular area from round to round. Once a bidder has submitted a bid for an area at a particular performance tier and latency combination (which must be a performance tier and latency combination for the state for which the bidder qualified at the application stage) any bids in subsequent rounds by that bidder for the same area must specify the same performance tier and latency combination. The Commission seeks comment on this proposal.

b. Bid for a Package of Areas

82. The Commission proposes package bidding procedures that will give bidders the option to place bids to serve a bidder-specified list of biddable areas, with corresponding bid processing procedures that may assign fewer than the full list of areas to the bidder as long as the funding associated with the assigned areas is at least equal to a bidder-specified percentage of the funding requested for the complete list of areas in the package. The Commission proposes to allow a bidder to specify a package bid by providing a list of biddable areas, a single performance tier and latency combination, a single price point for the areas in the list, and a minimum scale percentage for the package. The minimum scale percentage must be no higher than a maximum value defined by the Commission, which will be less than 100%. Thus, a package bid is an offer by the bidder to serve any subset of areas in the list at the support amount implied at the bid percentage, provided that the ratio of the total implied support of the subset to the total implied support of the list meets or exceeds the bidder-specified minimum scale percentage.

83. The Commission proposes that a bidder must bid to serve each biddable area in the package bid at the same performance tier and latency combination. Moreover, the Commission proposes that every area in a package bid must be in the same state. The Commission proposes that for a given round, a biddable area can appear in at most one bid—either a single bid or a package bid—made by a given bidder. A bidder may change the minimum scale percentage in any package bid from round to round. The Commission seeks comment, as well, on whether it should set a limit on the total amount of implied support that may be included in a single package. Limiting packages to the biddable areas within a state will impose a *de facto* limit on the total support that may be included in a package bid, but the Commission asks whether a limit, lower than the maximum possible state-level amount of support, should also be implemented.

84. The Commission also seeks comment on the appropriate upper limit of the bidder-specified minimum scale percentage. The Commission proposes 75% as its defined maximum of the minimum scale percentage. The Commission proposes to use an upper limit less than 100% so that small overlaps in the areas included in package bids do not prevent support from being assigned to a potentially much larger number of areas included in the package bids, which could occur if packages were assigned on an all-or-nothing basis.

85. The proposed package bidding format permits a bidder to ensure that it will receive a minimum amount of support equal to the bidder's specified minimum scale requirement if the bid is assigned, or no support if the bid is not assigned. The Commission seeks comment on the proposed package bidding format. Will this package bidding format facilitate packages that include areas with diverse costs, population densities, and other characteristics, especially considering that the Commission proposes not to allow different T+L weights for the areas in the package? Would the option to submit package bids be useful to both bidders that have small networks and bidders that have large networks?

5. Bids Placed by Proxy Bidding Instructions

86. The Commission proposes to permit proxy bidding, which could reduce bidders' need to submit bids manually every bidding round and provide bidders with a safeguard against accidentally failing to submit a bid. With proxy bidding, a bidder could submit instructions for the system to continue to bid automatically for an area with a specified performance tier and latency combination in every round until either the clock percentage falls below a bidder-specified proxy amount, the bidder intervenes to change its bid, or the area is assigned, whichever happens first. Proxy bidding instructions for a single area or a package of areas would contain all the information required for these bids, and the specified price point percentage would potentially be valid for multiple rounds. Proxy bidding instructions will not be permitted to include instructions for changes to the minimum scale percentage of a package bid nor to the specified area or areas.

87. During a round, the bidding system will generate a bid at the clock percentage on behalf of the bidder as long as the percentage specified in the proxy instruction is less than or equal to the current clock percentage. If the proxy percentage exceeds the current clock percentage but is lower than the prior round's clock percentage, then the bidding system will generate a bid at the price point percentage of the proxy. These bids would be treated by the auction system in the same way as any other bids placed in the auction. During a bidding round, a bidder may cancel or enter new proxy bidding instructions. Because proxy instructions may expire as the clock percentage descends and as areas get assigned, even with proxy bidding, bidders are strongly urged to monitor the progress of the auction to ensure that they do not need to cancel or adjust their proxy instructions. The Commission seeks comment on whether to provide for proxy bidding in this way.

88. Proxy bidding instructions will be treated as confidential information and would not be disclosed to the public at any time after the auction concludes, because they may reveal cost information that would not otherwise be made public (*e.g.,* if proxy bidding instructions are not fully implemented because the clock percentage does not fall as low as the specified proxy percentage). However, all submitted bids and the amount of support awarded for any assigned bid, regardless of whether they were placed by the bidder or by the bidding system according to proxy bidding instructions, will be publicly disclosed. The Commission seeks comment on these proposals.

6. Activity Rules

89. The Commission proposes to measure a bidder's bidding activity in a round in terms of implied support dollars and to adopt activity rules that prevent a bidder's activity in a round from exceeding its activity in the previous round.

90. The Commission proposes that a bidder's activity in a round: (1) Be calculated as the sum of the implied support amounts (calculated at the bid percentage) for all the areas bid for in the round, and (2) not exceed its activity from the previous round. The Commission further proposes that a bidder be limited in its ability to switch to bidding for support in different areas from round to round. Specifically, a bidder's activity in a round from areas that the bidder did not bid on at the previous round's clock percentage cannot exceed an amount determined by a percentage (the ''switching percentage'') of the bidder's total implied support from bids at the previous round's clock percentage. The Commission proposes to set this switching percentage at 20% for the second round of the auction only, at 10% for subsequent rounds, and to give OEA the discretion to change the switching percentage, with adequate notice, before a round begins. The Commission also proposes not to allow any switching once the budget has cleared, that is, under this proposal, a bidder would be allowed to bid for an area only if the bidder bid for that area at the previous round's clock percentage and if that area has not yet been assigned.

91. The Commission seeks comment on these proposed activity rules. In addition, the Commission asks for comment on the appropriate size of the switching percentage, and, if it is to be changed across rounds, when and how it should be changed. Will the proposed 20/10 switching percentage allow a bidder sufficient flexibility to react to other bidders' bids from the prior round?

*B. Bid Processing*

92. The Commission proposes that once a bidding round closes, the bidding system will consider the submitted bids to determine whether an additional round of bidding at a lower clock percentage is needed to bring the amount of requested support down to a level within the available budget. If the total requested support at the clock percentage exceeds the budget, another bidding round occurs. In a round in which the amount of overall requested support falls to a level within the budget (*i.e.,* the budget ''clears''), bid processing will take the additional steps of beginning to assign support.

93. If, after the bids have been processed in the clearing round, some areas bid at the clock percentage have not been assigned (*e.g.,* because there were multiple bids for an area at the same T+L weight at the clock percentage), the bidding system will commence another round of bidding to resolve the competition, and rounds will continue with bidding for these areas at lower clock percentages.

94. As a result of these proposed procedures, the bids that can be assigned under the budget in the round when the budget clears and in any later rounds will determine the areas that will be provided support under the Rural Digital Opportunity Fund. At most, one bid per area will be assigned support. The specifications of that bid, in turn, determine the performance tier and latency combination at which service will be provided to the eligible locations in the area. Additional details and examples of bid processing will be provided in the technical guide.

95. The Commission seeks comment generally on its proposed approach to assigning bids and determining support amounts. The Commission asks any commenters supporting an alternative approach to consider the goals of the Commission in the Rural Digital Opportunity Fund proceeding, the decisions made to date on auction design, and how any suggested alternatives would integrate with other aspects of the auction design.

1. Clock Percentage

96. The Commission proposes that in each of a series of discrete bidding rounds, a bidder will be offered an amount of support for an area at a specified performance tier and latency combination that is determined by the clock percentage for the round and the area's reserve price. By bidding at that clock percentage, the bidder indicates that it is willing to provide the required service within the bid area in exchange for a payment at least as large as that implied by the clock percentage and the T+L weight. The opening percentage will determine the highest support amount that the bidder will be offered in the auction for a given area and performance tier and latency combination.

a. Opening Percentage

97. The Commission proposes to start the clock percentage at 100% plus an additional percentage equal to the largest T+L weight that is submitted by any qualified bidder in the auction. Therefore, if any applicant is qualified to bid to provide service at the Minimum performance tier and high latency—a performance tier and latency combination assigned a weight of 90—the Commission proposes that the clock percentage will start at 190%. Starting the auction at this level will allow bidders at higher T+L weights multiple bidding rounds in which to compete for support simultaneously with bidders offering lower T+L weights (*i.e.,* higher performance).

98. The Commission seeks comment on this approach to setting the opening percentage, and request that commenters, in considering the proposal, bear in mind the Commission's previous decisions to: (1) Provide an opportunity for bidders offering different performance standards to compete against each other for the budget, and (2) balance this approach with the use of performance scoring weights previously determined by the Commission.

b. Clock Decrements

99. The Commission proposes to decrement the clock percentage by 10 points in each round. However, the Commission also proposes to provide OEA with the discretion to change that amount during the auction if it appears that a lower or higher decrement would better manage the pace of the auction. For example, if bidding is proceeding particularly slowly, the Commission may increase the bid decrement to speed up the auction, recognizing that bidders have the option of bidding at an intra-round price point percentage if the clock percentage falls to a percentage corresponding to an amount of support that is no longer sufficient. The Commission would begin the auction with a decrement of 10% and limit any further changes to the decrement to between 5% and 20%.

100. The Commission seeks comment on this proposal. Alternatively, the Commission seeks comment on using a decrement larger than 10% in the early rounds of the auction, when the implied support amounts of many bidders are capped at the reserve price and therefore are not changing from round to round. The Commission also seeks comment on circumstances under which it should consider changing the decrement during the auction.

2. Bid Processing After a Clock Round Before the Clearing Round

a. Aggregate Cost at the Clock Percentage

101. After each round until the budget has cleared, the bidding system will

calculate an ''aggregate cost,'' an estimate of what it would cost to assign support at the clock percentage to the bids submitted in the round, in order to determine whether the budget will clear in that round. More precisely, the aggregate cost is the sum of the implied support amounts for all the areas receiving bids at the clock percentage for the round, evaluated at the clock percentage. The calculation counts each area only once, even if the area receives bids, potentially including package bids, from multiple bidders. If there are multiple bids for an area at different performance tier and latency combinations, the calculation uses the bid with the highest implied support amount. If the aggregate cost for the round exceeds the budget, the bidding system will implement another round with a lower clock percentage. The Commission seeks comment on this proposed approach.

b. Clearing Determination

102. The first round in which the aggregate cost is less than or equal to the overall support budget is considered the ''clearing round.'' In the clearing round, the Commission proposes to have the bidding system further process bids submitted in the round and, if necessary, bids submitted at the previous round's clock percentage, to determine those areas that can be assigned and the support amounts winning bidders will receive. Once the clearing round has been identified, the system no longer calculates the aggregate cost, even if there are subsequent bidding rounds. The Commission seeks comment on this proposal.

3. Bid Processing in the Clearing Round

103. In the clearing round, the bidding system will consider bids in more detail to determine which can be identified as winning, or ''assigned,'' bids in that round; the ''second prices'' to be paid for winning bids; and which bids will carry over for bidding in an additional bidding round or rounds. The Commission addresses the proposed procedures for these determinations.

a. Assignment

104. The Commission proposes that once bid processing has determined that the current round is the clearing round, the bidding system will begin to assign winning bids, awarding support to at most one bid for a given area. The system considers all the bids submitted in the round in ascending order of price point percentage to determine which bids can be assigned within the budget. Bids at the same price point would be considered in ascending order of T+L weight.

105. As it considers bids in ascending price point percentage order and then in ascending T+L weight order, the system assigns a bid with a given T+L weight if no other bid for the same area has already been assigned, as long as the area did not receive bids at the clock percentage at the same or at a lower T+L weight and the areas to be assigned in a package bid meet the bid's minimum scale percentage. The bidding system also checks to ensure that sufficient budget is available to assign the bid.

106. To determine whether there is sufficient budget to support a bid, the bidding system keeps a running sum of support costs. This cost calculation at price point percentages between and including the current and previous clock percentages extends the concept of the aggregate cost calculation (which identifies the clearing round) to take into account, at sequential intermediate price points, the cost of bids that have been assigned so far and the estimated cost for areas bid at the clock percentage that have not been assigned.

107. The Commission proposes that at each ascending price point increment, starting at the clock percentage, the running cost calculation is the sum of support for three types of bids: (1) For assigned bids for which there were no other bids for support for their respective areas at price points lower than the currently-considered price point percentage, the system calculates the cost of providing support as the amount of support implied by the currently considered price point, (2) for assigned bids for areas that did receive other bids at price points lower than the currently-considered price point, support is generally calculated as the amount implied by the next-higher price point at which the area received a bid (where next-higher is relative to the price point of the assigned bid, not the currently-considered price point), and (3) bids at the clearing round's clock percentage that have not been assigned are evaluated as they were in the pre-clearing aggregate cost calculation: Only one bid per area is included in the calculation, namely, the bid with the highest implied support amount (*i.e.,* the lowest T+L weight) evaluated at the clock percentage.

108. Once the system has determined which of the bids submitted in the round are assigned, it then determines the highest price point percentage at which the total support cost of the assigned bids does not exceed the budget (the ''clearing price point''). There will be no assigned bids at price point percentages above the clearing price point.

109. The Commission further proposes that, once the system has processed all the bids submitted in the round, if the system has determined that the clearing price point is equal to the clock percentage of the previous round and there is still available budget, the system will proceed to consider bids submitted at the clock percentage of the previous round. These carried-forward bids will be considered in ascending order of T+L weights, and bid-specific pseudo-random numbers will be used to break ties. This process will be addressed in more detail in the technical guide.

b. Support Amount Determination

110. To determine the support amount for an assigned area, the system considers whether there were any other bids for the area in the round below the clearing price point. If there were no other bids below the clearing price point, the assigned area is supported at the clearing price point.

111. If a bid is assigned for an area that received more than one bid in the round below the clearing price point, the assigned bid is generally supported at the next higher price point percentage at which there is a bid for the area. For example, if there are two bids for an area below the clearing price point, the lower bid is supported at the bid percentage of the higher bid.

112. For any carried-forward bids assigned in the clearing round, the support amounts will be calculated based on the clock percentage of the previous round. A carried-forward bid can be assigned in the clearing round only if the system has determined that the clearing price point is equal to the clock percentage of the previous round.

113. The Commission seeks comment on these assignment and pricing proposals for the clearing round.

4. Bids and Bid Processing if the Budge Cleared in a Previous Round

a. Carried-Forward and Acceptable Bids

114. Once the budget clears, further bidding resolves competition for areas that were bid at the clock percentage of the previous round and have not yet been assigned. Therefore, bidding rounds continue after the clearing round at lower clock percentages, but bids are restricted to areas for which the bidder had bid at the previous round's clock percentage but which could not be assigned. Such bids may be for a given unassigned area that received multiple single bids, package bids that were not assigned because the bidder's minimum

scale percentage for the package was not met, or remainders of package bids—unassigned areas that formed part of package bids that were partially assigned.

115. The Commission proposes that these bids at the clock percentage for unassigned areas will carry forward automatically to the next bidding round at the previous round's clock percentage, since the bidder had previously accepted that percentage. In the round into which the bids carry forward, the bidder may also bid for support for these areas at the current round's clock percentage or at intermediate price points. In rounds after the clearing round, a bidder cannot switch to bidding for an area for which it did not bid at the previous round's clock percentage.

116. While bids for unassigned packages will carry forward at the previous clock percentage, the bidder for such a package may group the bids for the areas in the package into smaller packages and bid on those smaller packages at the current round's percentages. However, the unassigned remainders of package bids partially assigned to the bidder will carry forward as individual area bids. Any bids the bidder places for the remainder areas at the new round's percentages must be bids for individual areas—that is, the bidder cannot create a new package of any of the unassigned remainders.

117. The Commission proposes that proxy instructions, if at a price point percentage below the clock percentage of the previous round, generally continue to apply in rounds after the clearing round under the same conditions that apply to other bids. For package bids made by proxy that are only partially assigned to the bidder, the proxy instructions continue to apply to the unassigned areas in the package bid. That is, the price point percentage specified in the proxy instructions would apply to bids for the individual remainder areas.

b. Bid Processing

118. When processing the bids of a round after the clearing round, the system considers bids for assignment and support amount determination in ascending order of T+L weight and then in ascending order of price point percentage. The system assigns a bid with a given T+L weight if the area has not already been assigned, as long as the area did not receive bids at the clock percentage at the same or at a lower T+L weight and, in the case of a package bid, as long as the areas to be assigned in the package meet the bid's minimum scale percentage.

119. To determine the support amount for an assigned area, the system considers whether there were any other bids for the area in the round at the same or at a lower T+L weight. If there were no other bids, the assigned area is supported at the clock percentage of the previous round, consistent with the second-price rule. If a bid is assigned for an area that received more than one bid in the round at the same or at a lower T+L weight, the assigned bid is generally supported at the next higher price point percentage at which there is a bid for the area at the same or at a lower T+L weight.

120. If, after the bids of the round have been processed, one or more of the areas with bids at the clock percentage have not yet been assigned, there will be another bidding round at a lower clock percentage, with the same restrictions on bids and following the same assignment and pricing procedures.

121. The Commission seeks comment on these proposed procedures for assigning bids and determining support amounts in rounds after the clearing round.

c. Closing Conditions

122. The auction will end once the overall budget has cleared if all areas that were bid at the round's clock percentage were assigned during the bid processing of the round.

d. Availability of Auction-Related Information

123. The Commission proposes that the public will have access to certain auction information, while auction participants will have secure access to additional, non-public information.

(i) Information Available to Bidders During the Auction

124. The Commission proposes to limit the disclosure of information regarding bidding in the auction. After each round ends and before the next round begins, the Commission proposes to make the following information available to individual bidders:

- The clock percentage for the upcoming round.
- The aggregate cost at the previous round's clock percentage up until the budget clears.
  - The aggregate cost at the clock percentage is not disclosed for the clearing round or any later round.
- The bidder's activity, based on all bids in the previous round, the implied support of the bidder's bids at the clock percentage, and the implied support of the bidder's carried-forward bids.
  - In rounds after the clearing round, the bidder's assigned support will also be available.
- Summary statistics of the bidder's bidding in the previous round, including:
  - The number of areas for which it bid, at the clock percentage and at other price points, and the number of areas for which proxy instructions are in effect for future rounds.
  - A list of the bidder's carried-forward bids.
  - After the clearing round, areas and support amounts that have been assigned to the bidder.
- For all eligible areas in all states, including those in which the bidder was not qualified to bid or is not bidding, whether the number of bidders that placed bids at the previous round's clock percentage was 0, 1, or 2 or more.
  - For the clearing round and any subsequent round, bidders are also informed about which areas have been assigned.

125. Prior to each round, the Commission also proposes to make available to each bidder the implied support amounts at the round's clock percentage for the areas and performance tier and latency combinations for which the bidder is eligible to bid.

126. In addition to informing bidders whether the number of bidders that placed bids at the previous round's clock percentage was 0, 1, or 2 or more, the Commission seeks comment on making available to bidders the lowest T+L weight of any bid for each area in which there were 2 or more bids at the round's clock percentage. This information could encourage bidders with relatively higher T+L weights to move some bids to areas where they may be more likely to win support, thereby increasing the number of areas receiving winning bids. Commenters should also consider whether this modification might negatively impact the auction, such as by risking collusion or discouraging participation by bidders with higher T+L weights. The Commission seeks comment on how this proposal could impact competition in the auction or affect potential bidders' interest.

(ii) Application Information Procedures

127. The Commission proposes to withhold from the public, as well as other applicants, the following information related to the short-form application process at least until the auction closes and the results are announced:

- The state(s) selected by an applicant.

- The state(s) for which the applicant has been determined to be qualified to bid.
- The performance tier and latency combination(s) selected by an applicant.
- The spectrum access attachment submitted with the short-form application.
- The performance tier and latency combination(s) for which the applicant has been determined to be eligible to bid and the associated weight for each combination.
- An applicant's responses to the questions in Appendix A and any supporting documentation submitted in any attachment(s) that are intended to demonstrate an applicant's ability to meet the public interest obligations for each performance tier and latency combination that the applicant has selected in its application.
- Any financial information contained in an applicant's short-form application for which the applicant has requested confidential treatment under the abbreviated process.
- An applicant's letter of interest from a qualified bank that the bank would provide a letter of credit to the applicant.

All other application information that is not subject to a request for confidential treatment under section 0.459 of the Commission's rules would be publicly available upon the release of the public notice announcing the status of submitted short-form applications after initial review.

128. The Commission proposes to permit any applicant to use the abbreviated process under section 0.459(a)(4) to request confidential treatment of the financial information contained in its short-form application. The abbreviated process would allow all applicants to answer a simple yes/no question on FCC Form 183 as to whether they wish their information to be withheld from public inspection. The Commission will not grant requests to withhold financial data that applicants elsewhere disclose to the public, and that information will be disclosed in the normal course.

129. The Commission would withhold information on the progress of the auction from the general public until after the close of bidding when auction results are announced. Accordingly, during the auction, the public would not have access to such interim information as the current round, clock percentage, aggregate cost, or any summary statistics on bidding or assigned bids that may reveal or suggest the identities of bidders associated with any specific bids.

130. After the close of bidding and announcement of auction results, the Commission proposes to make publicly available all short-form application information and bidding data, except for an applicant's operational information, letter of interest, confidential financial information, and proxy bidding instructions.

131. The Commission seeks comment on its proposals to limit the availability of bidding information during the auction and to adopt limited information procedures for the Rural Digital Opportunity Fund auction concerning the application and bidding data that will be publicly available before, during, and after the auction.

**Proposed Auction 904 Short-Form Application Operational Questions**

132. *Operational History.*

1. Has the applicant previously deployed consumer broadband networks (Yes/No)? If so:

a. Provide the date range when broadband service was offered and in which state(s) service was offered. Specify dates for each state.

b. Provide an estimate of how many subscribers are currently served in each state. (If the applicant is no longer providing service in any state, estimate the number of customers that were served at the beginning of the last full year that the applicant did provide service.)

c. What services (*e.g.,* voice, video, broadband internet access) were or are provided in each state?

d. List any data-usage limit (data cap) used as part of existing broadband access services.

e. What specific technologies and network architecture are used for last-mile; middle-mile/backhaul; and internet interconnections?

f. What are the deployed voice technologies and how are these voice services implemented?

133. *Proposed Network(s) Using Funding from the Rural Digital Opportunity Fund Auction.*

Answer for each state the applicant selected in its application:

2. Network Infrastructures:

a. Briefly describe from a high-level network perspective which network architectures and technologies will be used in the applicant's proposed deployment. If there are variations by state, region, or other criteria, describe each network or location.

b. *Last-mile:* What are the relevant topologies, technologies and protocols and the corresponding industry standards for the last-mile network infrastructure in the applicant's proposed deployment?

c. *Middle-Mile/Backhaul:* What are the relevant topologies, technologies and protocols and the corresponding industry standards for the middle-mile/backhaul network infrastructure in the applicant's proposal?

d. *Internet Access:* What are the relevant topologies, technologies and protocols and the corresponding industry standards for the internet access network infrastructure in the applicant's proposal? This is the connection to major IXPs, transit providers, etc.

e. If the applicant is proposing to use non-standard technologies and protocols, the applicant should identify which vendor(s) and product(s) are being considered and provide links to the vendors' websites and to publicly available technical specifications of the product(s).

3. *Voice Services:* Briefly describe the anticipated system(s) that will be used to provide voice services to the applicant's subscribers. Examples of such solutions could include: (1) Internally designed and operated; (2) provided by a Managed Voice Service Provider; or (3) or an OTT (Over-The-Top) solution available to subscribers via the applicant. If the applicant is considering multiple solutions, provide information on each one and identify possible vendors or service providers.

4. Network Performance:

a. Can the applicant demonstrate that the technology and the engineering design will fully support the proposed performance tier, latency and voice service requirements for the requisite number of locations during peak periods (Yes/No)?

b. Briefly describe the capabilities of the network technologies that will enable performance tier (speed and usage allowance), latency and (where applicable) voice service mean opinion score (MOS) requirements to be met. This can include traffic management, Quality of Service, over-building/scalability, using equipment that easily allows upgrades and other techniques.

c. State the target or design peak period over-subscription ratio(s) for the last-mile, middle-mile/backhaul and internet interconnection that will be used. Additionally, describe the basic assumptions and calculation that will be used in determining these ratios.

d. What general rules-of-thumb will be used to determine if any portion of the network infrastructure needs to be improved, upgraded or expanded to ensure the network is able to meet the required speed, latency and where required voice quality? For example, taking action when (1) when middle-mile link average peak period load is

greater than 70%; when a link peak period load exceeds 95% more than 10 times; when a router's average peak period processing utilization exceeds 70%; when an internet access link load exceeds 75% for a specified time period; when call setup, call drop, call completion rates meet or exceed applicant targets.

e. For fixed broadband wireless access networks, describe how the proposed frequency band(s) and technology attributes, for both last mile and backhaul, will achieve the performance tier(s) and latency requirements to all locations. Specifically, describe how the planned frequency bands, base station configuration, channel bandwidths, traffic assumptions and propagation assumptions and calculations yield sufficient capacity to all the planned locations.

5. *Network Buildout:* Can the applicant demonstrate that all the network buildout requirements to achieve all service milestones can be met (Yes/No)? The applicant will be required to submit a detailed project plan in the long-form application if it is named as a winning bidder. Describe concisely the information that the applicant would make available in such a detailed project plan.

6. *Network Equipment, Consultants and Deployment Vendors:* For the proposed performance tier and latency combination, can the applicant demonstrate that potential vendors, integrators and other partners are able to provide commercially available and fully compatible network equipment/systems, interconnection, last mile technology and customer premise equipment (CPE) at cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? Describe concisely the information and sources of such information that the applicant could make available to support this response.

7. Network Management:

a. Briefly describe the method(s) that will be used to monitor, operate, problem resolution, provision and optimize the network and associated services such as voice. Identify if the proposed solution is internally developed and operated; expands existing systems; uses a third-party network management provider; or is some variant or combination of these methods.

b. Remember to include how voice operations will be monitored, operated, problems resolved, provisioned and optimized as appropriate.

c. If the applicant will expand existing network management systems, describe how the current system provides successful operations.

d. If the applicant will use third-party network management provider, identify any providers the applicant is currently considering.

e. If the applicant will develop, deploy and operate a new system can the applicant demonstrate that it can provide internally developed operations systems for provisioning and maintaining the proposed network including equipment and segments, interconnections, CPE and customer services at cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? If not, can the applicant demonstrate that potential vendors, integrators, and other partners are able to provide commercially available and fully compatible operations systems and tools for provisioning and maintaining the proposed network at cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? Describe concisely the information and sources of such information that the applicant could make available to support these responses.

8. *Satellite Networks:* If the applicant is using satellite technologies, identify which satellites would be used, and describe concisely the total satellite capacity available, that is, capacity that is not currently in use for existing subscribers.

PROPOSED AUCTION 904 SPECTRUM CHART

| Spectrum band/service | Paired licensed | | Unpaired licensed | Unlicensed |
|---|---|---|---|---|
| | Uplink freq., (MHz) | Downlink freq., (MHz) | Uplink & downlink freq., (MHz) | Unlicensed, (MHz) |
| 600 MHz | 663–698 | 617–652 | | |
| Lower 700 MHz | 698–716 | 728–746 | 716–728 (Downlink only) | |
| Upper 700 MHz | 776–787 | 746–757 | | |
| 800 MHz SMR | 813.5/817–824 | 858.5/862–869 | | |
| Cellular | 824–849 | 869–894 | | |
| Broadband PCS | 1850–1915 | 1930–1995 | | |
| AWS–1 | 1710–1755 | 2110–2155 | | |
| AWS (H Block) | 1915–1920 | 1995–2000 | | |
| AWS–3 | 1755–1780 | 2155–2180 | 1695–1710 (Uplink only) | |
| AWS–4 | | | 2000–2020, 2180–2200, (Downlink only). | |
| BRS/EBS | | | 2496–2690 | |
| WCS | 2305–2315 | 2350–2360 | 2315–2320, 2345–2350 | |
| CBRS (3.5 GHz) | | | 3550–3700 | |
| UMFUS (terrestrial) | | | 24,250–24,450, 24,750–25,250, 27,500–28,350, 37,600–38,600, 38,600–40,000, 47,200–48,200. | |
| 70–80–90 GHz unpaired & 70–80 GHz paired (point-to-point terrestrial). | Point-to-Point Pairs for 70–80 GHz 71,000–76,000 with 81,000–86,000 | | 71,000–76,000, 81,000–86,000, 92,000–94,000, 94,100–95,000. | |
| TV White Spaces | | | | 54–72, 76–88, 174–216, 470–698. |
| 900 MHz | | | | 902–928. |
| 2.4 GHz | | | | 2400–2483.5. |
| 5 GHz | | | | 5150–5250, 5250–5350, 5470–5725, 5725–5850. |

PROPOSED AUCTION 904 SPECTRUM CHART—Continued

| Spectrum band/service | Paired licensed | | Unpaired licensed | Unlicensed |
|---|---|---|---|---|
| | Uplink freq., (MHz) | Downlink freq., (MHz) | Uplink & downlink freq., (MHz) | Unlicensed, (MHz) |
| 24 GHz | | | | 24,000–24,250. |
| 57–71 GHz | | | | 57,000—71,000. |
| Ku Band (satellite) | 12,750–13,250, 14,000–14,500. | 10,700–12,700 | | |
| Ka Band (satellite) | 27,500–30,000 | 17,700–20,200 | | |
| V Band (satellite) | 47,200–50,200, 50,400–52,400. | 37,500–42,000 | | |

Abbreviations

AWS Advanced Wireless Services
BRS/EBS Broadband Radio Service/Education Broadband Service
CBRS Citizens Broadband Radio Service
PCS Personal Communications Service
SMR Specialized Mobile Radio
UMFUS Upper Microwave Flexible Use Service
WCS Wireless Communications Service

## V. Procedural Matters

134. *Supplemental Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in connection with the *Rural Digital Opportunity Fund NPRM, 84 FR 43543, August 21, 2019,* and a Final Regulatory Flexibility Analysis (FRFA) in connection with the *Rural Digital Opportunity Fund Order.* The Commission sought written public comment on the proposals in the *Rural Digital Opportunity Fund NPRM,* including comments on the IRFA. The Commission did not receive any comments in response to the Regulatory Flexibility Analyses.

135. The IRFA for the *Rural Digital Opportunity Fund NPRM* and the FRFA for the *Rural Digital Opportunity Fund Order* set forth the need for and objectives of the Commission's rules for the Rural Digital Opportunity Fund auction; the legal basis for those rules; a description and estimate of the number of small entities to which the rules apply; a description of projected reporting, recordkeeping, and other compliance requirements for small entities; steps taken to minimize the significant economic impact on small entities and significant alternatives considered; and a statement that there are no federal rules that may duplicate, overlap, or conflict with the rules. The proposals in the document do not change any of those descriptions. However, because the Public Notice proposes specific procedures for implementing the rules proposed in the *Rural Digital Opportunity Fund NPRM* and adopted in the *Rural Digital Opportunity Fund Order,* the Commission has prepared a supplemental IRFA seeking comment on how the proposals in the document could affect those Regulatory Flexibility Analyses.

136. The proposals in the document include procedures for awarding Rural Digital Opportunity Fund support through a multi-round, reverse auction and the availability of application and auction information to bidders and to the public during and after the auction. The document also includes detailed proposed bidding procedures for a descending clock auction, including bid collection, clock prices, proposed bid format, package bidding format, proxy bidding, bidder activity rules, bid processing, and how support amounts are determined. The bidding procedures proposed are designed to facilitate the participation of qualified service providers of all kinds, including small entities, in the Rural Digital Opportunity Fund program, and to give all bidders, including small entities, the flexibility to place bids that align with their intended network construction or expansion, regardless of the size of their current network footprints. In addition, the document specifically seeks comment on information the Commission could make available to help educate parties that have not previously participated in a Commission auction, and on whether OEA and the Bureau should work with the Commission's Office of Communications Business Opportunities to engage with small providers.

137. To implement the rules adopted by the Commission in the *Rural Digital Opportunity Fund Order* for the pre-auction process, the document proposes specific procedures and requirements for applying to participate and becoming qualified to bid in the Rural Digital Opportunity Fund auction, including designating the state(s) in which an applicant intends to bid and providing operational and financial information designed to allow the Commission to assess the applicant's qualifications to meet the Rural Digital Opportunity Fund public interest obligations for each area for which it seeks support. The document also makes proposals that address the types of further information that may be required in the post-auction long-form application that a winning bidder must file to become authorized to receive support. The application procedures proposed are intended to require applicants to submit enough information to permit the Commission to determine their qualifications to participate in the Rural Digital Opportunity Fund auction, without requiring so much information that it is cost-prohibitive for any entity, including small entities, to participate.

138. The Commission seeks comment on how the proposals in the document could affect the IRFA for the *Rural Digital Opportunity Fund NPRM* or the FRFA in the *Rural Digital Opportunity Fund Order.* Such comments must be filed in accordance with the same filing deadlines for responses to the Public Notice and have a separate and distinct heading designating them as responses to the IRFA and FRFA.

139. *Ex Parte Rules.* The proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 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 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.

**Cecilia Sigmund,**

*Federal Register Liaison Officer Office of the Secretary.*

[FR Doc. 2020–05171 Filed 3–16–20; 8:45 am]

**BILLING CODE 6712–01–P**

# Notices

Federal Register
Vol. 85, No. 52
Tuesday, March 17, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Board for International Food and Agricultural Development Public Meeting March 25, 2020, Correction

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Notice; correction.

**SUMMARY:** The public meeting of the Board for International Food and Agricultural Development (BIFAD) previously scheduled for March 25, 2020, *Agricultural Growth, Structural Transformation, and the Journey to Self-Reliance: Implications for USAID Programming,* has been postponed until a later date.

**FOR FURTHER INFORMATION CONTACT:** Clara Cohen, 202–712–0119, *ccohen@usaid.gov.*

**SUPPLEMENTARY INFORMATION:**

*Correction:* In the **Federal Register** notice of 2/7/2020 document number 2020–02423 (*https://www.federalregister.gov/documents/2020/02/07/2020-02423/board-for-international-food-and-agricultural-development-notice-of-meeting*), on p. 7265, please change the notice to read:

**U.S. Agency for International Development**

**Board for International Food and Agricultural Development**

The Board for International Food and Agricultural Development (BIFAD) public meeting previously scheduled for March 25, 2020 at the National Press Club, 529 14th St. NW, Washington, DC 20045, from 9 a.m. to 4:00 p.m., *Agricultural Growth, Structural Transformation, and the Journey to Self-Reliance: Implications for USAID Programming,* has been postponed until a later date. Please monitor the BIFAD website, *https://www.usaid.gov/bifad,* and the **Federal Register** for more information on the rescheduled date for the event.

Dated: March 11, 2020.

**Clara Cohen,**

*Designated Federal Officer, BIFAD.*

[FR Doc. 2020–05363 Filed 3–16–20; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

**[DOC. NO. AMS–FGIS–20–0022]**

### Grain Inspection Advisory Committee Meeting

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Agricultural Marketing Service (AMS) Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise AMS on the programs and services delivered under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help AMS better meet the needs of its customers who operate in a dynamic and changing marketplace.

**DATES:** April 1, 2020, 8:30 a.m. to 5:00 p.m. & April 2, 2020, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The Advisory Committee meeting will take place at the Courtyard & Residence Inn by Marriott Kansas City Downtown/Convention Center, 1535 Baltimore Ave, Kansas City, Missouri 64108.

Requests to orally address the Advisory Committee during the meeting, or written comments to be distributed during the meeting, may be sent to: Kendra Kline, AMS–FGIS, U.S. Department of Agriculture, 1400 Independence Avenue SW, STOP 3614, Washington, DC 20250–3601. Requests and comments may also be emailed to *Kendra.C.Kline@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kendra Kline by phone at (202) 690–2410 or by email at *Kendra.C.Kline@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the Advisory Committee is to provide advice to AMS with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71–87k). Information about the Advisory Committee is available on the AMS website at *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

The agenda will include updates on resolutions from the August 2019 meeting, a general program update, an update on AMS rulemaking activities, utilization of technology in grain inspection, Corn Borer Certification Program, updates on FGIS-Food and Drug Administration directive on ''actionable lots'', and Japanese phytosanitary requirements.

Public participation will be limited to written statements and interested parties who have registered to present comments orally to the Advisory Committee. If interested in submitting a written statement or presenting comments orally, please contact Kendra Kline at the telephone number or email listed above. Oral commenting opportunities will be first come, first serve. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Kendra Kline at the telephone number or email listed above.

Dated: March 12, 2020.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2020–05490 Filed 3–16–20; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### WTO Agricultural Quantity-Based Safeguard Trigger Levels

**AGENCY:** Foreign Agricultural Service, U.S. Department of Agriculture.

**ACTION:** Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade Organization (WTO) Agreement on Agriculture.

**SUMMARY:** This notice lists the updated quantity-based trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice

also includes the relevant period applicable for the trigger levels on each of the listed products.

**DATES:** This notice is applicable on March 17, 2020.

**ADDRESSES:** Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1070, 1400 Independence Avenue SW, Washington, DC 20250–1070.

**FOR FURTHER INFORMATION CONTACT:** Souleymane Diaby, (202) 720–2916, *Souleymane.Diaby@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tarification as a result of the Uruguay Round, if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties when the volume of imports of that product exceeds the sum of (1) a base trigger level multiplied by the average of the last three years of available import data and (2) the change in yearly consumption in the most recent year for which data are available (provided that the final trigger level is not less than 105 percent of the three-year import average). The base trigger level is set at 105, 110, or 125 percent of the three-year import average, depending on the percentage of domestic consumption that is represented by imports. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994, 60 FR 1007 (Jan. 4, 1995). The Secretary of Agriculture further delegated this duty, which lies with the Administrator of the Foreign Agricultural Service (7 CFR 2.*601*(a)(42)). The Annex to this notice contains the updated quantity trigger levels, consistent with the provisions of Article 5.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States (2019) and in the Secretary of Agriculture's Notice of Uruguay Round Agricultural Safeguard Trigger Levels, published in the **Federal Register** at 60 FR 427 (Jan. 4, 1995).

*Notice:* As provided in Section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the WTO Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superseded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 (Jan. 4, 1995).

Issued at Washington, DC, this 28th day of February 2020.

**Ken Isley,**

*Administrator, Foreign Agricultural Service.*

ANNEX-QUANTITY-BASED SAFEGUARD TRIGGER

| Product | 2020 Quantity-based safeguard trigger | | |
|---|---|---|---|
| | Trigger level | Unit | Period |
| Beef | 255,113 | MT | Jan 1, 2020—Dec 31, 2020. |
| Mutton | 4,657 | MT | Jan 1, 2020—Dec 31, 2020. |
| Cream | 2,195,402 | Liters | Jan 1, 2020—Dec 31, 2020. |
| Evaporated or Condensed Milk | 5,643,813 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Nonfat Dry Milk | 1,137,938 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Dried Whole Milk | 8,075,070 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Dried Cream | 34,923 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Dried Whey/Buttermilk | 102,146 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Butter [1] | 61,716,866 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Butteroil | 13,966,108 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Chocolate Crumb | 11,324,477 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Lowfat Chocolate Crumb | 76,422 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Animal Feed Containing Milk | 622,860 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Ice Cream | 9,583,319 | Liters | Jan 1, 2020—Dec 31, 2020. |
| Dairy Mixtures | 7,839,727 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Infant Formula Containing Oligosaccharides | 3,931,855 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Blue Cheese | 4,218,639 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Cheddar Cheese | 8,505,766 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| American-Type Cheese | 238,299 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Edam/Gouda Cheese | 9,479,493 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Italian-Type Cheese | 21,815,576 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Swiss Cheese with Eye Formation | 28,131,565 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Gruyere Process Cheese | 4,007,719 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| NSPF Cheese | 46,553,755 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Lowfat Cheese | 93,681 | Kilograms | Jan 1, 2020—Dec 31, 2020. |
| Peanut Butter/Paste | 4,395 | MT | Jan 1, 2020—Dec 31, 2020. |
| Peanuts [1] | 29,060 | MT | April 1, 2020—Mar 31, 2021. |
| Raw Cane Sugar [1] | 766,524 | MT | Oct 1, 2020—Sept 30, 2021. |
| Refined Sugars and Syrups [1] | 256,005 | MT | Oct 1, 2020—Sept 30, 2021. |
| Articles over 65% Sugar | 482 | MT | Oct 1, 2020—Sept 30, 2021. |
| Articles over 10% Sugar | 11,093 | MT | Oct 1, 2020—Sept 30, 2021. |
| Blended Syrups | 391 | MT | Oct 1, 2020—Sept 30, 2021. |
| Sweetened Cocoa Powder | 459 | MT | Oct 1, 2020—Sept 30, 2021. |
| Mixes and Doughs | 781 | MT | Oct 1, 2020—Sept 30, 2021. |

ANNEX-QUANTITY-BASED SAFEGUARD TRIGGER—Continued

| Product | 2020 Quantity-based safeguard trigger | | |
|---|---|---|---|
| | Trigger level | Unit | Period |
| Mixed Condiments and Seasonings | 350 | MT | Oct 1, 2020—Sept 30, 2021. |
| Short Staple Cotton [2] | 45,688 | Kilograms | Sep 20, 2020—Sep 19, 2021. |
| Harsh or Rough Cotton | 32,968 | Kilograms | Aug 1, 2020—July 31, 2021. |
| Medium Staple Cotton | 8,417 | Kilograms | Aug 1, 2020—July 31, 2021. |
| Extra Long Staple Cotton | 692,467 | Kilograms | Aug 1, 2020—July 31, 2021. |
| Cotton Waste [2] | 1,013,866 | Kilograms | Sep 20, 2020—Sep 19, 2021. |
| Cotton Processed but not Spun [2] | 124,933 | Kilograms | Sep 11, 2020—Sep 10, 2021. |

[1] Includes change in U.S. consumption.
[2] 12-month period from October to September.

[FR Doc. 2020–05506 Filed 3–16–20; 8:45 am]
BILLING CODE 3410–10–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Tuesday April 14, 2020, from 3:00–4:00 p.m. Eastern Time for the purpose of discussing next steps in the Committee's final report and recommendations to the Commission on education funding in the state.

**DATES:** The meeting will be held on Tuesday April 14, 2020, at 3:00 p.m. Eastern Time

*Public Call Information:* Dial: 800–367–2403, Confirmation Code: 4941445.

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

**SUPPLEMENTARY INFORMATION:** Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

**Agenda**

Welcome and Roll Call

Discussion: Civil Rights in Ohio

Public Comment

Adjournment

Dated: March 12, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–05509 Filed 3–16–20; 8:45 am]
BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Wednesday April 15, 2020 at 12 p.m. Central time. The Committee will discuss next steps in their study of prosecutorial discretion in the state.

**DATES:** The meeting will take place on Wednesday April 15, 2020 at 12:00 p.m. Central Time.

**PUBLIC CALL INFORMATION:** Dial: 800–353–6461, Confirmation Code: 1771064.

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

**SUPPLEMENTARY INFORMATION:** Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the

conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Welcome and roll call
II. Discussion: Prosecutorial Discretion in Mississippi
III. Public comment
IV. Next steps
V. Adjournment

Dated: March 12, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–05510 Filed 3–16–20; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Census Scientific Advisory Committee

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of public meeting; postponed.

**SUMMARY:** The Bureau of the Census (Census Bureau) is giving notice that it is postponing a meeting of the Census Scientific Advisory Committee (CSAC). The meeting was scheduled for March 26 and March 27. The Census Bureau is postponing that meeting due to health concerns with the coronavirus. In a future **Federal Register** notice, we will announce a rescheduled date and time for the CSAC meeting. CSAC information can be found at the following website: *https://www.census.gov/about/cac/sac.html.*

**FOR FURTHER INFORMATION CONTACT:** Kimberly Leonard, External Stakeholder Program Manager, Office of Program, Performance and Stakeholder Integrations, by mail at Department of Commerce, U.S. Census Bureau, Room 2K137, 4600 Silver Hill Road, Washington, DC 20233 or by phone at 301–763–7281, or via email at: *census.scientific.advisory.committee@census.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Census Bureau is giving notice that it is postponing a meeting of the Census Scientific Advisory Committee (CSAC). The Census Bureau originally published in the **Federal Register** on Thursday, March 5, 2020 (85 FR 12891) a notice announcing that the CSAC would be meeting on Thursday, March 26, 2020, from 8:30 a.m. to 5:00 p.m. and on Friday, March 27, 2020, from 8:30 a.m. to 2:00 p.m. The Census Bureau is postponing that meeting. In a future **Federal Register** notice, we will announce a rescheduled date and time for the CSAC meeting.

The Committee addresses policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

The members of the CSAC are appointed by the Director, Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

Dated: March 11, 2020.

**Ron S. Jarmin,**

*Deputy Director, Bureau of the Census.*

[FR Doc. 2020–05465 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–580–879]**

### Certain Corrosion-Resistant Steel Products From the Republic of Korea: 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 Dongbu Steel Co., Ltd/Dongbu Incheon Steel Co., Ltd. (Dongbu) received countervailable subsidies that are above *de minimis,* and that Hyundai Steel Company (Hyundai Steel) received countervailable subsidies that are *de minimis.* The period of review (POR) is January 1, 2017 through December 31, 2017.

**DATES:** Applicable March 17, 2020.

**FOR FURTHER INFORMATION CONTACT:** Myrna Lobo or Jun Jack Zhao, 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) 482–2371 or (202) 482–1396, respectively.

**SUPPLEMENTARY INFORMATION**

**Background**

Commerce published the *Preliminary Results* of this review on September 12, 2019.[1] In addition, Commerce issued a post-preliminary determination on the upstream allegation on electricity on February 5, 2020.[2] For a history of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

On December 30, 2019, we postponed the final results of this review until March 10, 2020.[4]

[1] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2017,* 84 FR 48107 (September 12, 2019) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Upstream Subsidy on Electricity,'' dated February 5, 2020 (Upstream Analysis Memorandum).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017 Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea (Issues and Decision Memorandum, or IDM), dated concurrently with, and hereby adopted by, this notice.

[4] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated December 30, 2019.

**Scope of the Order**

The products covered by this order are certain corrosion-resistant steel products. For a complete description of the scope of this order, *see* attachment to the Issues and Decision Memorandum.

**Analysis of Comments Received**

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum. The 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 Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on the comments received from interested parties and record information, we have made changes to the net subsidy rates calculated for Dongbu and for those companies not selected for individual review. The changes made for Hyundai Steel did not result in a change to its net subsidy rate. For a discussion of these issues, *see* the Issues and Decision Memorandum.

**Methodology**

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

**Companies Not Selected for Individual 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. However, Commerce normally determines the rates for non-selected companies in 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)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero, *de minimis,* or rates based entirely on facts available. In this review, the only subsidy rate above *de minimis* is the rate calculated for Dongbu. Therefore, for the companies for which a review was requested that were not selected as mandatory respondents, we are applying the subsidy rate calculated for Dongbu.

**Final Results of Administrative Review**

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period January 1, 2017 through December 31, 2017 to be as follows:

| Company | Net countervailable subsidy rate (percent *ad valorem*) |
|---|---|
| Dongbu Steel Co., Ltd./ Dongbu Incheon Steel Co., Ltd. | 7.16 |
| Hyundai Steel Company | 0.44 (*de minimis*). |
| Bukook Steel Co., Ltd | 7.16 |
| CJ Korea Express | 7.16 |
| DK Dongshin Co., Ltd | 7.16 |
| Dongbu Express | 7.16 |
| Hongyi (HK) Hardware Products Co., Ltd. | 7.16 |
| Hyundai Glovis Co., Ltd | 7.16 |
| Jeil Sanup Co., Ltd | 7.16 |
| POSCO | 7.16 |
| POSCO C&C | 7.16 |
| POSCO Daewoo Corp | 7.16 |
| POSCO P&S | 7.16 |
| Sejung Shipping Co., Ltd | 7.16 |
| SeAH Steel | 7.16 |
| Seil Steel Co., Ltd | 7.16 |
| SK Networks Co., Ltd | 7.16 |
| Soon Hong Trading Co., Ltd | 7.16 |
| Taisan Construction Co., Ltd | 7.16 |
| TCC Steel Co., Ltd | 7.16 |
| Young Sun Steel Co | 7.16 |

**Assessment and Cash Deposit Requirements**

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results to liquidate shipments of subject merchandise. Because we have calculated a *de minimis* countervailable subsidy rate for Hyundai Steel, we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties in accordance with 19 CFR 351.212. We will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by Dongbu and the above listed companies, entered or withdrawn from warehouse for consumption from January 1, 2017 through December 31, 2017, at the *ad valorem* rates listed above for each respective company.

In accordance with section 751(a)(2)(C) of the Ac, we intend also to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above, with the exception of Hyundai Steel, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. Because the countervailable subsidy rate for Hyundai Steel is *de minimis,* Commerce will instruct CBP to collect cash deposits at a rate of zero for Hyundai Steel for all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Administrative Protective Order**

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

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

and terms of an APO is a violation which is subject to sanction.

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 10, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. List of Issues
III. Background
IV. Changes Since the Preliminary Results
V. Scope of the Order
VI. Period of Review
VII. Subsidies Valuation Information
VIII. Analysis of Programs
IX. Discussion of Comments
Comment 1: Whether the Electricity for LTAR Upstream Subsidy Allegation Confers a Benefit
Comment 2: Whether the Subsidy Rate for the Industrial Technology Innovation Promotion Act (ITIPA) Grants Was Improperly Calculated
Comment 3: Whether Tax Credit Programs Under the RSTA Meet the Specificity Requirement
Comment 4: Whether Tax Benefits Should Not Be Adjusted for the Special Rural Development Tax
Comment 5: Whether the Trading of Demand Response Resource Program is Countervailable
Comment 6: Whether the Modal Shift Program Confers a Countervailable Benefit
Comment 7: Whether the Non-Government Banks Were Entrusted or Directed to Provide a Financial Contribution to Dongbu through the Debt Restructuring Program
Comment 8: Whether the Restructuring of Dongbu's Existing Loans by GOK-controlled Banks Provided a Financial Contribution to Dongbu
Comment 9: Whether the Restructured Loans Provided to Dongbu were Specific
Comment 10: Whether Commerce Should Use the Interest Rates from Loans provided by Commercial Banks Participating in the Creditor Bank Committee as Benchmarks
Comment 11: Whether Dongbu Is Equityworthy and the Debt-to-Equity Swaps should be Countervailed
Comment 12: Whether Commerce Correctly Calculated the Benefit to Dongbu from KDB Short-Term Discounted Loans for Export Receivables Program
X. Recommendation

[FR Doc. 2020–05488 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–878]**

## Corrosion-Resistant Steel Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

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

**SUMMARY:** The Department of Commerce (Commerce) determines that Dongkuk Steel Mill Co., Ltd. (Dongkuk) made sales of corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) at less than normal value, and Hyundai Steel Company (Hyundai) did not, during the period of review (POR), July 1, 2017 through June 30, 2018.

**DATES:** Applicable March 17, 2020.

**FOR FURTHER INFORMATION CONTACT:** Lingjun Wang or Elfi Blum-Page, 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) 482–2316 or (202) 482–0197, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce published the *Preliminary Results* on September 12, 2019.[1] On January 27, 2020, Commerce determined that a cost-based particular market situation (PMS) existed with respect to the production cost of CORE in Korea during the POR.[2] For a history of events that occurred since the *Preliminary Results, see* the IDM.[3] On January 2, 2020, Commerce postponed the final results of this review until March 10, 2020.[4]

**Scope of the Order**

The products covered by this order are certain corrosion-resistant steel products. For a complete description of the scope of this order, *see* attachment to the IDM.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties are addressed in the IDM. The issues are identified in the Appendix to this notice. The IDM 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, room B8024 of the main Commerce building. In addition, a complete version of the IDM can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the IDM are identical in content.

**Changes Since the Preliminary Results**

We increased the cost of the respondents' purchased hot-rolled coil by 17.29 percent for the final results, revised from the 13.97 percent used in the post-preliminarily results.[5]

**Final Determination of No Shipments**

We received no comments regarding our preliminary determination of no shipments with respect to Samsung C&T Corporation, Hyosung Corporation, and Hyosung TNC. As the record contains no other information that calls into question our preliminary findings, we continue to find that those three companies had no shipments of subject merchandise during the POR.

**Rate for Non-Examined Companies**

For the final results of this review, the only weighted-average dumping margin that is not zero, *de minimis,* or determined entirely on the basis of facts is the margin calculated for Dongkuk. Thus, Commerce has assigned the margin calculated for Dongkuk to the non-examined companies.

**Final Results of the Administrative Review**

We have determined the following weighted-average dumping margins for the exporters or producers listed below exist for the POR:

[1] *See Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017,* 84 FR 48118 (September 12, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea; 2017–2018: Post-Preliminary Decision Memorandum on Particular Market Situation,'' dated January 27, 2020 (PMS Memorandum).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments: Certain Corrosion-Resistant Steel Products from the Republic of Korea; 2017–2018'', dated concurrently with, and hereby adopted by, this notice (IDM).

[4] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated January 2, 2020.

[5] *See* PMS Memorandum and IDM.

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Dongkuk Steel Mill Co., Ltd .. | 2.43 |
| Hyundai Steel Company ..... | 0.00 |
| Anjeon Tech Co., Ltd ..... | 2.43 |
| Benion Corp. ..... | 2.43 |
| Dongbu Steel, Co., Ltd ..... | 2.43 |
| Dongbu Incheon Steel Co., Ltd ..... | 2.43 |
| GS Global Corp ..... | 2.43 |
| Kima Steel Corporation Ltd .. | 2.43 |
| Mitsubishi Corp. (Korea) Ltd | 2.43 |
| POSCO ..... | 2.43 |
| POSCO Coated & Color Steel Co., Ltd ..... | 2.43 |
| POSCO Daewoo Corporation | 2.43 |
| SeAH Coated Metal Corporation ..... | 2.43 |
| Young Steel Co., Ltd ..... | 2.43 |

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such 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 the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise 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 the respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.31 percent, the all-others cash deposit rate established in the investigation.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers Regarding the Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce'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). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

[6] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016), as amended by *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018).

Dated: March 10, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the IDM**

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Companies Not Selected for Individual Examination
VI. Final Determination of No Shipments
VII. Discussion of the Comments
Comment 1: Legal Authority for Applying PMS to the Sales-Below-Cost Test
Comment 2: Existence of a PMS
Comment 3: Quantifying the PMS
Comment 4: Dongkuk's Constructed Export Price (CEP) Offset
Comment 5: Dongkuk's Inland Freight from Plant to Port of Exportation
VII. Recommendation

[FR Doc. 2020–05489 Filed 3–16–20; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA082]**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Thursday, April 2, 2020 at 9 a.m., however, due to the evolving coronavirus situation, the Council may decide to change this meeting to a webinar, possibly on short notice. The Council website and official Council communications are the best source for this information.

**ADDRESSES:** The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01950; telephone: (978) 777–2500.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director,

New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The Advisory Panel will receive and discuss the Groundfish Catch Share Program Review final report. Also on the agenda is the discussion of Council's priorities. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: March 12, 2020.

**Tracey L. Thompson,**

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

[FR Doc. 2020–05496 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 200309–0071; RTID 0648–XQ007]**

### Fish and Fish Product Import Provisions of the Marine Mammal Protection Act 2020 List of Foreign Fisheries

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS is publishing its draft 2020 List of Foreign Fisheries (LOFF), as required by the regulations implementing the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act (MMPA). The draft 2020 LOFF reflects new information received from nations submitting their 2019 Progress Reports on interactions between commercial fisheries exporting fish and fish products to the United States and marine mammals, and updates the 2017 LOFF. NMFS classified each commercial fishery in this draft 2020 LOFF into one of two categories, either ''export'' or ''exempt,'' based upon frequency and likelihood of incidental mortality and serious injury of marine mammals likely to occur incidental to each fishery. The classification of a fishery on the draft 2020 LOFF determines which regulatory requirements will be applicable to that fishery for it to receive a comparability finding necessary to export fish and fish products to the United States from that fishery.

**DATES:** Written comments must be received by 5 p.m. Eastern Time on May 1, 2020.

**ADDRESSES:** The draft 2020 LOFF can be found at: *https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries.*

You may submit comments on this document, identified by NOAA–NMFS–2020–0001, by either of the following methods:

1. *Electronic Submissions:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0001,* click the ''Comment Now!'' icon, complete the required fields and enter or attach your comments.

2. *Mail:* Submit written comments to: Director, Office of International Affairs and Seafood Inspection, Attn: MMPA List of Foreign Fisheries, NMFS, F/IASI, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). NMFS will consider all comments and information received during the comment period in preparing a final LOFF. NMFS will also seek input from nations on the draft LOFF at bilateral and multilateral meetings, as appropriate.

**FOR FURTHER INFORMATION CONTACT:** Nina Young, NMFS F/IASI at *Nina.Young@noaa.gov, mmpa.loff@noaa.gov,* or 301–427–8383.

**SUPPLEMENTARY INFORMATION:** In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions (section 101(a)(2)) of the MMPA. This rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in its fisheries producing fish and fish products exported to the United States. Specifically, fish or fish products cannot be imported into the United States from commercial fishing operations that result in the incidental mortality or serious injury of marine mammals in excess of United States standards. Fish and fish products from export and exempt fisheries identified by the Assistant Administrator for Fisheries in the LOFF can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS. The 2016 final rule established procedures that a harvesting nation must follow and conditions it must meet to receive a comparability finding for a fishery. The rule also established provisions for intermediary nations to ensure that such nations do not import and re-export to the United States fish or fish products that are subject to an import prohibition.

This draft 2020 LOFF (see *https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries*) makes updates to the final 2017 LOFF, which was published on March 16, 2018 (83 FR 11703).

**What is the List of Foreign Fisheries?**

Based on information provided by nations, industry, the public, and other readily available sources, NMFS identified nations with commercial fishing operations that export fish and fish products to the United States and classified each of those fisheries based on their frequency of marine mammal interactions as either ''exempt'' or ''export'' fisheries (see Definitions below). The entire list of these export and exempt fisheries, organized by nation (or economy), constitutes the LOFF.

**Why is the LOFF important?**

Under the MMPA, the United States prohibits imports of commercial fish or fish products caught in commercial fishing operations resulting in the incidental killing or serious injury (bycatch) of marine mammals in excess of United States standards (16 U.S.C. 1371(a)(2)). NMFS published regulations implementing these MMPA import provisions in August 2016 (81 FR 54390; August 15, 2016). The regulations apply to any foreign nation with fisheries exporting fish and fish products to the United States, either directly or through an intermediary nation.[1]

The LOFF lists foreign commercial fisheries that export fish and fish products to the United States and that have been classified as either ''export'' or ''exempt'' based on the frequency and likelihood of interactions or incidental mortality and serious injury of a marine mammal. All fisheries that export to the United States must be on the LOFF. A harvesting nation must apply for and receive a comparability finding for each of its export and exempt fisheries on the LOFF to continue to export fish and fish products from those fisheries to the United States.

**What do the classifications of ''exempt fishery'' and ''export fishery'' mean?**

The classifications of ''exempt fishery'' or ''export fishery'' determine the criteria that a nation's fishery must meet to receive a comparability finding for that fishery. A comparability finding is required for both exempt and export fisheries, but the criteria for exempt and export fisheries differ.

For an exempt fishery, the criteria to receive a comparability finding are limited only to conditions related to the prohibition of intentional killing or injury of marine mammals (see 50 CFR 216.24(h)(6)(iii)(A)). For an export fishery, the criteria to receive a comparability finding include the conditions related to the prohibition of intentional killing or injury of marine mammals (see 50 CFR 216.24(h)(6)(iii)(A)) and the requirement to develop and maintain regulatory programs comparable in effectiveness to the U.S. regulatory program for reducing incidental marine mammal bycatch (see 50 CFR 216.24(h)(6)). The definitions of ''exempt fishery'' and ''export fishery'' are stated in the Definitions below.

**What type of fisheries are included in the List of Foreign Fisheries?**

The LOFF contains only those commercial fishing operations authorized by the harvesting nation to fish and export fish and fish products to the United States. 50 CFR 18.3 defines ''commercial fishing operation'' as the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold. 50 CFR 229.2 also defines ''commercial fishing operation'' as the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in section 216.3 of 50 CFR 216) activities and aquaculture activities. Per the application of these two definitions, the LOFF contains export and exempt fisheries that are engaged in the lawful and authorized commercial harvest of fish from the marine environment. The term ''commercial fishing operation'' is used in the definitions of exempt fishery and export fishery (see Definitions below).

**How did NMFS classify a fishery if a harvesting nation did not provide information?**

Information on the frequency or likelihood of interactions or bycatch in most foreign fisheries was lacking or incomplete. Absent such information, NMFS used readily available information, noted below, to classify fisheries, which included drawing analogies to similar U.S. fisheries and gear types interacting with similar marine mammal stocks. Where no analogous fishery or fishery information existed, NMFS classified the commercial fishing operation as an export fishery until information becomes available to properly classify the fishery. Henceforth, in the year prior to the year in which a determination is required on a comparability finding application (*e.g.,* 2020 and 2024), NMFS will revise the LOFF. When revising the LOFF, NMFS may reclassify a fishery if a harvesting nation provides reliable information to reclassify the fishery or such information is readily available to NMFS (*e.g.,* during the comment periods, consultations, or in Progress Reports).

**Overview of the 2020 Draft LOFF**

The 2020 draft LOFF is composed of 906 exempt fisheries and 1990 export fisheries from 129 nations (or economies). Ninety-six nations submitted their 2019 Progress Reports, and NMFS used information from those reports to revise the 2017 LOFF and create the updated draft 2020 LOFF. The 2017 LOFF and the draft 2020 LOFF, as well as a list of Intermediary nations (or economies) and their associated products and sources of those products, and a list of fisheries and nations where the rule does not apply, can be found at: *https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries.*

*Nations Failing To Respond*

More than 37 nations (or economies)[2] failed to submit a 2019 Progress Report. These nations include: Azerbaijan, Bahrain, British Virgin Islands, Cameroon, Cape Verde, Colombia, Dominican Republic, Egypt, Fiji, French Polynesia, France, Ghana, Haiti, Iran, Israel, Kiribati, Libya, Lithuania, Malaysia, Mauritania, Mozambique, New Caledonia, Nicaragua, Papua New Guinea, Romania, Russian Federation, Saudi Arabia, Senegal, Solomon Islands, South Africa, Saint Kitts Nevis, Saint Pierre Miquelon, Tanzania, Tunisia, Turks and Caicos Islands, and Venezuela. Some nations, such as Colombia, France, French Polynesia, Ghana, Senegal, Tunisia, and the Russian Federation, were in various stages of completing their 2019 Progress Reports at the time of the deadline.

The following nations are solely intermediary nations and were not technically required to submit a 2019 Progress Report: Belarus, Monaco, Reunion, and Switzerland. Switzerland submitted a 2019 Progress Report requesting the deletion of all of its intermediary products, which NMFS denied because U.S. trade records clearly indicate that these products are exports from Switzerland.

Of the 37 nations listed above, approximately 26 failed to submit to NMFS either their 2019 Progress Reports or information for development of the LOFF. These nations are: Azerbaijan, Bahrain, British Virgin Islands, Cameroon, Cape Verde, Dominican Republic, Egypt, Fiji, Haiti, Israel, Kiribati, Lithuania, Luxembourg,

[1] With respect to all references to ''nation'' or ''nations'' in the rule, it should be noted that the Taiwan Relations Act of 1979, Public Law 96–8, Section 4(b)(1), provides that [w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments, territories or similar entities, such terms shall include and such laws shall apply with respect to Taiwan. 22 U.S.C. 3303(b)(1). This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

[2] The term ''nation or harvesting nation'' includes foreign countries, nations, states, governments, territories, economies, or similar entities that have laws governing the fisheries operating under their control.

Mauritania, Nicaragua, Papua New Guinea, Romania, Russian Federation, Saudi Arabia, Solomon Islands, Saint Helena, Saint Kitts Nevis, Saint Lucia, Saint Pierre Miquelon, Tanzania, and Tunisia. If any of these nations fail to submit information or comments on this 2020 draft LOFF, these nations will not be on a positive trajectory toward receiving a comparability finding for their commercial fisheries.

Approximately 17 nations have a limited or sporadic history of exporting fish and fish products to the United States over the last 20 years. In the 2017 Draft LOFF, NMFS proposed several of these nations for removal from the LOFF and provided its rationale (82 FR 39762, August 22, 2017). These nations are: Albania, Bermuda, Cambodia, French Guiana, Jordan, Kazakhstan, Libya, Macedonia, Malta, Moldova, Mongolia, Montserrat, Rwanda, Slovakia, Somalia, Togo, and Yemen. NMFS urge these nations to contact NMFS or the Department of State to clarify whether they intend to continue to export fish and fish products to the United States.

Approximately 72 nation have no record of exporting fish and fish products to the United States. These nations are: Afghanistan, Algeria, Andorra, Angola, Anguilla, Aruba, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cayman Islands, Chad, Congo, Cuba, Djibouti, Dominica, East Timor, Equatorial Guinea, Eritrea, Ethiopia, French Indian Ocean Area, French Pacific Islands, French Southern Territories, French West Indies, Gabon, Gaza Strip, Georgia, Gibraltar, Guadeloupe, Guinea-Bissau, Heard and McDonald Islands, Iraq, Kosovo, Kuwait, Kyrgyzstan, Laos, Lebanon, Lesotho, Liechtenstein, Luxembourg, Malawi, Mali, Martinique, Mayotte, Montenegro, Nauru, Nepal, Netherlands Antilles, Niger, Niue, North Korea, Paraguay, Qatar, San Marino, Serbia, Sudan, Svalbard Jan Mayen, Swaziland, Syria, Tajikistan, Tokelau, Trust Territories of Pacific Islands, Tuvalu, Uzbekistan, Vatican City, Wallis and Futuna, West Bank, Western Sahara, Zambia, and Zimbabwe.

In these latter two cases (of having limited or sporadic history of exporting to the United States over the last 20 years, or of having no records of exporting to the United States), NMFS urges nations to examine their exports to the United States over the last two decades and include all fisheries or processors and processed product, which have, are, or in the future may be the source of fish and fish products exported to the United States. To ensure that no fisheries or processed products are overlooked in this process, nations should be as inclusive as possible. Nations or other entities should provide all the documentation and applicable references necessary to support any proposed modifications to the fisheries on the LOFF. Nations on these lists should send a letter to NMFS to confirm that they do not intend to export fish and fish products to the United States between January 1, 2022, and January 1, 2026. If any nation on these lists intends to export fish and fish products to the United States, they should contact and work with NMFS to ensure their fisheries are on the LOFF and that they apply for and receive a comparability finding.

*General Changes From the 2017 LOFF*

Nations submitted their 2019 Progress Reports through the NMFS International Affairs Information Capture and Reporting System (IAICRS). IAICRS was developed, in part, to achieve greater consistency and standardization in the reporting of target species, gear types, area of operation, and marine mammal interactions. Nations were instructed to revise their fisheries to reflect the fishery management regime within that harvesting nation. Consequently, nearly every harvesting nation that submitted a 2019 Progress Report updated the information on the LOFF. These modifications significantly improved the quantity, quality, consistency, and accuracy of the draft 2020 LOFF. Although the modifications are too numerous and fine-scale to enumerate in detail within this **Federal Register** notice, a record of all modifications are retained within IAICRS. The modifications are summarized below.

The target species listed on the 2017 Draft LOFF were initially identified based on the fish and fish products exported to the United States from that harvesting nation. Nations were requested to link those exported seafood products to specific fisheries and the target species of those fisheries. In some instances, the exported product was a non-target species harvested in a fishery. Therefore, in the 2019 Progress Report, harvesting nations were requested to identify target and non-target species for each fishery. If a particular fishery was a multi-species fishery, harvesting nations were instructed to include all species harvested or authorized to be harvested in that fishery. NMFS still encourages nations to aggregate multi-species fisheries into one fishery, as appropriate.

The 2017 LOFF included fisheries with unknown gear types or that used parochial names for certain gear types. In contrast, IAICRS uses the Food and Agriculture (FAO) definitions of fishing gear, grouped by categories, in accordance with the FAO-recommended classification system, the International Standard Statistical Classification of Fishing Gear (ISSCFG). These FAO definitions and FAO-recommended classifications are valid on a worldwide basis for fisheries in both inland waters and oceans, as well as for small-, medium- and large-scale fisheries. Therefore, using IAICRS, harvesting nations updated their gear types using these FAO definitions for gear types.

NMFS discourages harvesting nations from combining gear types with dissimilar bycatch risk profiles. For example, exempt gear types should not be listed with export gear types with high bycatch risk profiles (*e.g.,* gillnets), because this could result in fisheries using these exempt gear types being classified as export fisheries. Therefore, harvesting nations are urged to review their gear types and separate exempt gear types from export gear types.

IAICRS denotes area of operation using the FAO major fishing areas and subareas, and allows nations to designate management areas within their EEZ within those FAO fishing subareas. Harvesting nations were requested to use this construct to designate their area of operation. Nearly every harvesting nation submitting a 2019 Progress Report updated its area of operation for the LOFF.

Harvesting nations were requested to review the 2017 LOFF and identify fisheries that could be consolidated by area or target species, especially multi-species fisheries (*e.g.,* fisheries with permits issued to one gear type to fish multiple target species) or fisheries that should be eliminated because the fisheries are solely for domestic consumption. NMFS also requested that harvesting nations add fisheries that export fish and fish products or intend in the future to export such products to the United States.

NMFS maintains that the fisheries on the LOFF should reflect the commercial fisheries authorized by the harvesting nation, according to their fishery management system, to commercially fish and export fish and fish products to the United States. A list of commercial fisheries that were deleted or added can be found at: *https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries.*

After harvesting nations revised the LOFF as part of the 2019 Progress Reports, NMFS reviewed fisheries and identified gear types indicated in a fishery that should be classified as an

export fishery rather than as an exempt fishery, or vice-a-versa. NMFS reclassified such fisheries from export to exempt or from exempt to export as appropriate. A list of commercial fisheries with revised classifications can be found at: *https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries.*

**Instructions to Nations Reviewing the Draft 2020 LOFF and Actions Needed by Nations**

In the draft 2020 LOFF, the vast majority of fisheries (1990 fisheries) are classified as export fisheries, in accordance with 50 CFR 216.24(h)(3) and 216.3. To ensure that all of the information for their fisheries is complete and can be appropriately classified, harvesting nations should review carefully the draft 2020 LOFF within IAICRS (*https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries*), together with this **Federal Register** notice, and make any revisions in IAICRS. Harvesting nations may also submit detailed comments on their commercial fishing and processing operations in writing (see **ADDRESSES** above) or in IAICRS.

The final 2020 LOFF will be the last LOFF prior to the deadline for submission of comparability finding applications by nations. The 2020 LOFF will be the foundation for all responses that nations must provide as part of their comparability finding application. Therefore, NMFS urges nations to update the draft 2020 LOFF and provide the information that is lacking for their nation. NMFS further urges nations to provide as much detail as possible about the fishery, its operational characteristics, and, in particular, its interactions with and bycatch of marine mammals, including applicable references. It is in the interest of nations to provide the requested information, because the information allows NMFS to determine whether the MMPA import rule applies to all of the fish and fish products exported to the United States or only to a particular fishery or fisheries, what fishery classification is appropriate, whether the nation is only a processor of that fish or fish product, or if the nation is a harvester and processor of that fish or fish product. Specifically, we request that harvesting nations:

- Update their marine mammal abundance estimates using the new tool in IAICRS containing a look-up feature that provides the ''best available'' marine mammal abundance estimates for marine mammal populations/stock in their waters;
- Update their bycatch limit, using the guidance (provided in IAICRS) to calculate a bycatch limit and the new look-up feature that will automatically calculate the bycatch limit for the selected marine mammal stock;
- Update their marine mammal bycatch estimates for each fishery on the LOFF, including adding additional years of data (*e.g.,* at least five years);
- Provide and update bycatch estimates including information on the number of marine mammals killed, injured, and released alive in the fishery (note that any fishery for which a nation indicated that an observer program exists should be accompanied by bycatch estimates);
- Provide information in any category where the data set is labelled ''none provided'' or ''unknown'';
- Provide gear types for any gear listed as Unknown/Gear not known/Not provided; and
- Update and include information on distant water fisheries that are operating under a licensing or access agreement (even if nations are uncertain whether this product is exported to the United States).

We know that nations may have submitted deletion requests for fisheries and intermediary products (see below), and that NMFS declined requests due to inadequate information to support the deletion request or due to the existence of contrary trade data demonstrating that the fish and fish products were exported to the United States. For example, Hong Kong, while submitting its 2019 Progress Report, did so by requesting the deletion of all of its fisheries. NMFS denied these deletion requests because the U.S. trade data (*https://www.fisheries.noaa.gov/national/sustainable-fisheries/foreign-fishery-trade-data*) indicate that Hong Kong exports these products to the United States. If appropriate, nations are encouraged to use the deletion request system to request a fishery deletion or an intermediary product deletion. In addition, as stated above, nations are encouraged to review and revise their marine mammal lists under the ''Manage Marine Mammals'' tab in IAICRS. Many nations failed to submit marine mammal population abundance estimates and bycatch limit estimates, even when the estimate could be found in the scientific literature. NMFS has developed a new tool in IACRS where nations can look up the marine mammal stock, click on the appropriate stock, and populate the data fields with the abundance estimate, maximum net reproductive rate, recovery factor, and bycatch limit for that marine mammal stock.

*Description of the Columns on the LOFF and Additional Instructions*

The draft 2020 LOFF, like the 2017 LOFF, is again organized by nation, and has listed for each nation its exempt and export fisheries. This list contains the following seven columns.

''Target Species or Product'' is a list of the target species and the non-target species associated with that exempt or export fishery. For standardization purposes, this list includes common and scientific names for the fisheries' target and non-target species.

''Gear Type'' is the list of fishing gears used to harvest the target species. As previously discussed, the gears are designated according to the FAO definitions of fishing gear, and are grouped by categories in accordance with the FAO-recommended ISSCFG classification system.

''Number of Vessels/Licenses/Participants, Aquaculture Facilities'' is an estimate of the number of vessels authorized to fish in this fishery, the number of fishing permits or licenses issued by the nation for vessels or number of participants authorized to legally fish or operate in this fishery. In the case of aquaculture, it is the number of facilities authorized by the nation to operate aquaculture operations. Nations are requested to provide at least one of these data points.

''Area of Operation'' is the FAO global fishing area and sub-regional statistical area or division where the fishery operates. Nations may also include fishery management areas specific to their laws and management structure with the FAO area, division or subarea.

''Marine Mammal Interactions or Co-occurrence by Group, Species or Stock'' is a listing by marine mammal species or stock of known marine mammals whose distribution overlaps the area of operation of the fishery during the time when the fishery is in operation. This list does not need to be an exhaustive list of all of the marine mammal species/stock that may be found in or migrate through a nation's waters, but it should reflect the marine mammals that have a regular and significant co-occurrence with this fishery, depredate on bait or catch, are captured and released alive, or are killed or injured in the fishery. Co-occurrence data is useful to develop risk assessment models in the absence of bycatch estimates. Nations are requested to review and update this list.

''Marine Mammal Bycatch Estimates'' are the marine mammal species/stocks and the average annual bycatch estimate

for that species as provided by the harvesting nation. This list is likely to be a subset of the marine mammal species/stocks listed in the ''Marine Mammal Interactions or Co-occurrence by Group, Species or Stock'' column. In IAICRS, nations are requested to carefully review their existing submission and edit this data to provide marine mammal mortality and injury data for no less than five years. Nations are also requested to calculate an average annual mortality estimate or average annual mortality and injury estimate for all of the years where data is provided in the IAICRS. NMFS expects that, for any fishery for which there is an observer program, nations will provide bycatch estimates using that observer data, and will extrapolate the observed bycatch data/rate to estimate bycatch in the entire fleet.

''RFMO'' indicates that the fishery is operating under the jurisdiction of, or adhering to the management measures of, one or several regional fishery management organizations (RFMO). If the fishery is operating under an RFMO, nations should indicate each RFMO associated with that fishery.

*Instruction for Intermediary Nations and Products for Nations That Are Processing Fish and Fish Products*

For the purposes of identifying intermediary nations, if a nation exports a fish or fish product (for which it is the processor) to the United States, or if the nation is the harvester and processor, or if the fish in that product is harvested elsewhere and transshipped through that nation, NMFS strongly encourages that nation to identify those products and the source fisheries and nations for those products. Providing this information may allow NMFS to reclassify a nation as an intermediary nation for that specific fish or fish product. In addition, the intermediary nation list and the product feature in IAICRS also identify whether the specific fish or fish product was harvested in the nation's waters under an ''Access/License/Charter Agreement or Bilateral/Permitting Agreement.'' Nations should indicate whether the product was harvested by another nation operating under an agreement, and should indicate which nations are actively fishing in its waters for this product. If the product was not harvested in a nation's waters, but rather was imported into a nation from another nation for the purposes of processing, that nation should indicate which nations provided the product or raw material. If the product was transshipped through a nation's border (*i.e.,* transport only, with no value added), thus changing the product's origin so that it becomes a product of the nation through which it is transshipped, that nation should indicate that it is solely a transshipper of the product. If a nation is performing some form of value-added processing of the product, that nation should not indicate that it is a transshipper. Finally, if a nation is also the harvester of this product, that nation should indicate that it is sourcing this product from other nations and possibly co-mingling the product with product from its own active-harvest fisheries already on the LOFF. The intermediary nation and the product feature came online in IAICRS mid-way through the 2019 Progress Report reporting period. NMFS strongly encourages nations to use IAICRS to complete or update their list of intermediary products. The current list of intermediary products is at: *https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries.*

*Instructions for Fisheries Listed in ''Rule Does Not Apply''*

The MMPA import provisions do not apply to any land-based or freshwater aquaculture operations, as these commercial fishing operations do not occur in marine mammal habitat. Nevertheless, NMFS is attempting to account for all fish and fish products exported by a nation to the United States in one of three categories: (1) LOFF (exempt and export fisheries); (2) Intermediary (processed products); (3) Rule Does Not Apply (freshwater and inland fisheries).

Fisheries that occur solely in fresh water outside any marine mammal habitat, and inland aquaculture operations, are exempt from this rule. If any such fisheries operations have been included in the LOFF, nations should indicate such fisheries and operations and provide the necessary documentary evidence so NMFS can include them on the LOFF under ''Rule Does Not Apply''. However, nations wishing to designate a fishery under ''Rule Does Not Apply'' cannot use as a rationale that it occurs in an estuary, has no documented marine mammal bycatch, or exports small quantities of fish and fish products.

*Instructions for Non-Nation Entities*

NMFS welcomes the input of the public, non-governmental organizations, and scientists. These entities can provide critical information about marine mammal bycatch in global fisheries and efforts to mitigate such bycatch. NMFS requests that when such entities comment on the draft 2020 LOFF, they provide as much detail and supporting documentary evidence as possible. While literature contains references to marine mammal bycatch in certain foreign fisheries, it may be that fish and fish products originating from those fisheries are not exported to the United States (*e.g.,* artisanal or coastal fisheries for domestic consumption). NMFS would like to receive information on which fish and fish products are exported to the United States and the frequency of marine mammal interactions or bycatch in those fisheries.

**Frequently Asked Questions About the LOFF and the MMPA Import Provisions Definitions Within the MMPA Import Provisions**

*What is a ''comparability finding''?*

A comparability finding is a finding by NMFS that the harvesting nation has implemented a regulatory program for an export or exempt fishery that has met the applicable conditions specified in the regulations (see 50 CFR 216.24(h)) subject to the additional considerations for comparability findings set out in the regulations. A comparability finding is required for a nation to export fish and fish products to the United States. To receive a comparability finding for an export fishery, the harvesting nation must maintain a regulatory program with respect to that fishery that is comparable in effectiveness to the U.S. regulatory program for reducing incidental marine mammal bycatch. This requirement may be met by developing, implementing and maintaining a regulatory program that includes measures that are comparable, or that effectively achieve comparable results to the regulatory program under which the analogous U.S. fishery operates.

*What is the definition of an ''export fishery''?*

The definition of export fishery can be found in the implementing regulations for section 101(a)(2) of the MMPA (see 50 CFR 216.3). NMFS considers ''export'' fisheries to be functionally equivalent to Category I and II fisheries under the U.S. regulatory program (see definitions at 50 CFR 229.2).

NMFS defines ''export fishery'' as a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States that have more than a remote likelihood of incidental mortality and serious injury of marine mammals in the course of its commercial fishing operations.

Where reliable information on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation is not provided by the harvesting nation, the Assistant Administrator may determine the likelihood of incidental mortality and serious injury as more than remote by evaluating information concerning factors such as fishing techniques, gear used, methods used to deter marine mammals, target fish species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and distribution of marine mammals in the area, or other factors.

Commercial fishing operations not specifically identified in the current LOFF as either exempt or export fisheries are deemed to be export fisheries until a revised LOFF is posted, unless the harvesting nation provides the Assistant Administrator with information to properly classify a foreign commercial fishing operation not on the LOFF. To properly classify the foreign commercial fishing operation, the Assistant Administrator may also request additional information from the harvesting nation, as well as consider other relevant information about such commercial fishing operations and the frequency of incidental mortality and serious injury of marine mammals.

*What is the definition of an ''exempt fishery''?*

The definition of exempt fishery can be found in the implementing regulations for section 101(a)(2) of the MMPA (see 50 CFR 216.3). NMFS considers ''exempt'' fisheries to be functionally equivalent to Category III fisheries under the U.S. regulatory program (see definitions at 50 CFR 229.2).

NMFS defines an exempt fishery as a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States that have a remote likelihood of, or no known, incidental mortality and serious injury of marine mammals in the course of commercial fishing operations. A commercial fishing operation that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that, collectively with other foreign fisheries exporting fish and fish products to the United States, causes the annual removal of:

(1) Ten percent or less of any marine mammal stock's bycatch limit; or

(2) More than ten percent of any marine mammal stock's bycatch limit; yet that fishery by itself removes one percent or less of that stock's bycatch limit annually or

(3) Where reliable information has not been provided by the harvesting nation on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation, the Assistant Administrator may determine whether the likelihood of incidental mortality and serious injury is ''remote'' by evaluating information such as fishing techniques, gear used, methods to deter marine mammals, target fish species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator.

A foreign fishery will not be classified as an exempt fishery unless the Assistant Administrator has reliable information from the harvesting nation, or other information, to support such a finding.

**Developing the 2020 List of Foreign Fisheries**

*How is the List of Foreign Fisheries organized?*

NMFS organized the LOFF by harvesting nation (or economy). The LOFF may include ''exempt fisheries'' and ''export fisheries'' for each harvesting nation. The fisheries are defined by target species, geographic location of harvest, gear-type or a combination thereof. Where known, the LOFF also includes a list of the marine mammals that co-occur with the fishery, a list of marine mammals that interact (*e.g.,* depredate the fishing gear, are killed or injured in, or are released from the fishery) with each commercial fishing operation, and, when available, numerical estimates of the incidental mortality and serious injury of marine mammals in each commercial fishing operation.

*What sources of information did NMFS use to classify the commercial fisheries included in the LOFF?*

NMFS reviewed and considered documentation provided by nations during the development of the 2017 LOFF and the 2019 Progress Report. NMFS also reviewed and considered the information provided by the public and other sources of information, where available, including fishing vessel records; reports of on-board fishery observers; information from off-loading facilities, port-side government officials, enforcement entities and documents, transshipment vessel workers and fish importers; government vessel registries; RFMO or intergovernmental agreement documents, reports, national reports, and statistical document programs; appropriate catch certification programs; FAO documents and profiles; and published literature and reports on commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals. NMFS has used these sources of information and any other readily available information to classify the fisheries as ''export'' or ''exempt'' fisheries to develop the LOFF.

*How did NMFS determine which species or stocks are included as incidentally or intentionally killed or seriously injured in a fishery?*

The LOFF includes a column consisting of a list of marine mammals that co-occur with the commercial fisheries, that is, the distribution of marine mammals that overlaps with the distribution of commercial fishing activity. The marine mammals that co-occur with a fishery may or may not interact with, or be incidentally or intentionally killed or injured in, the fishery. The LOFF also includes a list of marine mammal species and/or stocks incidentally or intentionally killed or injured in a commercial fishing operation. The list of species and/or stocks incidentally or intentionally killed or injured includes ''serious'' and ''non-serious'' documented injuries and interactions with fishing gear, including interactions such as depredation.

NMFS reviewed information submitted by nations (for inclusion in the 2017 LOFF and in their 2019 Progress Report) and readily available scientific information including co-occurrence models demonstrating distributional overlap of commercial fishing operations and marine mammals to determine which species or stocks to include as incidentally or intentionally killed or injured in or interacting with a fishery. NMFS also reviewed, when available, injury determination reports, bycatch estimation reports, observer data, logbook data, disentanglement network data, fisher self-reports, and the information referenced in the definition of exempt and export fishery (see Definitions above or 50 CFR 216.3).

*How often will NMFS revise the List of Foreign Fisheries?*

NMFS will re-evaluate foreign commercial fishing operations and publish in the **Federal Register** the year prior to the expiration of the exemption period (*e.g.,* this year and again in 2024)

a notice of availability of the draft for public comment and a notice of availability of the final revised LOFF. NMFS will revise the final LOFF, as appropriate, and publish a notice of availability in the **Federal Register** every four years thereafter. In revising the list, NMFS may reclassify a fishery if new, substantive information indicates the need to re-examine and possibly reclassify a fishery. After January 1, 2022, all fisheries wishing to export to the United States must be on the LOFF and have a comparability finding. (see 50 CFR 216.24(h)(1)).

After publication of the LOFF, if a nation wishes to commence exporting fish and fish products to the United States from a fishery not currently included in the LOFF, that fishery will be classified as an export fishery until the next LOFF is published and will be provided a provisional comparability finding for a period not to exceed twelve months. If a harvesting nation can provide the reliable information necessary to classify the commercial fishing operation at the time of the request for a provisional comparability finding or prior to the expiration of the provisional comparability finding, NMFS will classify the fishery in accordance with the definitions. The provisions for new entrants are discussed in the regulations implementing section 101(a)(2) of the MMPA (see 50 CFR 216.24(h)(8)(vi)).

*How can a classification be changed?*

To change a fishery's classification, nations or other interested stakeholders must provide observer data, logbook summaries (preferably over a five-year period), or reports that specifically indicate the presence or absence of marine mammal interactions, quantify such interactions wherever possible, provide additional information on the location and operation of the fishery, details about the gear type and how it is used, maps showing the distribution of marine mammals and the operational area of the fishery, information regarding marine mammal populations and the biological impact of that fishery on those populations, and/or any other documentation that clearly demonstrates that a fishery is either an export or exempt fishery. Data from independent onboard observer programs documenting marine mammal interaction and bycatch is preferable and is given higher consideration than self-reports, logbooks, fishermen interviews, or sales tickets or dockside interviews. Such data can be summarized and averaged over at least a five-year period and include information on the observer program including the percent coverage, number of vessels and sets or hauls observed. Nations should also indicate whether bycatch estimates from observer data are observed minimum counts or extrapolated estimates for the entire fishery. Nations submitting logbook information should include details about the reporting system, including examples of forms and requirements for reporting. Nations may make formal requests to NMFS to reconsider a fishy classification.

**Classification Criteria, Rationale, and Process Used To Classify Fisheries**

*Process When Incidental Mortality and Serious Injury Estimates and Bycatch Limits Are Available*

If estimates of the total incidental mortality and serious injury were available and a bycatch limit calculated for a marine mammal stock, NMFS used the quantitative and tiered analysis to classify foreign commercial fishing operations as export or exempt fisheries under the category definition within 50 CFR 229.2 and the procedures used to categorize U.S. fisheries as Category I, II, or III, at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries.*

*Process When Only Incidental Mortality and Serious Injury Estimates Were Available*

For most commercial fisheries, NMFS is still lacking detail regarding marine mammal interactions, and/or lacking quantitative information on the frequency of interactions. Where nations provided estimates of bycatch or NMFS found estimates of bycatch in published literature, national reports, or through other readily available sources, NMFS classified the fishery as an export fishery if the information indicated that there was a likelihood that the mortality and serious injury was more than remote.

*Alternative Approaches When Estimates of Marine Mammal Bycatch Are Unavailable*

As bycatch estimates are lacking for most fisheries, NMFS relied on three considerations to assess the likelihood of bycatch or interaction with marine mammals, including: (1) Co-occurrence, the spatial and seasonal distribution and overlap of marine mammals and fishing operations as a measure of risk (Komoroske & Lewison 2015; FAO 2010; Watson *et al.,* 2006; Read *et al.,* 2006; Reeves *et al.,* 2004); (2) analogous gear, evaluation of records of bycatch and assessment of risk, where such information exists, in analogous U.S. fisheries (MMPA List of Fisheries found at: *https://www.fisheries.noaa.gov/action/list-fisheries-2019*) and international fisheries or gear types; and (3) overarching classifications, evaluation of gears and fishing operations and their risk of marine mammal bycatch (see section below for further discussion). NMFS also evaluated other relevant information including, but not limited to information on fishing techniques, gear used, methods used to deter marine mammals, target fish species, and seasons and areas fished; qualitative data from logbooks or fisher reports; stranding data; and information on the species and distribution of marine mammals in the area, or other factors. Published scientific literature provides numerous risk assessments of marine mammal bycatch in fisheries, routinely using these approaches to estimate marine mammal mortality rates, identify information gaps, set priorities for conservation, and transfer technology for deterring marine mammals from gear and catch. Findings from the most recent publications cited in this **Federal Register** notice often demonstrate levels of risk by location, season, fishery, and gear.

*Classification in the Absence of Information*

When no analogous gear, fishery, or fishery information existed, or insufficient information was provided by the nation and information was not readily available, NMFS classified the commercial fishing operation as an export fishery per the definition of ''export fishery'' at 50 CFR 216.3. These fishing operations will remain classified as export fisheries until the harvesting nation provides the reliable information necessary to classify properly the fishery or, in the course of revising the LOFF, such information becomes readily available to NMFS.

*Global Classifications for Some Fishing Gear Types*

Due to a lack of information about marine mammal bycatch, NMFS used gear types to classify fisheries as either export or exempt. The detailed rationale for these classifications by gear type were provided in the **Federal Register** notice for the draft 2017 LOFF (82 FR 39762; August 22, 2017) and are summarized here. In the absence of specific information showing a remote likelihood of marine mammal bycatch in a particular fishery, NMFS classified fisheries using these gear types as export. Exceptions to those

classifications are included in the discussion below.

NMFS classi fied as export all trap and pot fisheries because the risk of entanglement in float/buoy lines and groundlines is more than remote, especially in areas of co-occurrence with large whales. While many nations assert that marine mammals cannot enter the trap and become entangled, the risk is not from the trap but from the surface buoy line and the groundlines (line that connects the trap). These lines represent an entanglement risk to large whales and some small cetaceans. However, NMFS classified as exempt trap and pot fisheries operating in the Gulf of Mexico and Caribbean due to the low co-occurrence with large whales in this region and an analogous U.S. Category III mixed species and lobster trap/pot fishery operating in the Gulf of Mexico and Caribbean. NMFS classifies as exempt small-scale fish, crab, and lobster pot fisheries using mitigation strategies to prevent large whale entanglements, including seasonal closures during migration periods, ropeless fishing, and vertical line acoustic release technology.

NMFS classified as export longline gear and troll line fisheries because the likelihood of marine mammal bycatch is more than remote. However, NMFS classified as exempt longline and troll fisheries with demonstrated bycatch rates that are less than remote or the fishery is analogous (by area, gear type, and target species) to U.S. Category III fishery operating in the area where the fishery occurs. The entanglement rates from marine mammals depredating longline gear is largely unknown. NMFS classifies as exempt snapper/grouper bottom-set longline fisheries operating in the Gulf of Mexico and the Caribbean because they are analogous to U.S. Category III bottom-set longline gear operating in these areas. NMFS also classifies as exempt longline fisheries using a cachalotera system, which prevents and, in some cases, eliminates marine mammal hook depredation and entanglement.

NMFS uniformly classified as export all gillnet, driftnet, set net, fyke net, trammel net, and pound net fisheries because the likelihood of marine mammal bycatch in this gear type is more than remote. No nation provided evidence that the likelihood of marine mammal bycatch in these gillnet and set net fisheries was less than remote.

NMFS classified purse seine fisheries as export, unless the fishery is operating under an RFMO that has implemented conservation and management measures prohibiting the intentional encirclement of marine mammals by a purse seine. In those instances, NMFS classifies the purse seine fisheries as exempt because the evidence suggests that, where purse seine vessels do not intentionally set on marine mammals, the likelihood of marine mammal bycatch is generally remote. However, if there is documentary evidence that a nation's purse seine fishery continues to incidentally kill or injure marine mammals despite such a prohibition, NMFS classified the fishery as an export fishery. Similarly, if any nation demonstrated that it had adopted and implemented a regulatory measure prohibiting the intentional encirclement of marine mammals by a purse seine vessel, that fishery would be designated as exempt, absent evidence that it continued to incidentally kill or injure marine mammals.

NMFS classified as export all trawl fisheries, including bream trawls, pair trawls, and otter trawls, because the marine mammal bycatch in this gear type is more than remote, and this gear type often co-occurs with marine mammal stocks. However, the krill trawl fishery operating under changes to Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) in subareas 48.1–4 of CCAMLR is classified as exempt due to the conservation and management measure requiring marine mammal excluding devices and levels of marine mammal mortalities that are less than ten percent of the bycatch limit/PBR for marine mammal stocks that interact with that fishery.

There are several gear types that NMFS classified as exempt because they are highly selective, have a remote likelihood of marine mammal bycatch, and have analogous U.S. Category III fisheries. These gear types are: Hand collection, diving, manual extraction, hand lines, hook and line, jigs, dredges, clam rakes, beach-operated hauling nets, ring nets, beach seines, small lift nets, cast nets, bamboo weir, and floating mats for roe collection.

NMFS classified Danish seine fisheries as exempt based on the remote likelihood of marine mammal bycatch because of a lack of documented interactions with marine mammals. The exception are Danish seine fisheries with documentary evidence of marine mammal interactions, which NMFS classified as export.

Finally, NMFS classified as exempt most forms of aquaculture, including lines and floating cages, unless documentary evidence indicates marine mammal interactions or entanglement, particularly of large whale entanglement in aquaculture seaweed or shellfish lines, or nations permit aquaculture facilities to intentionally kill or injure marine mammals.

*General Trends and Observations Related to the LOFF and the 2019 Progress Report*

Gillnets represent the vast majority of the export fisheries with documented marine mammal bycatch. Mitigation measures for gillnets are few. Active sound emitters such as ''pingers'' are used in gillnet fisheries to reduce small cetacean bycatch. However, pingers are not effective for all small cetacean species and may be less effective in operational fisheries than research programs (Dawson *et al.,* 2013). Given the limited mitigation options, nations should consider substituting gillnets with other non-entangling fishing gear, where there is overlap between operational area of the fishery and the distribution of marine mammal populations.

The LOFF highlights the clear need for bycatch monitoring programs to better estimate marine mammal bycatch and to identify where mitigation efforts are most needed. For example, several nations recommended that longline and purse seine fisheries be classified as exempt fisheries because there are few interactions with marine mammals. However, the logbook and observer data and reports from various RFMOs that NMFS received did not fully substantiate that the likelihood of bycatch in these fisheries is remote.

NMFS believes accurate classification of longline fisheries, especially for tuna, and purse seine fisheries for pelagic species would benefit from monitoring programs (*e.g.,* observer programs) or analyses of observer and logbook programs to assess the bycatch rates associated with these gear types. RFMOs are well-situated to evaluate marine mammal bycatch rates in tuna and swordfish longline fisheries. Information from these sources could be used to determine whether the likelihood of marine mammal bycatch is remote. Nations should strongly consider bycatch monitoring programs, especially observer and electronic video monitoring, as a core element in any regulatory program and a key to the appropriate classification of their fisheries.

There is a growing volume of information available on marine mammal bycatch mitigation. The most comprehensive report is that of the Expert Workshop on the Means and Methods for Reducing Marine Mammal Mortality in Fishing and Aquaculture Operations (FAO 2018), which reviewed the current state of knowledge on the issue of marine mammal bycatch, and

evaluated the efficacy and implementation of different strategies and measures for mitigating bycatch. The workshop produced some key technical outputs, including an extensive review of techniques across different gear types and species, together with a summary table and a draft decision-making tool (decision tree) which could be used to support management decision-making processes. The workshop recommended that FAO develop technical guidelines on means and methods for prevention and reduction of marine mammal bycatch and mortality in fishing and aquaculture operations in support of FAO's Code of Conduct for Responsible Fisheries, which are currently under development.

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Dated: March 10, 2020.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2020–05380 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Renewal of the Advisory Committee on Commercial Remote Sensing

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of renewal.

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act and the General Services Administration (GSA) rule on Federal Advisory Committee Management, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Advisory Committee on Commercial Remote Sensing (ACCRES) is in the public interest in connection with the performance of duties imposed on the Department by law. ACCRES was last renewed on March 8, 2018.

**FOR FURTHER INFORMATION CONTACT:** Tashaun Pierre, Commercial Remote Sensing Regulatory Affairs Office, NOAA Satellite and Information Services, 1335 East West Highway, Room G101, Silver Spring, Maryland 20910; telephone (301) 713–7047, email *tashaun.pierre@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Committee was first established in May 2002, to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote-sensing industry and NOAA's activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (The Act) Title 51 U.S.C. 60101 *et seq* (formally the Land Remote Sensing Policy Act of 1992 15 U.S.C. Secs. 5621–5625).

ACCRES will have a fairly balanced membership consisting of approximately 9 to 20 members serving in a representative capacity. All members should have expertise in remote sensing, space commerce or a related field. Each candidate member shall be recommended by the Assistant Administrator and shall be appointed by the Under Secretary for a term of two years at the discretion of the Under Secretary.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. Copies of the Committee's revised Charter have been filed with the appropriate committees of the Congress and with the Library of Congress.

**Stephen M. Volz,**

*Assistant Administrator, for Satellite and Information Services.*

[FR Doc. 2020–05288 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–HR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA083]**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Friday, April 3, 2020 at 9 a.m., however, due to the evolving coronavirus situation, the Council may decide to change this meeting to a webinar, possibly on short notice. The Council website and official Council communications are the best source for this information.

**ADDRESSES:** The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01950; telephone: (978) 777–2500.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The Committee will receive and discuss the Groundfish Catch Share

Program Review final report. Also on the agenda is the discussion of Council's priorities. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: March 12, 2020.

**Tracey L. Thompson,**

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

[FR Doc. 2020–05497 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA081]**

### Fisheries of the Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 65 Assessment Webinar II for Highly Migratory Species Atlantic Blacktip Shark.

**SUMMARY:** The SEDAR 65 assessment of the Atlantic stock of Blacktip Shark will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review workshop.

**DATES:** The SEDAR 65 Assessment Webinar II has been scheduled for April 17, 2020, from 12 p.m. until 3 p.m., Eastern Standard Time.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/3734975434235325709.*

*SEDAR address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary, documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies. The items of discussion at the Assessment Webinar II are as follows:

- Review alternative reference case catch streams (as alternate states of nature) which are robust to the major uncertainties identified in commercial bycatch discard estimation, recreational catch live discard estimation, and post-release live-discard mortality estimation. Review the base case model to develop reference case model run(s) (as alternate states of nature) which are robust to the major uncertainties identified in commercial bycatch discard estimation (and post-release mortality) as well as the major uncertainties identified in the indices of relative abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: March 12, 2020.

**Tracey L. Thompson,**

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

[FR Doc. 2020–05495 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XF505]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction Activities Associated With the Raritan Bay Pipeline

**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 Transcontinental Gas Pipe Line Company, LLC (Transco), a subsidiary of Williams Partners L.P., to incidentally harass, by Level A and Level B harassment, marine mammals incidental to construction activities associated with the Raritan Bay Pipeline.

**DATES:** This authorization is valid from May 1, 2021 through April 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jordan Carduner, 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: *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.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

## Summary of Request

On February 7, 2019, NMFS received a request from Transco for an IHA to take marine mammals incidental to construction activities associated with the Raritan Bay Loop pipeline offshore of New York and New Jersey. Transco submitted a revised version of the application on May 23, 2019, and this application was deemed adequate and complete. Transco's request is for take of 10 species of marine mammals by harassment. Neither Transco nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

## Description of the Proposed Activity

### *Overview*

Transco, a subsidiary of Williams Partners L.P., is proposing to expand its existing interstate natural gas pipeline system in Pennsylvania and New Jersey and its existing offshore natural gas pipeline system in New Jersey and New York waters. The Northeast Supply Enhancement Project would consist of several components, including offshore pipeline facilities in New Jersey and New York. The proposed offshore pipeline facilities would include the Raritan Bay Loop pipeline, which would be located primarily in Raritan Bay, as well as parts of the Lower New York Bay and the Atlantic Ocean.

Construction of the Raritan Bay Loop pipeline would require pile installation and removal, using both impact and vibratory pile driving, which may result in the incidental take of marine mammals. Transco would install and remove a total of 163 piles, which would range in size from 10 to 60 inches in diameter, using a vibratory device and/or diesel impact hammer. These piles would be temporary; they would remain in the water only for the duration of each related offshore construction activity. Once offshore construction of the project is complete, all piles installed by Transco would be removed. In-water construction is anticipated to occur between the 2nd quarter of 2020 and the 4th quarter of 2020. Pile installation and removal activities are planned to occur from June through August 2020, however the timeframe for pile removal may occur in fall 2020. Pile installation and removal activities are expected to take a total of 65.5 days. Transco's proposed activity would occur in the waters of Raritan Bay, the Lower New York Bay, and the Atlantic Ocean (see Figure 1 in the IHA application).

A detailed description of Transco's planned activities is provided in the notice of proposed IHA (84 FR 45955; September 9, 2019). Since that time, no changes have been made to the activities. Therefore, a detailed description is not provided here. Please refer to that notice for the detailed description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Mitigation'' and ''Monitoring and Reporting'').

## Comments and Responses

A notice of proposed IHA was published in the **Federal Register** on September 9, 2019 (84 FR 45955). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission) and one comment from a member of the general public. NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

A summary of the public comments received and NMFS' responses to those comments are below.

*Comment 1:* A member of the general public asked several questions including whether Transco demonstrated prior cooperation with NOAA for any previously-issued authorizations; whether Transco qualifies and trains the PSOs that will be responsible for marine mammal; what kind of reporting NOAA will receive regarding Transco's activities; how the environmental review for the proposed project is being handled to ensure that pipeline leakages and vibrational noise from operations are addressed; and the definition of ''take''.

*NMFS response:* The answers to the commenter's questions are provided in the IHA application the notice of proposed IHA (84 FR 45955; September 9, 2019). The commenter does not provide any substantive recommendations regarding the IHA therefore we have not made any revisions to the IHA in response to the comment.

*Comment 2:* The Commission recommended that NMFS revise the numbers of authorized takes for gray and harbor seals by: Estimating a daily sightings rate (versus a monthly sightings rate); relying on observational data from Sandy Hook Bay as opposed to Cupsogue Beach Park; and, using the total estimated take of harbor seals to inform the number of gray seal takes

(rather than being reduced by the number of gray seal takes). The Commission recommended that NMFS authorize 833 Level B harassment takes and at least 14 Level A harassment takes of gray seals and that we authorize at least 1,593 Level A harassment takes and 6,136 Level B harassment takes of harbor seals.

*NMFS response:* We agree with the Commission's recommendations to revise harbor and gray seal takes by estimating a daily sightings rate as opposed to a monthly sightings rate, and to use the total estimated takes of harbor seals to inform the number of gray seal takes, rather than reducing the number of harbor seal takes by the estimated number of gray seal takes; we have taken both of these steps in estimating revised take numbers in the final IHA. We do not agree with the Commission's recommendation to rely on observational data from Sandy Hook Bay as opposed to Cupsogue Beach Park for harbor seal take estimates because, while Sandy Hook Bay is closer to the project location, we do not consider the data from Sandy Hook Bay to be reliable for estimating a take estimate. The data from Sandy Hook Bay is based on a much smaller sample size (only 24 data points over a period of 10 years for Sandy Hook Bay compared with 32 surveys from 2018–2019 for Cupsogue Beach Park) and is based on citizen science alone, as opposed to the data available from Cupsogue Beach Park which is based on systematic data collected over multiple years by the Coastal Research and Education Society of Long Island, which conducts research on marine mammals in the project area. We have authorized 1,535 Level B harassment takes and 399 Level A harassment takes of gray seals, and 4,264 Level B harassment takes and 1,107 Level A harassment takes of harbor seals. Please see the ''Estimated Take'' section below for further details on the methods for determining the take estimates for harbor and gray seals.

*Comment 3:* The Commission recommended that NMFS revise the numbers of authorized takes of humpback whales, specifically by obtaining the most recent 2018 and 2019 sightings data from Gotham Whale and using a daily sightings rate to estimate take, and including a sufficient number of Level A harassment takes of humpback whales based on 14 days of impact pile driving.

*NMFS response:* We agree with the Commission's recommendations regarding the methods for estimating takes of humpback whales and have obtained the 2018 and 2019 sightings data from Gotham Whale, used a daily sightings rate to estimate take, and increased the number of authorized takes by Level A harassment based on 14 days of impact pile driving. We have authorized 35 Level B harassment takes and 14 Level A harassment takes of humpback whales. Please see the ''Estimated Take'' section below for further details on the methods for determining the take estimates for humpback whales.

*Comment 4:* The Commission recommended that NMFS increase the number of Level B harassment takes of North Atlantic right whales from two to at least three based on average group size.

*NMFS response:* The Commission refers to authorized take numbers of right whales in three previously issued IHAs as justification for increasing group size from two to at least three North Atlantic right whales in this IHA. One previously-issued IHA cited by the Commission (NMFS, 2015; 80 FR 27635) authorized three takes of right whales apparently to account for group size; however, a review of that IHA shows the citation relied upon for that group size estimate, which summarized right whale sightings during vessel-based surveys offshore New Jersey from 2008–2009, reported group size ranged from one to two whales (Whitt *et al.,* 2013). Another previously-issued IHA cited by the Commission (NMFS, 2014; 79 FR 57538) authorized the take of five right whales; however, a review of that IHA shows that the authorized take number was based on the actual modeled number of takes, not on an estimate of mean group size. The third previously-issued IHA cited by the Commission (NMFS, 2014; 79 FR 52121) authorized the take of three right whales; however, a review of that IHA shows that the citation for mean group size, the Bureau of Land Management's Cetacean and Turtle Assessment Program (CeTAP), reported a mean group size of 2.6 right whales (CeTAP, 1982), but CeTAP surveys included areas of known feeding aggregations which would result in higher mean group size estimates. While larger group sizes of right whales are known to occur in areas of importance for feeding, the project area is not an important feeding area, therefore any right whales in the area would be expected to be migrating through the area. An average group size of two represents the best estimate for right whales that are migrating, and this is supported by sightings near the project area off New Jersey from 2008–2009 (Whitt *et al,* 2013). We have therefore not revised the number of authorized Level B harassment takes of North Atlantic right whales.

*Comment 5:* The Commission recommended that NMFS include a requirement for Skipjack to provide marine mammal observational datasheets or raw sightings data in its draft and final monitoring report.

*Response:* NMFS agrees with the Commission's recommendation and has incorporated this requirement in the IHA.

*Comment 6:* The Commission recommended that NMFS include a requirement to estimate the total takes by extrapolating Level A and B harassment takes to the proportion of the zones that are not visible by PSOs and ensure that Transco keeps a running tally of the total takes for each species while the project is underway.

*Response:* NMFS agrees with the Commission's recommendation and has incorporated this requirement in the IHA.

*Comment 7:* The Commission recommended that NMFS include the number and location of PSOs in the final IHA rather than referencing the application.

*Response:* NMFS agrees with the Commission's recommendation and has incorporated this requirement in the IHA.

**Changes From the Proposed IHA to Final IHA**

As described above, revisions have been made to the take estimates for harbor seals, gray seals and humpback whales. These changes are also described in greater detail in the ''Estimated Take'' section below.

**Description of Marine Mammals in the Area of Specified Activity**

Sections 3 and 4 of the IHA 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' Stock Assessment Reports (SARs; *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' website (*www.fisheries.noaa.gov/find-species*).

We expect that the species listed in Table 1 will potentially occur in the project area and will potentially be taken as a result of the proposed project. Table 1 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 (2018). 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' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator 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' 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' U.S. Atlantic SARs. All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 Atlantic SARs (Hayes *et al.,* 2019) available online at: *www.fisheries.noaa.gov/action/2018-draft-marine-mammal-stock-assessment-reports-available.*

TABLE 1—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY THE SPECIFIED ACTIVITY

| Common name (scientific name) | Stock | MMPA and ESA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | Predicted abundance (CV) [3] | PBR [4] | Annual M/SI [4] | Occurrence and seasonality in project area |
|---|---|---|---|---|---|---|---|
| **Toothed whales (Odontoceti)** | | | | | | | |
| Bottlenose dolphin (*Tursiops truncatus*). | W. North Atlantic, Offshore. | -;N | 77,532 (0.40; 56,053; 2011). | [5] 97,476 (0.06) | 561 | 39.4 ..... | Rare in summer; absent in winter. |
| | W. North Atlantic Coastal Migratory. | -;N | 6,639 (0.41; 4,759; 2015). | ..... | 48 | unknown ... | Common year round. |
| Common dolphin [6] (*Delphinus delphis*). | W. North Atlantic. | -;N | 173,486 (0.55; 55,690; 2011). | 86,098 (0.12) | 557 | 406 ..... | Common year round. |
| Harbor porpoise (*Phocoena phocoena*). | Gulf of Maine/Bay of Fundy. | -;N | 79,833 (0.32; 61,415; 2011). | *45,089 (0.12) | 706 | 255 ..... | Common year round. |
| **Baleen whales (Mysticeti)** | | | | | | | |
| North Atlantic right whale (*Eubalaena glacialis*). | W. North Atlantic. | E; Y | 451 (0; 455; n/a) ..... | *535 (0.45) | 0.9 | 56 ..... | Year round in continental shelf and slope waters, occur seasonally. |
| Humpback whale [7] (*Megaptera novaeangliae*). | Gulf of Maine | -;N | 896 (0.42; 239; n/a) ..... | *1,637 (0.07) | 14.6 | 9.8 ..... | Common year round. |
| Minke whale [6] (*Balaenoptera acutorostrata*). | Canadian East Coast. | -;N | 20,741 (0.3; 1,425; n/a) | *2,112 (0.05) | 14 | 7.5 ..... | Year round in continental shelf and slope waters, occur seasonally. |
| **Earless seals (Phocidae)** | | | | | | | |
| Gray seal [8] (*Halichoerus grypus*). | W. North Atlantic. | -;N | 27,131 (0.10; 25,908; n/a). | ..... | 1,389 | 5,688 ..... | Common year round. |
| Harbor seal (*Phoca vitulina*) .. | W. North Atlantic. | -;N | 75,834 (0.15; 66,884; 2012). | ..... | 2,006 | 345 ..... | Common year round. |
| Harp seal (*Pagophilus groenlandicus*). | W. North Atlantic. | -;N | 7,411,000 (unk.; unk; 2014). | ..... | unk | 225,687 .... | Rare |

[1] 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 (see footnote 3) 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] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2018 draft Atlantic SARs.

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, 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 size (OSP). Annual M/SI, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2018 SARs.

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016) produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] Abundance as reported in the 2007 Canadian Trans-North Atlantic Sighting Survey (TNASS), which provided full coverage of the Atlantic Canadian coast (Lawson and Gosselin, 2009). Abundance estimates from TNASS were corrected for perception and availability bias, when possible. In general, where the TNASS survey effort provided superior coverage of a stock's range (as compared with NOAA shipboard survey effort), the resulting abundance estimate is considered more accurate than the current NMFS abundance estimate (derived from survey effort with inferior coverage of the stock range). NMFS stock abundance estimate for the common dolphin is 70,184. NMFS stock abundance estimate for the fin whale is 1,618. NMFS stock abundance estimate for the minke whale is 2,591.

[7] 2018 U.S. Atlantic draft SAR for the Gulf of Maine feeding population lists a current abundance estimate of 896 individuals. However, we note that the estimate is defined on the basis of feeding location alone (*i.e.,* Gulf of Maine) and is therefore likely an underestimate.

[8] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

Two marine mammal species that are listed under the Endangered Species Act (ESA) may be present in the project area and may be taken incidental to the proposed activity: The North Atlantic right whale and fin whale.

A detailed description of the of the species likely to be affected by Transco's activities, 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 notice of proposed IHA (84 FR 45955; September 9, 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 notice for these descriptions. Please also refer to NMFS' website (*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 Transco's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (84 FR 45955; September 9, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Skipjack's survey activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (84 FR 45955; September 9, 2019).

**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 noise from pile driving 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. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. The 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 take estimate.

*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 160 dB re 1 µPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving) and 120 dB rms for continuous sources (*e.g.,* vibratory driving). Transco's proposed activity includes the use of intermittent sources (impact pile driving) and continuous sources (vibratory driving), therefore use of the 120 and 160 dB re 1 µPa (rms) thresholds are 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 from two different types of sources (impulsive or non-impulsive). The components of Transco's proposed activity that may result in the take of marine mammals include the use of impulsive and non-impulsive sources.

These thresholds are provided in Table 2 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: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—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. |

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

| Hearing group | PTS onset acoustic thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| 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 µPa, and cumulative sound exposure level ($L_E$) has a reference value of 1µPa$^2$s. 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)

$R_1$ = the distance of the modeled SPL from the driven pile, and

$R_2$ = 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(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(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. Acoustic measurements of pile driving at the project area are not available. Therefore, to estimate sound levels associated with the proposed project, representative source levels for installation and removal of each pile type and size were identified using the compendium compiled by the California Department of Transportation (Caltrans, 2015). The information presented in Caltrans (2015) is a compilation of SPLs recorded during various in-water pile driving projects in California, Oregon, Washington, and Nebraska. The compendium is a commonly used reference document for pile driving source levels when analyzing potential impacts on protected species, including marine mammals, from pile driving activities.

The proposed project would include impact and vibratory installation and vibratory removal of 0.25-m (10-in), 0.61-m (24-in), 0.86-m (34-in), 0.91-m (36-in), 0.91- to 1.2-m (36- to 48-in), and 1.5-m (60-in)-diameter steel pipe piles. Reference source levels from Caltrans (2015) were determined using data for piles of similar sizes, the same pile driving method as that proposed for the project, and at similar water depths (Table 3). While the pile sizes and water depths chosen as proxies do not exactly match those for the proposed project, they represent the closest matches available. It is assumed that the source levels shown in Table 3 are the most representative for each pile type and associated pile driving method. To be conservative, the representative sound source levels were based on the largest pile expected to be driven/removed at each potential in-water construction site. For example, where Transco may use a range of pile sizes (*i.e.,* 0.91 to 1.2 m (36 to 48 in)), the largest potential pile size (1.2 m (48 in)) was used in the modeling.

TABLE 3—MODELED PILE INSTALLATION AND REMOVAL SOURCE LEVELS

| Pile diameter (in) | RMS (dB) | | SEL | |
|---|---|---|---|---|
| | Impact | Vibratory | Impact | Vibratory |
| **Installation** | | | | |
| 10 | ..... | 150 | ..... | 150 |
| 24 | ..... | 160 | ..... | 160 |

TABLE 3—MODELED PILE INSTALLATION AND REMOVAL SOURCE LEVELS—Continued

| Pile diameter (in) | RMS (dB) | | SEL | |
|---|---|---|---|---|
| | Impact | Vibratory | Impact | Vibratory |
| 34 | 193 | 168 | 183 | 168 |
| 36 | 193 | 168 | 183 | 168 |
| 48 | ..... | 170 | ..... | 170 |
| 60 | 195 | 170 | 185 | 170 |
| **Removal** | | | | |
| 10 | ..... | 150 | ..... | 150 |
| 24 | ..... | 160 | ..... | 160 |
| 34 | ..... | 168 | ..... | 168 |
| 36 | ..... | 168 | ..... | 168 |
| 48 | ..... | 170 | ..... | 170 |
| 60 | ..... | 170 | ..... | 170 |

Since there would be many piles at each of the construction sites within close proximately to one another, it was not practical to estimate zones of influence (ZOIs) for each individual pile, and results would have been nearly identical for all similarly sized piles at each construction location. In order to simplify calculations, a representative pile site was selected for eight separate pile locations (Table 4) (See Figure 8 in the IHA application for the representative locations).

TABLE 4—REPRESENTATIVE PILE SITES SELECTED FOR MODELING

| Location/mile post (MP) | Pile size (inches) |
|---|---|
| HDD Morgan Offshore (MP 12.59) | 24 |
| | 36 |
| | 48 |
| Neptune Power Cable Crossing (MP 13.84) | 10 |
| MP 14.5 to MP 16.5 | 24 |
| MP 28.0 to MP 29.36 | 34 |
| HDD Ambrose West Side (MP 29.4) | 24 |
| | 36 |
| | 48 |
| | 60 |
| HDD Ambrose East Side (MP 30.48) | 24 |
| | 36 |
| | 48 |
| | 60 |
| MP 34.5 to MP 35.04 | 34 |
| Neptune Power Cable Crossing (MP 35.04) | 10 |

For strings where only a single pile type would be installed or removed (*i.e.,* Neptune Power Cable Crossing MP13.84 and MP35.04, MP14.5 to MP16.5, MP28.0 to MP29.36, and MP34.5 to MP35.04), the representative pile location was selected in the middle of the string. For the HDD Morgan Offshore string site, the location closest to the platform installation was selected as the representative pile location as it represents the area with the largest pile sizes. The HDD Ambrose West Side and HDD Ambrose East Side representative pile locations were selected based on the entry and exit pits. The HDD Ambrose East Side is the entry pit and the HDD Ambrose West Side is the exit pit. This would also represent the outer limit of the HDD Ambrose string, and is therefore the most conservative modeling option.

Distances to isopleths associated with Level A and Level B harassment thresholds were calculated for each pile size, for vibratory and impact installation and removal activities, at the representative pile locations (Table 4). 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 driving from the proposed project the NMFS Optional 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 Optional User Spreadsheet, and the resulting isopleths, are reported below. The ''Impact Pile Driving'' and ''Non-Impulse-stationary-continuous'' tabs of the Optional User Spreadsheet were used to calculate

isopleth distances to the Level A harassment thresholds for impact and vibratory driving, respectively.

The updated acoustic thresholds for impulsive sounds (such as pile driving) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both $SEL_{cum}$ and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The $SEL_{cum}$ metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. Isopleth distances to relevant Level A harassment thresholds were calculated, for both the $SEL_{cum}$ and peak sound pressure level metrics, for all pile sizes at the representative pile driving locations as described above. The largest modeled isopleth distance to harassment thresholds based on the peak SPL metric was 34.1 m which was modeled based on 60 inch piles for the high frequency functional hearing group (threshold of 202 dB re 1 µPa). Calculation of isopleth distances to relevant Level A harassment thresholds for all pile sizes and all marine mammal functional hearing groups resulted in greater modeled distances associated with the $SEL_{cum}$ metric than the peak sound pressure level metric, thus the modeled distances associated with the $SEL_{cum}$ metric were carried forward in the exposure analysis to be conservative. It should be noted that this method likely results in a conservative estimate of Level A exposures because the $SEL_{cum}$ metric assumes continuous exposure to the total duration of pile driving anticipated for a given day, which represents an unlikely scenario given that there is likely both some temporal and spatial separation between pile driving operations within a day (when multiple piles are driven), and that marine mammals are mobile and would be expected to move away from a sound source before it reached a level that would have the potential to result in auditory injury. Inputs to the Optional User Spreadsheet are shown in Tables 5 and 6. The resulting isopleth distances to Level A harassment thresholds are shown in Tables 7 and 8.

TABLE 5—INPUTS TO NMFS OPTIONAL USER SPREADSHEET (NMFS, 2018) TO CALCULATE ISOPLETH DISTANCES TO LEVEL A HARASSMENT THRESHOLDS FOR VIBRATORY DRIVING AND REMOVAL

| Pile size (representative pile location) | Source level (RMS SPL) | Pile driving duration (hours) within 24-hour period | Pile removal duration (hours) within 24-hour Period | Weighting factor adjustment (kHz) | Propagation (xLogR) | Distance of source level measurement (m) |
|---|---|---|---|---|---|---|
| 10 in. (Neptune Power Cable Crossing (MP 13.84) | 150 | 1.0 | 1.0 | 2.5 | 15 | 10 |
| 10 in. (Neptune Power Cable Crossing MP 35.04) | 150 | 0.5 | 0.5 | 2.5 | 15 | 10 |
| 24 in. (Ambrose East MP 30.48) | 160 | 1.25 | 5.5 | 2.5 | 15 | 10 |
| 24 in. (Ambrose West MP 29.4) | 160 | 1.5 | 0.5 | 2.5 | 15 | 10 |
| 24 in. (Morgan Offshore MP 12.59) | 160 | 1.0 | 0.3 | 2.5 | 15 | 10 |
| 24 in. (MP 14.5) | 160 | 1.25 | 2.75 | 2.5 | 15 | 10 |
| 36 in. (Morgan Offshore MP 12.59) | 168 | 1.0 | 4 | 2.5 | 15 | 10 |
| 36 in. (Ambrose East MP 30.48) | 168 | 0.75 | 0.75 | 2.5 | 15 | 10 |
| 36 in. (Ambrose West MP 29.4) | 168 | 0.5 | 0.75 | 2.5 | 15 | 10 |
| 48 in. (Ambrose East MP 30.48) | 170 | 2.0 | 2.0 | 2.5 | 15 | 10 |
| 48 in. (Ambrose West MP 29.4) | 170 | 1.0 | 2.0 | 2.5 | 15 | 10 |
| 48 in. (Morgan Offshore MP 12.59) | 170 | 1.0 | 0.75 | 2.5 | 15 | 10 |
| 60 in. (Ambrose East MP 30.48) | 170 | 0.25 | 0.25 | 2.5 | 15 | 10 |
| 60 in. (Ambrose West MP 29.4) | 170 | 0.5 | 4.0 | 2.5 | 15 | 10 |

Note: Tab A (''Non Impulsive Static Continuous'') in the NMFS Optional User Spreadsheet (NMFS, 2018) was used for all calculations for vibratory installation of piles.

TABLE 6–INPUTS TO NMFS OPTIONAL USER SPREADSHEET (NMFS, 2018) TO CALCULATE ISOPLETH DISTANCES TO LEVEL A HARASSMENT THRESHOLDS FOR IMPACT DRIVING

| Pile size (representative pile location) | Source level (RMS SPL) | Number of strikes per pile | Number of piles per day | Weighting Factor Adjustment (kHz) | Propagation (xLogR) | Distance of source level measurement (m) |
|---|---|---|---|---|---|---|
| 36 in. (Morgan Offshore MP 12.59) | 183 | 2,500 | 2/4* | 2 | 15 | 10 |
| 60 in. (Ambrose West | 185 | 3,382 | 2 | 2 | 15 | 10 |

*The number of piles driven per day will vary based on the construction schedule, thus both scenarios (*i.e.* 2 and 4 piles driven per day) were modeled.
Note: Tab E1 (''Impact Pile Driving'') in the NMFS Optional User Spreadsheet (NMFS, 2018) was used for all calculations for impact pile driving.

NMFS has established Level B harassment thresholds of 160 dB re1µPa (rms) for impulsive sounds (*e.g.,* impact pile driving) and 120 dB re1µPa (rms) for non-impulsive sounds (*e.g.,* vibratory driving and removal). Based on the predicted source levels associated with various pile sizes (Table 3) the distances from the pile driving/removal equipment to the Level B harassment thresholds were calculated, using the distance to the 160 dB threshold for the diesel impact hammer and the distance to the 120 dB threshold for the vibratory device, at the representative pile locations (Table 4). It should be noted that while sound levels associated with the Level B harassment threshold for vibratory driving/removal were estimated to propagate as far as 21,544 m (13 mi) from pile installation and removal activities based on modeling, it is likely that the noise produced from vibratory activities associated with the project would be masked by background noise before reaching this distance, as the Port of

New York and New Jersey, which represents the busiest port on the east coast of the United States and the third busiest port in the United States, is located near the project area and sounds from the port and from vessel traffic propagate throughout the project area. However, take estimates conservatively assume propagation of project-related noise to the full extent of the modeled isopleth distance to the Level B harassment threshold. The modeled distances to isopleths associated with Level B harassment thresholds for impact and vibratory driving are shown in Tables 7 and 8.

TABLE 7—MODELED ISOPLETH DISTANCES TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR IMPACT AND VIBRATORY PILE INSTALLATION

| | | | Low-frequency cetaceans | Mid-frequency cetaceans | High-frequency cetaceans | Phocid seals | Cetaceans and phocids |
|---|---|---|---|---|---|---|---|
| Impulsive | | | 183 dB | 185 dB | 155 dB | 185 dB | 160 dB |
| Non-Impulsive | | | 199 dB | 198 dB | 173 dB | 201 dB | 120 dB |
| Location/mile post (MP) | Pile size (inches) | Hammer type | Distance to Level A harassment threshold (m)* | | | | Distance to Level B harassment threshold (m) |
| HDD Morgan Offshore (MP 12.59) | 24 | Vibratory | 5.9 | 0.5 | 8.7 | 3.6 | 4,641.6 |
| | 36 | Vibratory | 20.0 | 1.8 | 29.6 | 12.2 | 15,848.9 |
| | | Impact | 4,635.2 | 164.9 | 5,521.3 | 2,480.6 | 1,584.9 |
| | 48 | Vibratory | 27.2 | 2.4 | 40.2 | 16.5 | 21,544.3 |
| Neptune Power Cable Crossing (MP 13.84). | 10 | Vibratory | 1.3 | 0.1 | 1.9 | 0.8 | 1,000.0 |
| MP 14.5 to MP 16.5 | 24 | Vibratory | 6.8 | 0.6 | 10.1 | 4.1 | 4,641.6 |
| MP 28.0 to MP 29.36 | 34 | Vibratory | 20.0 | 1.8 | 29.6 | 12.2 | 15,848.9 |
| HDD Ambrose West Side (MP 29.4) | 24 | Vibratory | 7.7 | 0.7 | 11.3 | 4.7 | 4,641.6 |
| | 36 | Vibratory | 12.6 | 1.1 | 18.6 | 7.7 | 15,848.9 |
| | 48 | Vibratory | 27.2 | 2.4 | 40.2 | 16.5 | 21,544.3 |
| | 60 | Vibratory | 17.1 | 1.5 | 25.3 | 10.4 | 21,544.3 |
| | | Impact | 4,855.2 | 172.7 | 5,783.3 | 2,598.3 | 2,154.4 |
| HDD Ambrose East Side (MP 30.48) | 24 | Vibratory | 6.8 | 0.6 | 10.1 | 4.1 | 4,641.6 |
| | 36 | Vibratory | 16.5 | 1.5 | 24.4 | 10.0 | 15,848.9 |
| | 48 | Vibratory | 43.2 | 3.8 | 63.8 | 26.2 | 21,544.3 |
| | 60 | Vibratory | 10.8 | 1.0 | 16.0 | 6.6 | 21,544.3 |
| MP 34.5 to MP 35.04 | 34 | Vibratory | 12.6 | 1.1 | 18.6 | 7.7 | 15,848.9 |
| | | Impact | 2,920.0 | 103.9 | 3,478.2 | 1,562.7 | 1,584.9 |
| Neptune Power Cable Crossing (MP 35.04). | 10 | Vibratory | 0.8 | 0.1 | 1.2 | 0.5 | 1,000.0 |

*All distances shown are based on the SELcum metric. Distances to the peak SPL metric for impact driving were smaller than those for the SELcum metric for all pile sizes and scenarios.

TABLE 8—MODELED ISOPLETH DISTANCES TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR VIBRATORY PILE REMOVAL

| | | | Low-frequency cetaceans | Mid-frequency cetaceans | High-frequency cetaceans | Phocid seals | Cetaceans and phocids |
|---|---|---|---|---|---|---|---|
| Non-Impulsive | | | 199 dB | 198 dB | 173 dB | 201 dB | 120 dB |
| Location/mile post (MP) | Pile size (inches) | Hammer type | Distance to level A harassment threshold (m)* | | | | Distance to Level B harassment threshold (m) |
| HDD Morgan Offshore (MP 12.59) | 24 | Vibratory | 2.6 | 0.2 | 3.9 | 1.6 | 4,641.6 |
| | 36 | Vibratory | 50.4 | 4.5 | 74.5 | 30.6 | 15,848.9 |
| | 48 | Vibratory | 22.4 | 2.0 | 33.2 | 13.6 | 21,544.3 |
| Neptune Power Cable Crossing (MP 13.84). | 10 | Vibratory | 1.3 | 0.1 | 1.9 | 0.8 | 1,000.0 |
| MP 14.5 to MP 16.5 | 24 | Vibratory | 11.5 | 1.0 | 17.0 | 7.0 | 4,641.6 |
| MP 28.0 to MP 29.36 | 34 | Vibratory | 41.6 | 3.7 | 61.5 | 25.3 | 15,848.9 |
| HDD Ambrose West Side (MP 29.4) | 24 | Vibratory | 3.7 | 0.3 | 5.5 | 2.2 | 4,641.6 |
| | 36 | Vibratory | 16.5 | 1.5 | 24.4 | 10.0 | 15,848.9 |
| | 48 | Vibratory | 43.2 | 3.8 | 63.8 | 26.2 | 21,544.3 |
| | 60 | Vibratory | 68.5 | 6.1 | 101.3 | 41.6 | 21,544.3 |
| HDD Ambrose East Side (MP 30.48) | 24 | Vibratory | 18.3 | 1.6 | 27.0 | 11.1 | 4,641.6 |
| | 36 | Vibratory | 16.5 | 1.5 | 24.4 | 10.0 | 15,848.9 |
| | 48 | Vibratory | 43.2 | 3.8 | 63.8 | 26.2 | 21,544.3 |

| Location/mile post (MP) | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 60 | Vibratory ..... | 10.8 | 1.0 | 16.0 | 6.6 | 21,544.3 |
| MP 34.5 to MP 35.04 ..... | 34 | Vibratory ..... | 12.6 | 1.1 | 18.6 | 7.7 | 15,848.9 |
| Neptune Power Cable Crossing (MP 35.04). | 10 | Vibratory ..... | 0.8 | 0.1 | 1.2 | 0.5 | 1,000.0 |

*Marine Mammal Occurrence*

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

There are no marine mammal density estimates for Raritan Bay. The best available information regarding marine mammal densities in the project area is provided by habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018). These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each model, is available online at: *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Although these updated models (and a newly developed seal density model) are not currently publicly available, our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. Marine mammal density estimates in the project area (animals/$km^2$) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018). As noted, the updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011b, 2012, 2014a, 2014b, 2015, 2016). For each cetacean species, density data for summer (June–August) and fall (September, October, November) were used to generate source grids by averaging monthly densities (see Figure 15 in the IHA application for an example of one such source grid). Since the source density grids do not extend to Raritan Bay, the grids were extrapolated to cover the bay and values were pulled from the nearest grid cell to assign density values to those empty cells in order to approximate densities in Raritan Bay (see Figure 16 in the IHA application). The resulting density grid was used to calculate take estimates of marine mammals for pile installation and removal activities. It should be noted that this approach likely results in conservative estimates of cetacean density for the project area, as cetacean densities in Raritan Bay are expected to be lower than the densities in the areas of the Atlantic Ocean from which the densities were extrapolated (with the exception of humpback whales, as described below).

For harbor seals and gray seals, densities were first obtained from Roberts *et al.* (2018), as described above for cetacean densities. However, because the pinniped data used in the Roberts *et al.* (2018) density models were derived from offshore aerial and vessel surveys, the models did not accurately represent the densities of pinnipeds that would be expected in Raritan Bay, as they underestimate densities that would be expected closer to shore which would be higher than those offshore due to closer proximity to haulouts. Thus, the extrapolation of pinniped densities from Roberts *et al.* (2018) to Raritan Bay resulted in exposure estimates that were not consistent with expectations of actual pinniped densities based on the number of opportunistic sightings reported in the project area. There have been no systematic studies focusing on seal populations within Raritan Bay, Lower New York Bay, or Sandy Hook Bay. Therefore, pinniped densities were estimated using systematic data collected by Coastal Research and Education Society of Long Island, Inc. (CRESLI) from November 18, 2018, to April 16, 2019, at Cupsogue Beach Park in Westhampton Beach, NY (CRESLI, 2019).

*Take Calculation and Estimation*

Here we describe how the information provided above is brought together to produce a quantitative take estimate. The following steps were performed to estimate the potential numbers of marine mammal exposures above Level A and Level B harassment thresholds as a result of the proposed activity:

1. Distances to isopleths corresponding to Level A and Level B harassment thresholds were calculated for each pile size for vibratory and impact installation and removal activities at the representative pile locations within the Project area, as described above.

2. GIS analysis was then used, incorporating these distance values and a viewshed analysis (described below), to calculate resulting ZOIs.

3. Species density estimations were incorporated in the GIS analysis to determine estimated number of daily exposures.

4. Daily exposure estimates were multiplied by the duration (days) of the corresponding in-water construction activity (based on pile size and location).

As described above, the distances to isopleths associated with Level A and Level B harassment thresholds were calculated for each pile size for vibratory and impact installation and removal activities (Tables 7 and 8). These distances to relevant thresholds were then incorporated into a GIS analysis to analyze the relevant ZOIs within which take of marine mammals would be expected to occur.

Given that the proposed activity would occur in a semi-enclosed bay, the modeled distances to thresholds would in some cases be truncated by land (*i.e.,* the sounds from the proposed activity would not propagate to the full modeled isopleth distances because of the presence of land, which in some cases is closer to the pile driving/removal location than the total distances). A viewshed analysis is a standard technique used in GIS to determine whether an area is visible from a specific location (Kim *et al.,* 2004). The analysis uses an elevation value of two points with direct line of sight to determine the likelihood of seeing the elevated point from the ground. Incorporating the viewshed analysis allowed GIS modeling of sound propagation to replicate how sound waves traveling through the water are truncated when they encounter land. GIS modeling used an artificial elevation model setting the water to zero (ground) and any land mass to 100 (elevated point) and focusing only on areas within the Project area where

sound would propagate. Any land within direct 'line of sight' to the sound source would prevent the sound from propagating farther. This method was applied to each of the eight representative pile locations. This simple model does not account for diffusion, which would be minimal with large landmasses; therefore in the model no sound bends around landmasses. See Figure 9 in the IHA application for an example of applying the viewshed analysis to a single representative pile location (HDD Morgan Offshore).

A custom Python script was developed to calculate potential cetacean takes due to pile installation and removal activities. The script overlays the species-specific Level A and Level B harassment ZOIs (each clipped by the viewshed) for each pile size and type at each of the representative pile locations (Table 4), over the density grid cells. The script then multiplies the total density value by the area of the ZOI, resulting in initial take estimate outputs. The following formulas were implemented by the script for each species at each representative pile location:

Initial Level A take estimate = ZOI * d
Initial Level B take estimate = ZOI * d

where:

ZOI = the ensonified area at or above the species-specific acoustic threshold, clipped by the viewshed.
d = density estimate for each species within the ZOI.

The initial take estimates were then multiplied by the duration (days) of the corresponding in-water construction activity (based on pile size and location). The following formulas demonstrate this method:

Level A take estimate = initial take estimate * X days of activity
Level B take estimate = initial take estimate * X days of activity

where:

X days of activity = number of days for which the corresponding in-water construction activity occurs.

These numbers were then totaled to provide estimates of the numbers of take by Level A and Level B harassment for each species. The exposure numbers were rounded to the nearest whole individual. As the construction schedule has not yet been finalized, the take calculations described above were performed for two scenarios: (1) All construction activities occurring during summer 2020, and (2) installation occurring during the summer and removal in fall of 2020. To be conservative, the higher take estimates calculated between the two scenarios were then carried forward in the analysis.

Note that for bottlenose dolphins, the density data presented by Roberts *et al.* (2016) does not differentiate between bottlenose dolphin stocks. Thus, the take estimate for bottlenose dolphins calculated by the method described above resulted in an estimate of the total of bottlenose dolphins expected to be taken, from all stocks (for a total of 6,331 takes by Level B harassment). However, as described above, both the Western North Atlantic Northern Migratory Coastal stock and the Western North Atlantic Offshore stock have the potential to occur in the project area. As the project area represents the extreme northern extent of the known range of the Western North Atlantic Northern Migratory Coastal stock, and as dolphins from the Western North Atlantic Northern Migratory Coastal stock have never been documented in Raritan Bay, we assume that 25 percent of bottlenose dolphins taken would be from the North Atlantic Northern Migratory Coastal stock and the remaining 75 percent of bottlenose dolphins taken will be from the Western North Atlantic Offshore stock. Thus, we allocated 75 percent of the total authorized bottlenose dolphin takes to the Western North Atlantic Offshore stock (total 4,748 takes by Level B harassment), and 25 percent to the Western North Atlantic Northern Migratory Coastal stock (total 1,583 takes by Level B harassment) (Table 9).

For humpback whales and harbor, gray and harp seals, the methods used to estimate take were slightly different than the methodology described above. For humpback whales, the steps above resulted in zero exposures above the Level B harassment threshold. However, there are humpback whales are known to occur in the project area, indicating that potential takes may occur and therefore should be accounted for. As the exposure estimate method described above resulted in zero exposures, other methods for calculating take were applied.

Humpback whale sightings data from Gotham Whale, a whale watching organization that collects data on marine mammals in and around New York harbor and Raritan Bay, represent the best available information on humpback whale abundance in the project area. Based on Gotham Whale's sightings data, an estimate of the number of humpback whales observed per day was estimated by dividing the number of humpback whale observations by the number of trips. As sightings data from 2011 through 2019 demonstrated an increasing trend in the number of sightings from 2011 through 2019, we used the number of sightings from 2019 (which represented the highest number of sightings per day of all years) to develop a conservative take estimate for humpback whales. The daily sightings rate in 2019 (0.54 whales per day) was multiplied by the number of days of construction activities (65.5) to come up with an estimate of total takes by Level B harassment (*i.e.,* 0.54 * 65.5 = 35 takes; Table 9). To calculate takes by Level A harassment, we conservatively estimated that one humpback whale may be taken by Level A harassment during each day of impact pile driving (14 days); thus, we have authorized 14 takes of humpback whales by Level A harassment.

As described above, local survey data represents the best available information on abundance estimates for pinnipeds in the project area. Estimates of take by Level B harassment for harbor seals were calculated using systematic data collected by CRESLI from November 18, 2018 through April 28, 2019, where a total of 2,621 harbor seals were sighted at Cupsogue Beach Park. The total number of sightings was divided by the total number of survey days to come up with a daily sightings rate (82 seals per day). That number was then multiplied by the number of days of construction activities (65.5) to come up with an estimate of total takes by Level B harassment (*i.e.,* 82 * 65.5 = 5,371 takes). To calculate an estimate of takes by Level A harassment, the daily sightings rate was multiplied by the number of days of impact pile driving (14 days, for a total of 1,107 takes by Level A harassment).

Data on gray seals in the project area was not available; however, anecdotal information indicates gray seals are present in the project area and may be taken by Transco's proposed activities. Therefore, to come up with an estimate of gray seal takes, a ratio of gray seals to harbor seals was estimated. While the data presented by Roberts *et al.* (2018) represent the best available density estimates for pinnipeds in the project area, that data does not differentiate by seal species. Thus the best available information on the ratio of gray seals to harbor seals comes from the U.S. Navy's OPAREA density estimates (Halpin *et al.* 2009; Navy 2007, 2012). The OPAREA data indicate the ratio of gray seals to harbor seals is 36 percent to 64 percent, respectively. Thus, the estimated number of takes by Level A harassment and Level B harassment for harbor seals (1,107 and 5,371 respectively) were multiplied by 0.36 to come up with an estimate of total takes by Level A harassment and Level B

harassment for gray seals (399 and 1,934 respectively).

Note that the take estimate methods described above for harbor seals, gray seals, and humpback whales have been revised from the methods proposed in the notice of proposed IHA (84 FR 45955; September 9, 2019) based on public comments received in response to the notice of proposed IHA, and authorized take numbers have also been revised from the numbers proposed in the notice of proposed IHA as result of these changes.

Due to lack of data and their rare occurrence in the Mid-Atlantic region, no densities for harp seals are available. However, harp seals have been documented along the southern coast of Long Island during the winter, and a recent pinniped UME has resulted in increased strandings of harp seals on the Atlantic coast. Because so few harp seals have been documented in the region of the project area, we estimate that up to four harp seals (the total number opportunistically observed at Cupsogue Beach (CRESLI, 2008) could enter the Level B harassment zone and be taken by Level B harassment. Authorized take numbers are shown in Table 9.

TABLE 9—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS AUTHORIZED AND AUTHORIZED TAKES AS A PERCENTAGE OF POPULATION

| Species | Authorized takes by Level A harassment | Authorized takes by Level B harassment | Total authorized takes | Total authorized takes authorized as a percentage of stock taken * |
|---|---|---|---|---|
| Fin whale | 0 | 5 | 5 | 0.1 |
| Humpback Whale | 14 | 35 | 49 | 3.0 |
| Minke Whale | 0 | 1 | 1 | 0.0 |
| North Atlantic Right Whale | 0 | 2 | 2 | 0.5 |
| Bottlenose Dolphin—Western North Atlantic Northern Migratory Coastal stock | 0 | 1,583 | 1,583 | 23.8 |
| Bottlenose Dolphin—Western North Atlantic Offshore stock | 0 | 4,748 | 4,748 | 6.1 |
| Common Dolphin | 0 | 95 | 95 | 0.1 |
| Harbor porpoise | 0 | 11 | 11 | 0.0 |
| Gray seal | 399 | 1,934 | 2,333 | 8.6 |
| Harbor seal | 1,107 | 5,371 | 6,478 | 8.5 |
| Harp seal | 0 | 4 | 4 | 0.0 |

* Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 1. For North Atlantic right whales the best available abundance estimate is derived from the 2018 North Atlantic Right Whale Consortium 2018 Annual Report Card (Pettis *et al.,* 2018). For the pinniped species the best available abundance estimates are derived from the most recent NMFS Stock Assessment Reports. For all other species, the best available abundance estimates are derived from Roberts *et al.* (2016, 2017, 2018).

The take numbers authorized are considered conservative for the following reasons:

- Density estimates assume are largely derived from adjacent grid-cells that likely overestimate density in the vicinity of the project area.
- Level A harassment take numbers do not account for the likelihood that marine mammals will avoid a stimulus when possible before that stimulus reaches a level that would have the potential to result in injury; and
- Level A harassment take numbers do not account for the effectiveness of mitigation and monitoring measures in reducing the number of takes.

**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 and impact on operations.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities. Modeling was performed to estimate zones of influence (ZOI; see ''Estimated Take''); these ZOI values were used to inform mitigation measures for pile driving activities to minimize Level A harassment and Level B harassment to the extent possible, while providing estimates of the areas within which Level B harassment might occur.

In addition to the specific measures described later in this section, Transco would conduct briefings for construction supervisors and crews, the marine mammal monitoring teams, and Transco staff prior to the start of all pile driving activity, and when new personnel join the work, in order to

explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

*Pre-Clearance Zones*

Transco would use Protected Species Observers (PSOs) to establish pre-clearance zones around the pile driving equipment to ensure these zones are clear of marine mammals prior to the start of pile driving. The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury and potential instances of more severe behavioral disturbance as a result of exposure to pile driving noise (serious injury or death are unlikely outcomes even in the absence of mitigation measures) by delaying the activity before it begins if marine mammals are detected within certain pre-defined distances of the pile driving equipment. The primary goal in this case is to prevent auditory injury (Level A harassment), and the pre-clearance zones are larger than the modeled distances to the isopleths corresponding to Level A harassment (based on peak SPL) for all marine mammal functional hearing groups. These zones vary depending on species and are shown in Table 10. All distances to pre-clearance zones are the radius from the center of the pile being driven.

TABLE 10—PRE-CLEARANCE ZONES DURING TRANSCO PILE DRIVING AND REMOVAL ACTIVITIES

| Species | Clearance zone |
|---|---|
| North Atlantic right whale | Any distance |
| Fin and humpback whale | 1,000 m |
| All other marine mammal species | 100 m |

If a marine mammal is observed approaching or entering the relevant pre-clearance zones prior to the start of pile driving operations, pile driving activity would be delayed until either the marine mammal has voluntarily left the respective clearance zone and been visually confirmed beyond that zone, or, 30 minutes have elapsed without re-detection of the animal.

Prior to the start of pile driving activity, the pre-clearance zones will be monitored for 30 minutes to ensure that they are clear of the relevant species of marine mammals. Pile driving would only commence once PSOs have declared the respective pre-clearance zones clear of marine mammals. Marine mammals observed within a pre-clearance zone will be allowed to remain in the pre-clearance zone (*i.e.,* must leave of their own volition), and their behavior will be monitored and documented. The pre-clearance zones (to a distance of 1,000 m) may only be declared clear, and pile driving started, when the entire pre-clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving.

*Soft Start*

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. Transco will utilize soft start techniques for impact pile driving by performing an initial set of three strikes from the impact hammer at a reduced energy level followed by a thirty second waiting period. The soft start process would be conducted a total of three times prior to driving each pile (*e.g.,* three strikes followed by a thirty second delay, then three additional single strikes followed by a thirty second delay, then a final set of three strikes followed by an additional thirty second delay). Soft start would be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

*Shutdown*

The purpose of a shutdown is to prevent some undesirable outcome, such as auditory injury or behavioral disturbance of sensitive species, by halting the activity. If a marine mammal is observed entering or within the shutdown zones after pile driving has begun, the PSO will request a temporary cessation of pile driving. Transco has proposed that, when called for by a PSO, shutdown of pile driving would be implemented when feasible. However, if a shutdown is called for before a pile has been driven to a sufficient depth to allow for pile stability, then for safety reasons the pile would need to be driven to a sufficient depth to allow for stability and a shutdown would not be feasible until after that depth was reached. We therefore propose that shutdown would be implemented when feasible. If shutdown is called for by a PSO, and Transco determines a shutdown to be technically feasible, pile driving would be halted immediately. After shutdown, pile driving may be initiated once all clearance zones are clear of marine mammals for the minimum species-specific time periods, or, if required to maintain installation feasibility. For North Atlantic right whales, shutdown would occur when a right whale is observed by PSOs at any distance, and a shutdown zone of 85 m (279 ft) would be implemented for all other species (Table 11). The 500 m zone is a protective measure to avoid takes by Level A harassment, and potentially some takes by Level B harassment, of North Atlantic right whales. The 85 m zone was calculated based on the distance to the Level A harassment threshold based on the peak sound pressure metric (202 dB re 1µ Pa) for a 66-inch steel pile, plus an additional 50 m (164-ft) buffer. During in-water construction activities that do not entail pile driving (*e.g.,* excavating, dredging, and use of other heavy machinery), if a marine mammal comes within 10-m of the construction equipment, Transco must cease operations and reduce vessel speed to the minimum level required to maintain steerage and safe working conditions.

TABLE 11—SHUTDOWN ZONES DURING TRANSCO PILE DRIVING AND REMOVAL ACTIVITIES

| Species | Shutdown zone |
|---|---|
| North Atlantic right whale | Any distance |
| All other marine mammal species | 85 m |

*Visibility Requirements*

All in-water construction and removal activities would be conducted during daylight hours, no earlier than 30 minutes after sunrise and no later than 30 minutes before sunset. Pile driving would not be initiated at night, or, when the full extent of all relevant clearance zones cannot be confirmed to be clear of marine mammals, as determined by the lead PSO on duty. The clearance zones may only be declared clear, and pile driving started, when the full extent of all clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving.

*Monitoring Protocols*

Monitoring would be conducted before, during, and after pile driving activities. In addition, observers will record all incidents of marine mammal occurrence, regardless of distance from the construction activity, and monitors will document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zones will not result in delay of pile driving; that pile segment may be completed without cessation, unless the marine mammal approaches or enters the shutdown zone, at which point pile driving activities would be halted when practicable, as described above. Pile driving activities include the time to install 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.

The following additional measures apply to visual monitoring:

(1) A minimum of two PSOs would be on duty at all times during pile driving and removal activity;

(2) Monitoring must be conducted by qualified, trained PSOs. One PSO must be stationed on an escort boat and the other either on the construction barge or another vessel during impact and vibratory pile installation and removal. The escort boat location may shift depending on work location, but will be a minimum of 100 to 200 m (328 to 656 ft) from the pile-driving location, depending on the site and the ensonification area associated with that specific pile-driving scenario;

(3) PSOs may not exceed four consecutive watch hours (PSOs may conduct duties not related to marine mammal observation beyond four consecutive hours); must have a minimum two-hour break between watches; and may not exceed a combined watch schedule of more than 12 hours in a 24- hour period;

(4) Monitoring will be conducted from 30 minutes prior to commencement of pile driving, throughout the time required to drive a pile, and for 30 minutes following the conclusion of pile driving;

(5) PSOs will have no other construction-related tasks while conducting monitoring; and

(6) PSOs would have the following minimum 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;
- 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 document 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 of marine mammals from construction noise 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.

PSOs employed by Transco in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

- Independent observers (*i.e.,* not construction personnel) are required during all pile driving and removal activities (during non-pile driving construction activities (*e.g.,* excavating, dredging, and use of other heavy machinery), construction personnel may act as observers for the 10-m exclusion zone described above. Construction personnel acting as observers for the 10-m exclusion zone must have no other construction-related responsibilities during times of marine mammal monitoring);
- At least one observer must have prior experience working as an observer;
- Other observers may substitute education (degree in biological science or related field) or training for experience;
- One observer will be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
- NMFS will require submission and approval of observer CVs.

*Vessel Strike Avoidance*

Vessel strike avoidance measures will include, but are not limited to, the following, except under circumstances when complying with these measures would put the safety of the vessel or crew at risk:

- All vessel operators and crew must maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;
- All vessels must travel at 10 knots (18.5 km/hr) or less within any designated Dynamic Management Area (DMA) for North Atlantic right whales;
- All vessels greater than or equal to 65 ft (19.8 m) in overall length will comply with 10 knot (18.5 km/hr) or less speed restriction in any Seasonal Management Area (SMA) for North Atlantic right whales per the NOAA ship strike reduction rule (73 FR 60173; October 10, 2008);
- All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;
- All survey vessels will maintain a separation distance of 500 m (1640 ft) or greater from any sighted North Atlantic right whale;
- If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500 m (1,640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 500 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the right whale has moved outside of the vessel's path and beyond 500 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 500 m;
- All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m.

If a vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;

- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean, with the exception of delphinoid cetaceans that voluntarily approach the vessel (*i.e.,* bow ride). Any vessel underway must remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway must reduce vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped; and
- All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped.

Transco will ensure that vessel operators and crew maintain a vigilant watch for marine mammals by slowing down or stopping the vessel to avoid striking marine mammals. Project-specific training will be conducted for all vessel crew prior to the start of the construction activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet.

We have carefully evaluated Transco's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

**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 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.

*Visual Marine Mammal Observations*

Transco will collect sighting data and behavioral responses to pile driving activity for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. PSOs would monitor all clearance zones at all times. PSOs would also monitor Level B harassment zones and would document any marine mammals observed within these zones, to the extent practicable (noting that some distances to these zones are too large to fully observe). Transco would conduct monitoring before, during, and after pile driving and removal, with observers located at the best practicable vantage points.

Transco would implement the following monitoring procedures:

- A minimum of two PSOs will maintain watch at all times when pile driving or removal is underway;
- PSOs would be located at the best possible vantage point(s) to ensure that they are able to observe the entire clearance zones and as much of the Level B harassment zone as possible;
- During all observation periods, PSOs will use binoculars and the naked eye to search continuously for marine mammals;
- If the clearance zones are obscured by fog or poor lighting conditions, pile driving will not be initiated until clearance zones are fully visible. Should such conditions arise while impact driving is underway, the activity would be halted when practicable, as described above; and
- The clearance zones will be monitored for the presence of marine mammals before, during, and after all pile driving activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. PSOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and Transco.

*Data Collection*

We require that observers use standardized data forms. Among other pieces of information, Transco will record detailed information about any implementation of delays or shutdowns, including the distance of animals to the pile and a description of specific actions that ensued and resulting behavior of the animal, if any. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* wind speed, percent cloud 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;
- Type of construction activity (*e.g.,* impact or vibratory driving/removal) when marine mammals are observed.
- Description of implementation of mitigation measures (*e.g.,* delay or shutdown).
- Locations of all marine mammal observations; and
- Other human activity in the area.

Transco would note behavioral observations, to the extent practicable, if an animal has remained in the area during construction activities.

*Reporting*

A draft report would be submitted to NMFS within 90 days of the completion of monitoring for each installation's in-water work window. The report would include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and would also provide descriptions of any behavioral responses to construction activities by marine mammals. The report would detail the monitoring protocol, summarize the data recorded during monitoring including an estimate of the number of marine mammals that may have been harassed during the period of the report, and describe any mitigation actions taken (*i.e.,* delays or shutdowns due to detections of marine mammals, and documentation of when shutdowns were called for but not implemented and why). A final report must be submitted within 30 days following resolution of comments on the draft report.

**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 driving and removal activities associated with the proposed project, as described previously, have the potential to disturb or temporarily displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment (potential injury) or Level B harassment (potential behavioral disturbance) from underwater sounds generated from pile driving and removal. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving and removal is occurring. To avoid repetition, the our analyses apply to all the species listed in Table 1, given that the anticipated effects of the proposed project on different marine mammal species and stocks are expected to be similar in nature.

Impact pile driving has source characteristics (short, sharp pulses with higher peak levels and sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. However, modeling indicates there is limited potential for injury even in the absence of the mitigation measures, with most species predicted to experience no Level A harassment based on modeling results. In addition, the potential for injury is expected to be greatly minimized through implementation of the mitigation measures including soft start and the implementation of clearance zones that would facilitate a delay of pile driving if marine mammals were observed approaching or within areas that could be ensonified above sound levels that could result in auditory injury. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions.

We expect that any exposures above the Level A harassment threshold would be in the form of 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. 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. However, given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions.

Additionally, the numbers of exposures above the Level A harassment authorized are very low for all marine mammal stocks and species: For 9 of 11 stocks, we authorize no takes by Level A harassment; for the remaining two stocks we authorize no more than 12 takes by Level A harassment of a low level that would not be expected to impact reproduction or survival of any individuals. No serious injury or mortality of any marine mammal stocks are anticipated or authorized. Serious injury or mortality as a result of the proposed activities would not be expected even in the absence of the mitigation and monitoring measures.

Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, in this case, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Instances of more severe behavioral harassment are expected to be minimized by mitigation and monitoring measures. 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). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where pile driving is occurring. Therefore, we expect that animals disturbed by project sound would

simply avoid the area during pile driving in favor of other, similar habitats. We expect that any avoidance of the project area by marine mammals would be temporary in nature and that any marine mammals that avoid the project area during construction activities would not be permanently displaced.

Feeding behavior is not likely to be significantly impacted, as prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no areas of notable biological significance for marine mammal feeding known to exist in the project area. In addition, there are no rookeries, mating areas, calving areas or migratory areas known to be biologically important to marine mammals within the proposed project area.

NMFS concludes that exposures to marine mammals due to the proposed project would result in only short-term effects to individuals exposed. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in habitat use, distribution, or foraging success. NMFS does not anticipate the marine mammal takes that would result from the proposed project would impact annual rates of recruitment or survival.

As described above, north Atlantic right, humpback, and minke whales, and gray, harbor and harp seals are experiencing ongoing UMEs. For North Atlantic right whales, as described above, no injury as a result of the proposed project is expected or authorized, and Level B harassment takes of right whales are expected to be in the form of avoidance of the immediate area of construction. In addition, the number of exposures above the Level B harassment threshold are minimal (*i.e.,* 2). As no injury or mortality is expected or authorized, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized takes of right whales would not exacerbate or compound the ongoing UME in any way. For minke whales, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. Even though the PBR value is based on an abundance for U.S. waters that is negatively biased and a small fraction of the true population abundance, annual M/SI does not exceed the calculated PBR value for minke whales. With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains healthy. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland, was delisted. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.* (2015), the West Indies DPS has a substantial population size (*i.e.,* approximately 10,000; Stevick *et al.,* 2003; Smith *et al.,* 1999; Bettridge *et al.,* 2015), and appears to be experiencing consistent growth.

With regard to gray seals, harbor seals and harp seals, although the ongoing UME is under investigation, the UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2018). For gray seals, the population abundance is over 27,000, and abundance is likely increasing in the U.S. Atlantic EEZ and in Canada (Hayes *et al.,* 2018). For harp seals, the current population trend in U.S. waters is unknown, as is PBR (Hayes *et al.,* 2018), however the population abundance is over 7 million seals, suggesting that the UME is unlikely to result in population-level impacts (Hayes *et al.,* 2018).

Authorized takes by Level A harassment for all species are very low (*i.e.,* no more than 12 takes by Level A harassment authorized for any of these species) and as described above, any Level A harassment would be expected to be in the form of slight PTS, *i.e.* minor degradation of hearing capabilities which is not likely to meaningfully affect the ability to forage or communicate with conspecifics. No serious injury or mortality is expected or authorized, and Level B harassment of North Atlantic right, humpback and minke whales and gray, harbor and harp seals will be reduced to the level of least practicable adverse impact through use of mitigation measures. As such, the authorized takes of North Atlantic right, humpback and minke whales and gray, harbor and harp seals would not exacerbate or compound the ongoing UMEs in any way.

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 or serious injury is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals would be temporary behavioral changes due to avoidance of the project area and limited instances of Level A harassment in the form of a slight PTS for two marine mammal stocks;
- Potential instances of exposure above the Level A harassment threshold are expected to be zero for most species and relatively low for others; any PTS incurred is expected to be of a low level;
- Total authorized takes as a percentage of population are low for all species and stocks (*i.e.,* less than 24 percent for one stock and less than 7 percent for the remaining 10 stocks);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the project area during the proposed project to avoid exposure to sounds from the activity;
- Effects on species that serve as prey species for marine mammals from the proposed project are expected to be short-term and are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations;
- There are no known important feeding, breeding, calving or migratory areas in the project area.
- The mitigation measures, including visual and acoustic monitoring, clearance zones, and soft start, are expected to minimize potential impacts to marine mammals.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the 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.

We are authorizing the incidental take of 11 marine mammal stocks. The total amount of taking authorized is less than 24 percent for one of these stocks, and less than 9 percent for all remaining stocks (Table 9), which we consider to be relatively small percentages and we find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed activity (including the 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 all 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.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 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 proposed action qualifies to be categorically excluded from further NEPA review.

**Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is authorizing the incidental take of two species of marine mammals which are listed under the ESA: The North Atlantic right whale and fin whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on August 14, 2019, for the issuance of this IHA. On February 25, 2020, NMFS GARFO determined our issuance of the IHA to Transco was not likely to adversely affect any ESA-listed species or result in the take of any marine mammals in violation of the ESA.

**Authorization**

NMFS has issued an IHA to Transco for conducting construction activities in Raritan Bay for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 11, 2020.

**Donna Wieting,**

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

[FR Doc. 2020–05385 Filed 3–16–20; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Thursday, March 19, 2020.

**PLACE:** CFTC Headquarters, Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- *Final Rule:* Amendment to Regulation 23.161—Compliance Schedule Extension for Initial Margin Requirements for Uncleared Swaps;
- *Proposed Rule:* Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO–PQR;
- *Final Interpretive Guidance:* Retail Commodity Transactions Involving Certain Digital Assets; and
- Other Commission business.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

**SUPPLEMENTARY INFORMATION:** As a precaution due to the coronavirus, *members of the public, including media, will not be able to attend the open meeting in person.* However, the public may listen to a live, audio-only feed via conference call using a domestic toll-free telephone or international toll or toll-free number. A live webcast may also be available in the event the open meeting is conducted in person. More information about the available public observation options may be found on the Commission's website at *https://www.cftc.gov.*

Dated: March 12, 2020.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2020–05577 Filed 3–13–20; 11:15 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[Docket Number DARS–2020–0014; OMB Control Number 0704–0359]**

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement, Contract Financing

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, DoD announces the proposed revision of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through May 31, 2020. DoD proposes that OMB extend its approval for an additional three years.

**DATES:** DoD will consider all comments received by May 18, 2020.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0359, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0359 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting. Please allow 30 days for posting of comments submitted by postal mail.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone 571–372–6106.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing and Related Clauses at 252.232; OMB Control Number 0704–0359.

*Type of Request:* Extension.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Respondents' Obligation:* Required to obtain or retain benefits.

*Respondents:* 1,000.

*Responses per Respondent:* 14.

*Annual Responses:* 14,000.

*Hours per Response:* 1.2 hour.

*Estimated Hours:* 16,800.

*Reporting Frequency:* On occasion.

*Needs and Uses:*

- *DFARS 252.232–7007, Limitation of Government's Obligation.* The data submitted by contractors enables contracting officers to calculate improved financing opportunities that will provide benefit to both industry (prime and subcontractor level) and the taxpayer.
- *DFARS subpart 232.10, Performance-Based Payments, 252.232–7012, Performance Based Payments—Whole Contract Basis, and 252.232–7013, Performance Based Payments—Deliverable-Item Basis.* Contracting officers use the information provided by contractors to create a cash-flow model for use in evaluating alternative financing arrangements. The analysis tool calculates improved financing opportunities that will provide benefit to both industry (prime and subcontractor level) and the taxpayer.

**Summary of Information Collection**

DFARS 252.232–7007 is prescribed for use in solicitations and resultant incrementally-funded fixed-price contracts. Paragraph (c) of the clause requires a written notification from the contractor that: (1) States the estimated date when the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable items; (2) states an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds, or to a mutually agreed upon substitute date; and (3) advises the contracting officer of the estimated amount of additional funds that will be required for the timely performance of the items funded pursuant to the clause, for a subsequent period as may be specified in the allotment schedule, or otherwise agreed to by the parties to the contract.

DFARS subpart 232.10 requires the contracting officer, when considering performance-based payments, to obtain from the contractor a proposed performance-based payments schedule which includes all performance-based payments events, completion criteria and event values along with the expected expenditure profile.

DFARS 252.232–7012 is prescribed for use at DFARS 232.1005–70(a). This clause requires contractors to report the negotiated value of all previously completed performance-based payments; negotiated value of current performance-based payment(s) event(s); cumulative negotiated value of performance-based payment(s) events completed to date; total costs incurred to date; cumulative amount of payments previously requested; and the payment amount requested for the current performance based payment.

DFARS 252.232–7013 is prescribed for use at 232.1005–70(b). This clause requires contractors to report the negotiated value of current performance-based payment(s) event(s); cumulative negotiated value of performance-based payment(s) events completed to date; total costs incurred to date; cumulative amount of payments previously requested; and the payment amount requested for the current performance based payment.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

[FR Doc. 2020–05353 Filed 3–16–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 20–09]**

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of an arms sales notification.

**FOR FURTHER INFORMATION CONTACT:** Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–09 with attached Policy Justification and Sensitivity of Technology.

Dated: March 10, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–P**

**DEFENSE SECURITY COOPERATION AGENCY**
**201 12TH STREET SOUTH, SUITE 101**
**ARLINGTON, VA 22202-5408**

MAR 0 4 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-09 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Poland for defense articles and services estimated to cost $100 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 20-09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Poland

(ii) *Total Estimated Value*:

| | |
|---|---|
| Major Defense Equipment * .. | $ 75 million |
| Other ..... | $ 25 million |
| Total ..... | $100 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

*Major Defense Equipment (MDE):*

One hundred eighty (180) Javelin Missiles

Seventy-nine (79) Javelin Command Launch Units (CLU)

*Non-MDE:*

Also included are Basic Skill Trainers (BST), Missile Simulation Rounds (MSR), Battery Coolant Units (BCU), tool kits, modified 2-level maintenance parts, training, U.S. Government and contractor technical assistance, transportation and other related elements of logistics support.

(iv) *Military Department*: Army (PL-B-UDN)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex.

(viii) *Date Report Delivered to Congress*: March 4, 2020

*As defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Poland—Javelin Missile and Command Launch Unit*

The Government of Poland has requested to buy one hundred eighty (180) Javelin missiles and seventy-nine (79) Javelin Command Launch Units (CLUs). Also included are Basic Skill Trainers (BST), Missile Simulation Rounds (MSR), Battery Coolant Units (BCU), tool kits, modified 2-level maintenance parts, training, U.S. Government and contractor technical assistance, transportation and other related elements of logistics support. The total estimated program cost is $100 million.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a NATO ally and partner nation which is an important force for peace, political stability, and economic progress in Eastern Europe.

This proposed sale of the Javelin system will help Poland build its long-term defense capacity to defend its sovereignty and territorial integrity in order to meet its national defense requirements. Poland will have no difficulty absorbing this system into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon/Lockheed Martin Javelin Joint Venture, Orlando, Florida and Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale. However, the purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20-09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Javelin Weapon System is a medium-range, man-portable, shoulder-launched, fire-and-forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft, and watercraft. The system weighs 49.5 pounds and has a maximum range in excess of 2,500 meters. The system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Command Launch Unit (CLU) and a round contained in a disposable launch tube assembly. The CLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The CLU's thermal sight is a Forward Looking Infrared (FLIR) sensor.

3. The Javelin's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately relocate or take cover. The missile is autonomously guided to the target which allows the gunner the ability to reload and engage another target after firing a missile. The missile has a tandem warhead that is effective against armor threats.

4. The Javelin Missile System hardware and the documentation are UNCLASSIFIED. The missile software which resides in the CLU is CLASSIFIED.

5. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Poland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed on this transmittal are authorized for release and export to the Government of Poland.

[FR Doc. 2020–05389 Filed 3–16–20; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 19–71]**

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of an arms sales notification.

**FOR FURTHER INFORMATION CONTACT:** Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–71 with attached Policy Justification and Sensitivity of Technology.

Dated: March 10, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

FEB 2 5 2020

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-71 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Tunisia for defense articles and services estimated to cost $325.8 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19-71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Tunisia

(ii) *Total Estimated Value*:

| | |
|---|---|
| Major Defense Equipment * .. | $123.2 million |
| Other ..... | $202.6 million |
| TOTAL ..... | $325.8 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

*Major Defense Equipment (MDE):*

Three hundred twelve (312) MAU-169 Computer Control Groups (CCG)

Three hundred twelve (312) MXU-1006/B Air Foil Groups (AFG)

Four hundred sixty-eight (468) MK81 250 LB GP Bombs

Eighteen (18) BDU-50s (MK-82 Filled Inert)

Sixty-six (66) MXU-650 C/B Air Foil Groups (AFG), GBU-12

Sixty (60) Guidance Section, Guided Bombs, MAU-209, GBU-10,12,16

Forty-eight (48) MK-82 5001b Bombs

Five hundred sixteen (516) FMU-152 A/B Fuzes

Eighteen (18) MAU-169H(D-2)/B Computer Control Groups

Three thousand two hundred ninety (3290) Advanced Precision Kill Weapon Systems (APKWS)

*Non-Major Defense Equipment (MDE):*

Also included are four (4) AT-6C Wolverine Light Attack Aircraft; two (2) Pratt & Whitney PT6A-68D 1600 SHP engines (spares); six (6) L-3 WESCAM MX-15D Multi-Spectral Targeting System; six (6) Machine Gun Caliber .50; Cartridge Actuated Device/Propellant Actuated Device (CAD/PAD); High Explosive Warhead; bomb components, repair and return of weapons, weapons training equipment, practice bombs, TTU-595 Test Set and spares, fin assemblies, rocket motors, training aids/devices/spare parts, aircraft spare parts, support equipment, clothing and textiles, publications and technical documentation, travel expenses, medical services, construction, aircraft ferry support, technical and logistical support services, major modifications/class IV support, personnel training and training equipment, U.S. Government and contractor program support, and other related elements of logistics and program support.

(iv) *Military Department*: Air Force (TU-D-SAC)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex.

(viii) *Date Report Delivered to Congress*: February 25, 2020

* As defined in Section 47(6) of the Arms Export Control Act

*POLICY JUSTIFICATION*

*Tunisia—AT-6 Light Attack Aircraft*

The Government of Tunisia has requested to buy four (4) AT-6C Wolverine Light Attack Aircraft with supporting equipment, to include: three hundred twelve (312) MAU-169 Computer Control Groups (CCG); three hundred twelve (312) MXU-1006/B Air Foil Groups (AFG); four hundred sixty-eight (468) MK81 250 LB GP bombs; eighteen (18) BDU-50s (MK-82 Filled Inert); sixty-six (66) MXU-650 C/B Air Foil Groups (AFG), GBU-12; sixty (60) Guidance Section, guided bombs, MAU-209, GBU-10,12,16; forty-eight (48) MK-82 500lb bombs; five hundred sixteen (516) FMU-152 A/B fuzes; eighteen (18) MAU-169H(D-2)/B Computer Control Groups; and three thousand two hundred ninety (3,290) Advanced Precision Kill Weapon Systems (APKWS); two (2) Pratt & Whitney PT6A-68D 1600 SHP engines (spares); six (6) L-3 WESCAM MX-15D Multi-Spectral Targeting System; six (6) Machine Gun Caliber .50; Cartridge Actuated Device/Propellant Actuated Device (CAD/PAD); High Explosive Warhead; bomb components, repair and return of weapons, weapons training equipment, practice bombs, TTU-595 Test Set and spares, fin assemblies, rocket motors, training aids/devices/spare parts, aircraft spare parts, support equipment, clothing and textiles, publications and technical documentation, travel expenses, medical services, construction, aircraft ferry support, technical and logistical support services, major modifications/class IV support, personnel training and training equipment, U.S. Government and contractor program support, and other related elements of logistics and program support. The estimated value is $325.8 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the defense capabilities and capacity of a major non-NATO ally, which is an important force for political stability and economic progress in North Africa. This potential sale will provide additional opportunities for bilateral engagements and further strengthen the bilateral relationship between the United States and Tunisia.

The proposed sale will improve Tunisia's ability to meet current and future threats by increasing their capability and capacity to counter-terrorism and other violent extremist organization threats. The AT-6 platform will bolster their capability to respond to and engage threats in multiple areas across the country. Additionally, the procurement of the AT-6 aircraft strengthens interoperability between Tunisia, regional allies, and the United States. Tunisia will have no difficulty absorbing this aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Textron Aviation Defense LLC, Wichita, Kansas. There are no known offset agreements proposed with this potential sale. However, the purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require the assignment of two (2) U.S. contractor logistics representatives to Tunisia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The AT-6 Wolverine is a Beechcraft light attack, armed reconnaissance and irregular warfare and counterinsurgency mission aircraft. With a single engine PT6A–68D Pratt & Whitney engine and Lockheed Martin A-10C mission computer and plug and-play weapons management system with Seek Eagle certification, the AT-6 Wolverine can fire laser-guided rockets and deliver general purpose and inertially-aided munitions.

2. GBU–12 is a 5001b Mk-82 General Purpose (GP) bomb body fitted with the MXU-650 AFG, and MAU-209C/B or MAU-168L/B Computer Control Group (CCG) to guide to its laser designated target. The GBU–12 is a maneuverable, free-fall Laser Guided Bomb (LGB) that guides to a spot of laser energy reflected off of the target. Laser designation for the LGB can be provided by a variety of laser target markers or designators.

3. GBU–58 is a 2501b Mk-81 GP bomb body fitted with the MXU-1006 AFG, and MAU-209C/B or MAU-168L/B CCG to guide to its laser designated target. The GBU–58 is a maneuverable, free-fall LGB that guides to a spot of laser energy reflected from the target. Laser designation for the LGB can be provided by a variety of laser target markers or designators.

4. Mk-82 General Purpose (GP) bomb is a 500 pound, free-fall, unguided, low-drag weapon usually equipped with the mechanical M904 (nose) and M905 (tail) fuzes or the radar-proximity FMU-113 air-burst fuze. The Mk-82 is designed for soft, fragment sensitive targets and is not intended for hard targets or penetrations. The explosive filling is usually tritonal, though other compositions have sometimes been used.

5. BDU-50 (Mk-82 Inert) GP bomb is a 500 pound, free-fall, unguided, low-drag training weapon. There are no explosive elements with this bomb; it does not have a fuze and will not detonate when it hits the ground. It is

used from flight training to give the pilot the insight into aircraft handling characteristics with the additional weight on the wing.

6. The Joint Programmable Fuze (JPF) FMU-152 is a multi-delay, multi-arm and proximity sensor compatible with general purpose blast, frag and hardened-target penetrator weapons. The JPF settings are cockpit selectable in flight when used with JDAM weapons.

7. Advanced Precision Kill Weapon System (APKWS) II All-Up-Round (AUR) is an air-to-ground weapon that consists of an APKWS II Guidance Section (GS), legacy 2.75 inch MK66 Mod 4 rocket motor, and legacy MK152 and MK435/436 warhead/fuze. APKWS II uses a semi-active laser seeker. The GS is installed between the rocket motor and warhead to create a guided rocket. The APKWS II may be procured as an independent component to be mated to appropriate 2.75-inch warheads/fuzes and rocket motors purchased separately, or may be purchased as an AUR.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

9. A determination has been made that the recipient country can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

10. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Tunisia.

[FR Doc. 2020–05398 Filed 3–16–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 19–75]**

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of an arms sales notification.

**FOR FURTHER INFORMATION CONTACT:** Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–75 with attached Policy Justification and Sensitivity of Technology.

Dated: March 10, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–P**

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

FEB 2 5 2020

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-75 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of the Netherlands for defense articles and services estimated to cost $85 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 19–75

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of the Netherlands

(ii) *Total Estimated Value*:

| | |
|---|---|
| Major Defense Equipment * .. | $75 million |
| Other ..... | $10 million |
| Total ..... | $85 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

*Major Defense Equipment (MDE):*

Sixteen (16) MK–48 Mod 7 Advanced Technology (AT) Torpedo Conversion Kits

*Non-MDE:*

Also included are spare parts, containers, associated hardware, torpedo handling equipment, and cables; U.S. Government and contractor engineering, technical, and

logistics support services; and other related elements of logistics and program support.

(iv) *Military Department*: Navy (NE–P–LHC A5)

(v) *Prior Related Cases, if any*: NE–P–LHC

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Annex Attached

(viii) *Date Report Delivered to Congress*: February 25, 2020

*As defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Netherlands—MK–48 Torpedo Conversion Kits*

The Government of the Netherlands has requested to buy sixteen (16) MK–48 Mod 7 Advanced Technology (AT) torpedo conversion kits. Also included are spare parts, containers, associated hardware, torpedo handling equipment, and cables; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The total estimated program cost is $85 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve security of a NATO ally which is an important force for political stability and economic progress in Northern Europe.

The Netherlands desires to upgrade additional MK 48 Mod 4 torpedoes to the MK 48 Mod 7 AT model. They intend to use the MK 48 Mod 7 AT torpedo on their Walrus Class submarines. The Netherlands will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment will not alter the basic military balance in the region.

The prime contractor will be Raytheon Company, Portsmouth, RI. The Netherlands may require offset agreements in connection with this potential sale. Any offset agreement will be defined in negotiations between the Purchaser and the prime contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands. Travel of U.S. Government or contractor representatives to the Netherlands on a temporary basis for program technical support and management oversight will be required.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19–75

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Mod 7 configuration is the United States Navy's most capable submarine launched torpedo. It has a new sonar receiver that has a broader bandwidth capability than previous versions, and also employs a new tactical processor that has increased memory and throughput. The Mod 7AT configuration has the same guidance and control system and the same software as the Mod 7. However, it employs the Mod 4M afterbody which results in higher radiated noise.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Netherlands can provide substantially the same degree of protection for the technology being released as the U.S. Government. This proposed sustainment program is necessary to the furtherance of the U.S. foreign policy and national security objectives as outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Netherlands.

[FR Doc. 2020–05381 Filed 3–16–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2020–OS–0031]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Under Secretary of Defense (Comptroller), Department of Defense (DoD).

**ACTION:** Notice of a new System of Records.

**SUMMARY:** The Office of the Under Secretary of Defense (Comptroller) proposes to add a System of Records titled, ''Defense Repository for Common Enterprise Data (DRCED),'' DUSDC 01. This system will automate financial and business transactions, perform cost-management analysis, produce oversight and audit reports, and provide critical data linking to improve performance of mission objectives. Congress mandated the creation of this system through the National Defense Authorization Act of 2018 and then codified it by statute as ''Defense Business Systems: Business Process Reengineering; Enterprise Architecture; Management.'' The DRCED's purpose is to improve the Department's defense business enterprise by synchronizing and normalizing data for affordability, performance, and mission readiness. To achieve this, the DRCED will optimize technology to provide an enterprise solution for integrating and analyzing targeted data from existing Department systems to develop timely, actionable, and insightful conclusions in support of national strategies. Also, DRCED is capable of creating predictive analytic models based upon specific data streams to equip decision makers with critical data necessary for execution of fiscal and operational requirements.

**DATES:** This new System of Records is effective upon publication; however, comments on the Routine Uses will be accepted on or before April 16, 2020. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia B. Stanley, Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09,

Alexandria, VA 22350–1700, or by phone at (703) 571–0070.

**SUPPLEMENTARY INFORMATION:** DRCED is a single authoritative repository for DoD Common Enterprise Data (CED) to provide decision-makers greater insight into financial auditability, business processes, and operational combat/mission readiness. CED is defined as automatically accessible data from business operations or management records provided in a usable format to authorized DoD personnel or DoD components. DRCED will extract records from relevant Department systems, synchronize and normalize CED from those systems to facilitate and streamline enterprise-wide analysis and management of business processes. DRCED capabilities include: robust auditing to recognize fraudulent budget, programming, and fiscal transactions; linking of data from multiple systems (such as personnel, financial, and medical systems) to specific operations and missions for visibility and traceability of expenditures and resource allocation; producing reports for individual transaction processing for each stage of the budgetary life cycle; assessment tools for decision-makers charged with overseeing costs for specific missions or functions (*e.g.,* equipment, training, personnel); and applying predictive analysis to identify common operational factors for readiness and unit deploy ability.

The DoD notices for Systems of Records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

The proposed systems reports, as required by of the Privacy Act, as amended, were submitted on January 24, 2020, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: March 12, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**SYSTEM NAME AND NUMBER:**

Defense Repository for Common Enterprise Data (DRCED), DUSDC 01.

**SECURITY CLASSIFICATION:**

Unclassified and Classified.

**SYSTEM LOCATION:**

Marine Corps Information Technology Center (MCITC), 2306 East Bannister Road, Kansas City, MO 64131–3088. Amazon Web Services (AWS), 12900 Worldgate Drive, Suite 800, Herndon, VA 20170–6040.

**SYSTEM MANAGER(S):**

Director, Business Integration Office, OUSD Comptroller, 1100 Defense Pentagon, Washington, DC 20301–1100; email: *osd.pentagon.ousd-c.mbx.audit-helpdesk@mail.mil;* Phone: (703) 614–8575.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2222, Defense Business Systems: Business Process Reengineering; Enterprise Architecture; Management; 31 U.S.C. 902, Authority and Functions of Agency Chief Financial Officers, as amended; 31 U.S.C. 6101, Digital Accountability and Transparency Act of 2006, as amended in 2014; 31 U.S.C. 3512(b), Executive Agency Accounting and Other Financial Management Reports and Plans; 10 U.S.C. 117, Readiness Reporting System; DoD Directive 7045.14, The Planning, Programming, Budgeting, and Execution (PPBE) Process; DoD Instruction 8320.02, Data Sharing in a Net-Centric Department of Defense; and E.O. 9397 (SSN), as amended.

**PURPOSE(S) OF THE SYSTEM:**

This system establishes a single authoritative repository for DoD CED providing decision-makers an integrated system for data processing and the production of reports for auditability, business operations, cost performance, and combat/mission readiness. As a single system repository of department-wide CED, the DRCED will maintain information retrieved from several systems of record within the Department. As a shared data environment DRCED will make information more easily accessible, standardized, efficiently processed, and useful for customers across the DoD.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All armed services personnel, including National Guard and Reserve components; former members, and retirees of the armed services; dependent family members of armed services members; DoD ''affiliated'' individuals (*e.g.* non-appropriated fund employees, Red Cross volunteers, United Services Organization (USO) staff, Congressional staff members, etc.), presidential appointees, civilian employees, contractors, or individuals (and their surviving beneficiaries) accorded benefits, rights, privileges, or immunities associated with DoD as provided by U.S. law.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*Personal Information:* Name; DoD ID number; Social Security Number (SSN); address; email address(es); date of birth; gender; branch of service; citizenship; Defense Enrollment Eligibility Reporting System benefit number; sponsorship and beneficiary information; race and ethnic origin;

*Employment Information:* mployment status; duty position; leave balances and history; work schedules; individual personnel records; time and attendance records; retirement records, sponsor duty location, unit of assignment; occupation; rank; skill specialty; security clearance information.

*Personal Financial Information:* Pay, wage, earnings information; separation information; financial benefit records; income tax withholding records; accounting records.

*Medical Readiness and Deployment Information:* Inpatient and outpatient medical records; pharmacy records; immunization records; Medical and Physical Evaluation Board records; neuropsychological functioning and cognitive testing data; periodic and deployment-related health assessments.

**RECORD SOURCE CATEGORIES:**

Individuals; all DoD databases flowing into or accessed through the following integrated data systems, environments, applications, and tools: Defense Finance and Accounting Services financial business feeder systems, Procurement Integrated Enterprise Environment, Defense Manpower Data Center including the Defense Eligibility Enrollment System, Defense Readiness Reporting System (DRRS) enterprise (including DRRS-Strategic and DRRS-Army Database), Defense Medical Logistics—Enterprise Solution, Digital Training Management System; Defense Occupational and Environmental Health Readiness System, Global Force Management Data Initiative, Medical Operations Data System, Force Risk Reduction, Medical Readiness Reporting System, the Medical Data Repository, Army National Guard Human/Personnel, Resource, and Manpower, and commensurate data from National Guard Bureau systems. The following standalone systems and datasets: Drug and Alcohol Management Information System; Physical Disability Case Processing System; Personnel Tempo; TRANSCOM Patient Regulating Command & Control Evaluation System,

Substance Abuse Program, DoD Suicide Event Report System, Unit Risk Inventory, Global Assessment Tool, Defense Organizational Climate Survey: Military, Learning Management System, Total Human Resource Managers Information System, Navy Manpower Program and Budget System, and Army Training Requirements and Resources System.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this System of Records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the System of Records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are stored on electronic media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records will be typically retrieved by individual's full name, key words and/or DoD ID number.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Permanent. Cut off when canceled or superseded. Transfer to NARA 25 years after cutoff.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Multifactor log-in authentication including CAC authentication and password; SIPR token as required. Access controls enforce need-to-know policies so only authorized users have access to PII. Additionally, security audit and accountability policies and procedures directly support privacy and accountability procedures. Network encryption protects data transmitted over the network while disk encryption secures the disks storing data. Key management services safeguards encryption keys. Sensitive data is identified and masked as practicable. All individuals granted access to this System of Records must complete requisite training to include Information Assurance and Privacy Act training. Sensitive data will be identified, properly marked with access by only those with a need to know, and safeguarded as appropriate. Physical access to servers are controlled at building access points utilizing detection systems other electronic alert systems. Electronic intrusion detection systems are installed within the facilities to monitor, detect, and automatically alert appropriate personnel of security incidents. Access to server rooms are secured with devices that require each individual to provide multi-factor authentication before granting entry or exit.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to their records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed written requests should contain the name and number of this System of Records Notice along with the full name, identifier (*i.e.,* DoD ID Number or Defense Benefits Number), date of birth, current address, and telephone number of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**CONTESTING RECORD PROCEDURES:**

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Business Integration Office, OUSD Comptroller, 1100 Defense Pentagon, Washington, DC 20301–1100; email: *osd.pentagon.ousd-c.mbx.audit-helpdesk@mail.mil;* Phone: (703) 614–8575. Signed written requests should contain the full name, identifier (*i.e.* DoD ID Number or DoD Benefits Number), date of birth, and current address and telephone number of the individual. In addition, the requester must provide either a notarized

statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

[FR Doc. 2020–05504 Filed 3–16–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 20–12]**

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of an arms sales notification.

**FOR FURTHER INFORMATION CONTACT:** Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–12 with attached Policy Justification and Sensitivity of Technology.

Dated: March 10, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–P**

**DEFENSE SECURITY COOPERATION AGENCY**
**201 12TH STREET SOUTH, SUITE 101**
**ARLINGTON, VA 22202-5408**

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAR 0 3 2020

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-12 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Israel for defense articles and services estimated to cost $2.40 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

**BILLING CODE 5001–06–C**

Transmittal No. 20-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Israel

(ii) *Total Estimated Value*:

| | |
|---|---|
| Major Defense Equipment * .. | $2.25 billion |
| Other ..... | $0.15 billion |
| Total ..... | $2.40 billion |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

*Major Defense Equipment (MDE):*

Up to eight (8) KC-46 Aircraft
Up to seventeen (17) PW4062 Turbofan Engines (16 installed, 1 spare)
Up to eighteen (18) MAGR 2K-GPS SAASM Receivers (16 installed, 2 spares)

*Non-MDE:*

Also included are AN/ARC-210 U/VHF radios, APX-119 Identification Friend or Foe transponders, initial spares and repair parts, consumables, support equipment, technical data,

engineering change proposals, publications, Field Service Representatives (FSRs), repair and return, depot maintenance, training and training equipment, contractor technical and logistics personnel services, U.S. Government and contractor representative support, Group A and B installation for subsystems, flight test and certification, other related elements of logistics support and training.

(iv) *Military Department*: Air Force (IS-D-YAG)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: March 3, 2020

*As defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Israel—KC–46A Aerial Refueling Aircraft*

The Government of Israel has requested to buy up to eight (8) KC-46 aircraft; up to seventeen (17) PW4062 turbofan engines (16 installed, 1 spare); and up to eighteen (18) MAGR 2K-GPS SAASM receivers (16 installed, 2 spares). Also included are AN/ARC-210 U/VHF radios, APX-119 Identification Friend or Foe transponders, initial spares and repair parts, consumables, support equipment, technical data, engineering change proposals, publications, Field Service Representatives (FSRs), repair and return, depot maintenance, training and training equipment, contractor technical and logistics personnel services, U.S. Government and contractor representative support, Group A and B installation for subsystems, flight test and certification, other related elements of logistics support and training. The total estimated program cost is $2.4 billion.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale further supports the foreign policy and national security of the United States by allowing Israel to provide a redundant capability to U.S. assets within the region, potentially freeing U.S. assets for use elsewhere during times of war. Aerial refueling and strategic airlift are consistently cited as significant shortfalls for our allies. In addition, the sale improves Israel's national security posture as a key U.S. ally. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed equipment and support will not alter the basic military balance in the region.

The principal contractors will be Boeing Corporation, Everett, WA, for the aircraft; and Raytheon Company, Waltham, MA, for the MAGR 2K. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. field service/contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Boeing KC-46 is an aerial refueling aircraft with two (2) Pratt & Whitney Model 4062 (PW4062) Turbofan engines. The KC-46 evolved from the Boeing 767-200ER passenger aircraft and the 767-2C provision freighter. Refueling systems and military avionics have been added to the aircraft.

2. The Miniature Airborne Global Positioning System Receiver 2000 (MAGR 2K) with Selective Availability Anti-Spoofing Module (SAASM) design is a GPS Receiver Applications Module based open system architecture that is modular in design and incorporates modern electronics. The MAGR 2K is a form, fit, and function backward compatible replacement of the MAGR, and provides enhancements including improved acquisition and GPS solution performance, all-in-view GPS satellite tracking and GPS integrity.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Israel.

[FR Doc. 2020–05387 Filed 3–16–20; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 20–03]**

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of an arms sales notification.

**FOR FURTHER INFORMATION CONTACT:** Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–03 with attached Policy Justification and Sensitivity of Technology.

Dated: March 10, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DEFENSE SECURITY COOPERATION AGENCY**
**201 12TH STREET SOUTH, SUITE 101**
**ARLINGTON, VA 22202-5408**

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

MAR 0 3 2020

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-03 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Morocco for defense articles and services estimated to cost $239.35 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

**BILLING CODE 5001–06–C**

Transmittal No. 20-03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Kingdom of Morocco

(ii) *Total Estimated Value*:

| | |
|---|---|
| Major Defense Equipment * | $211.18 million |
| Other | $ 28.17 million |
| TOTAL | $239.35 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

*Major Defense Equipment (MDE):*

Twenty five (25) M88A2 Heavy Equipment Recovery Combat Utility Lift and Evacuation System (HERCULES) Vehicles and/or M88A1 Long Supply HERCULES Refurbished Vehicles

Twenty-five (25) M2 .50 Caliber Machine Guns

*Non-MDE:*

Also included are twenty five (25) export Single Channel Ground and Airborne Radio System (SINCGARS); twenty five (25) AN/PSN-13A Defense Advanced Global Positioning System (GPS) Receiver (DAGR) with Selective-Availability/Anti-Spoofing Module (SAASM); thirty (30) AN/VAS-5B Driver Vision Enhancer (DVE) kits; twenty five (25) M239 or M250 smoke grenade launchers; one thousand eight hundred (1,800) M76 (G826) or L8A1/L8A3 (G815) smoke grenade rounds; spare

parts; support equipment; depot level support; Government-Furnished Equipment (GFE); repair parts; communication support equipment; communication equipment integration; tools and test equipment; training; training simulators; repair and return program; U.S. Government and contractor engineering, technical, and logistics support services; Technical Assistance Field Team (TAFT); and other related elements of logistics and program support. Additionally, the following recommended basic load ammunition may be included upon request from customer: Twenty five thousand (25,000) A576 cartridges, .50 caliber linked 4 API/API-T F/M2; three hundred (300) G815 - grenade, smoke screening L8A1/A3; two thousand five hundred (2,500) A541 - 50 armor piercing incendiary, tracer M20 F/M2; ninety-one thousand eight hundred (91,800) A557 - cartridge, .50 caliber 4 ball/1 tracer linked M33 F/M2; fifty four thousand (54,000) A598 - cartridge, .50 caliber blank F/M2; other technical assistance and support equipment; and other related elements of logistics and program support.

(iv) *Military Department*: Army (MO-B-UTS)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex.

(viii) *Date Report Delivered to Congress*: March 3, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Morocco—M88A2 Heavy Equipment Recovery Combat Utility Lift and Evacuation System (HERCULES), Support, and Equipment*

The Government of Morocco has requested to buy twenty five (25) M88A2 Heavy Equipment Recovery Combat Utility Lift and Evacuation System (HERCULES) vehicles and/or M88A1 long supply HERCULES refurbished vehicles; and twenty-five (25) M2 .50 caliber machine guns. Also included are twenty five (25) export Single Channel Ground and Airborne Radio System (SINCGARS); twenty five (25) AN/PSN-13A Defense Advanced Global Positioning System (GPS) Receiver (DAGR) with Selective-Availability/Anti-Spoofing Module (SAASM); thirty (30) AN/VAS-5B Driver Vision Enhancer (DVE) kits; twenty five (25) M239 or M250 smoke grenade launchers; one thousand eight hundred (1,800) M76 (G826) or L8A1/L8A3 (G815) smoke grenade rounds; spare parts; support equipment; depot level support; Government-Furnished Equipment (GFE); repair parts; communication support equipment; communication equipment integration; tools and test equipment; training; training simulators; repair and return program; U.S. Government and contractor engineering, technical, and logistics support services; Technical Assistance Field Team (TAFT); and other related elements of logistics and program support. Additionally, the following recommended basic load ammunition may be included upon request from customer: twenty five thousand (25,000) A576 cartridges, .50 caliber linked 4 API/API-T F/M2; three hundred (300) G815 - grenade, smoke screening L8A1/A3; two thousand five hundred (2,500) A541 - 50 armor piercing incendiary, tracer M20 F/M2; ninety-one thousand eight hundred (91,800) A557 - cartridge, .50 caliber 4 ball/1 tracer linked M33 F/M2; fifty four thousand (54,000) A598 - cartridge, .50 caliber blank F/M2; other technical assistance and support equipment; and other related elements of logistics and program support. The total estimated cost is $239.35 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally that continues to be an important force for political stability and economic progress in North Africa.

The proposed sale will improve Morocco's capability to meet current and future combat vehicle recovery requirements. Morocco will use the enhanced capability to enable armored forces training to strengthen its homeland defense and deter regional threats. Morocco intends to use these defense articles and services to modernize its armed forces by updating their combat vehicle recovery capability in pace with their armored unit upgrades. Morocco will have no difficulty absorbing these vehicles into its armed forces.

The proposed sale of this equipment and services will not alter the basic military balance in the region.

The principal contractor will be BAE, York, Pennsylvania. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this sale will require the assignment of approximately 30 U.S. Government or contractor representatives to travel to Morocco for equipment deprocessing/fielding, system checkout and new equipment training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20-03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The M88A2 Improved Recovery Vehicle HERCULES (Heavy Equipment Recovery Combat Utility Lift and Evacuation System) recovers tanks mired to different depths, removes and replaces tank turrets and power packs, and uprights overturned heavy combat vehicles. The main winch on the M88A2 is capable of a 70-ton, single-line recovery, allowing the HERCULES to provide recovery of the 70-ton M1A2 Abrams tanks. The highest level of information that could be transferred with the sale of HERCULES is UNCLASSIFIED.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Morocco can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Morocco.

[FR Doc. 2020–05468 Filed 3–16–20; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2020–SCC–0010]**

## Statewide Longitudinal Data System (SLDS) Survey 2020–2022; ED–2020–SCC–0010; Correction

**AGENCY:** National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Correction notice.

**SUMMARY:** On March 6, 2020, the U.S. Department of Education published a

30-day comment period notice in the **Federal Register** with FR DOC# 2020–04568 seeking public comment for an information collection entitled, ''Statewide Longitudinal Data System (SLDS) Survey 2020–2022''. The comment period ends on April 17, 2020 instead of April 6, 2020, and interested persons are invited to submit comments on or before April 17, 2020.

The PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: March 12, 2020.

**Kathy Axt,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.*

[FR Doc. 2020–05494 Filed 3–16–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2019–ICCD–0160]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of District and School Uses of Federal Education Funds

**AGENCY:** Institute of Education Sciences (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before April 16, 2020.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0160. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Stephanie Stullich, 202–245–6468.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Study of District and School Uses of Federal Education Funds.

*OMB Control Number:* 1850–NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 306.

*Total Estimated Number of Annual Burden Hours:* 306.

*Abstract:* The Study of District and School Uses of Federal Education Funds will examine targeting and resource allocation for five major federal education programs: Part A of Titles I, II, III, and IV of the Elementary and Secondary Education Act (ESEA)—including school improvement grants provided under Section 1003 of Title I, Part A—as well as Title I, Part B of the Individuals with Disabilities Education Act (IDEA). The study will collect detailed fiscal data from a nationally representative sample of 400 school districts, including budgets, plans, expenditure data, and personnel and payroll data. In addition, the study will collect data on allocations to districts and schools to examine how the distribution of funds varies in relation to program goals and student needs; survey district and school officials to explore such issues as the types of services and resources that are provided through the federal funds, coordination across programs, and use of flexibility; conduct interviews in nine site visits to districts to obtain more in-depth data; and analyze fiscal data.

Dated: March 12, 2020.

**Kathy Axt,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.*

[FR Doc. 2020–05475 Filed 3–16–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 7189–014]**

### Green Lake Water Power Company; Green Lake Hydroelectric Project; Notice of Dispute Resolution Panel Meeting and Technical Conference

On March 9, 2020, Commission staff, in response to the filing of a notice of study dispute by the U.S. National Marine Fisheries Service (NMFS) on February 25, 2020, convened a single three-person Dispute Resolution Panel (Panel) pursuant to 18 CFR 5.14(d).

The Panel will hold a technical conference, via conference call, at the time identified below. The technical conference will address the study dispute regarding an assessment of the feasibility of various fish passage options for Atlantic salmon and alewife at the Green Lake Project, as requested by NMFS in its study request filed on July 26, 2019.

The purpose of the technical session is for the disputing agency, applicant, and Commission to provide the Panel with additional information necessary to evaluate the disputed study. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate in the conference call as observers. The Panel may also request information or clarification on written

submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific study or information in dispute and will focus on the applicability of the study or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panel may, at its discretion, limit the speaking time for each participant.

For more information, please contact Jody Callihan, the Dispute Resolution Panel Chair, at *jody.callihan@ferc.gov* or 202–502–8278.

**Technical Conference Call**

Date: Monday, March 30, 2020
Time: 10:00 a.m.–12:00 p.m. (EST)

**Conference Call-in Information**

WebEx
Call-in number: 202–502–8001
Meeting ID number: 991839900

Dated: March 11, 2020..

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05462 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC20–11–000]**

### Commission Information Collection Activities; Comment Request for Generic Clearance for the Collection of Qualitative Feedback on Commission Service Delivery

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–153, ''Generic Clearance for the Collection of Qualitative Feedback on Commission Service Delivery''.

**DATES:** Comments on the collection of information are due May 18, 2020.

**ADDRESSES:** You may submit comments (identified by Docket No. IC20–11–000) by either of the following methods:

- e*Filing 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:* FERC–153, Generic Clearance for the Collection of Qualitative Feedback on Commission Service Delivery.

*OMB Control No.:* 1902–0293.

*Type of Request:* Generic information collection.

*Abstract:* This information collection provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, we mean data that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. This collection will allow for ongoing, collaborative and actionable communications between FERC and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Commission's services will be unavailable.

The Commission will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low burden for respondents (based on considerations of total burden hours, total number of respondents, or burden hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- The collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program soon;
- Personal identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Commission (if released, the Commission must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study.

As a general matter, this information collection will not result in any new system of records containing privacy information and will not ask questions

of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection is subject to the PRA. The Commission generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA 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 which does not display a valid OMB Control Number. See 5 CFR 1320. OMB authorization for an information collection cannot be for more than three years without renewal.

*Type of Respondents/Affected Public:* Individuals and households; Businesses or other for-profit and not-for-profit organizations; State, Local, or Tribal government.

*Estimate of Annual Burden:* [1] The Commission estimates the annual public reporting burden and cost for the information collection as:

FERC–153, ESTIMATED ANNUAL BURDEN FOR GENERIC CLEARANCE

| | Number of respondents | Number of responses per respondent | Total number of responses | Average burden minutes per response | Total burden hours |
|---|---|---|---|---|---|
| | (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) |
| Generic Clearance ..... | 15,000 | 1 | 15,000 | 6 minutes ..... | [2] 1,500 hours. |

*Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 10, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05391 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR20–8–000]**

### Explorer Pipeline Company; Notice of Petition for Declaratory Order

Take notice that on February 26, 2020, 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), Explorer Pipeline Company (Explorer), filed a petition for declaratory order requesting that the Commission approve certain terms and conditions of service related to a proposed new transportation service from the U.S. Gulf Coast receipt points on Explorer's system to a new delivery point on Explorer's system in Melissa, Texas, 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 April 1, 2020.

Dated: March 11, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05464 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR20–9–000]**

### Apex Oil Company, Inc. FutureFuel Chemical Company v. Colonial Pipeline Company; Notice of Complaint

Take notice that on March 9, 2020, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission's (Commission) 18 CFR 385.206 (2019), Part 343 of the Commission's Rules and Regulations, 18 CFR 343, *et seq.* (2019) and sections 1(5), 6, 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. 1(5), 6, 8, 9, 13, 15, and 16 and section 1803 of the Energy Policy Act of 1992, Apex Oil Company, Inc. and FutureFuel Chemical Company, (jointly Complainants) filed a formal complaint against Colonial Pipeline Company (Colonial or Respondent), challenging the just and reasonableness of (1) Colonial's cost-based transportation rates in FERC Tariff No.

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[2] 1,500 hours = 90,000 minutes.

99.56.0 and all predecessor tariffs; (2) Colonial's market-based rate authority and rates charged pursuant to that authority; and (3) Colonial's charges relating to product loss allocation and transmix, all as more fully explained in the complaint.

Complainants certifies that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission 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 electronic 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 April 8, 2020.

Dated: March 11, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05461 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 15019–000]**

### Paddy Hill Holdings, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

March 11, 2020.

On December 13, 2019, Paddy Hill Holdings, 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 Brownville Hydroelectric Project to be located on the Black River in Jefferson County, New York. 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 impoundment with a surface area of 19 acres and a storage capacity of 500 acre-feet at a normal pool level of 284 feet mean sea level; (2) a new 178-foot-long, 22-foot-high concrete gravity dam with an ogee-crest spillway and 2 feet of adjustable crest gates or flashboards; (3) a new 10-foot-long, 8-foot-wide fishway; (4) two turbine-generator units with a total rated capacity of 9 megawatts; (5) a new 90-foot-long, 60-foot-wide, 45-foot-high powerhouse; (6) a new 70-foot-wide tailrace with a new 700-foot-long training wall; (7) a new 200-foot-long, 4.16-kilovolt underground transmission line connecting the new generating units to an existing National Grid substation; and (8) appurtenant facilities. The proposed project would have an annual generation of 43,000 megawatt-hours.

*Applicant Contact:* Stuart Brown, Paddy Hill Holdings, LLC, 800 Starbuck Avenue, Watertown, NY 13601; phone: 315–681–6381.

*FERC Contact:* Woohee Choi; phone: (202) 502–6336.

*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–15019–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15019) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05463 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

*Agency Holding Meeting:* Federal Energy Regulatory Commission.

*Date and Time:* March 19, 2020, 10:00 a.m.

*Place:* Room 2C, 888 First Street NE, Washington, DC 20426, Open to the public via Webcast only.[1]

*Status:* Open.

*Matters to be Considered:* Agenda, * NOTE—Items listed on the agenda may be deleted without further notice.

*Contact Person for More Information:* Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

[1] A free webcast of this event is available through *www.ferc.gov.* Anyone may view this event via the internet by navigating to *www.ferc.gov* Calendar of Events and locating this event in the Calendar. This event will contain a link to the webcast. Members of the media who have Capitol Hill accreditation, or who represent media outlets that regularly follow FERC, can attend this meeting but must pre-register at *https://www.ferc.gov/whats-new/registration/03-19-20-form.asp.*

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

## 1066TH MEETING—OPEN MEETING

[March 19, 2020, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **Administrative** | |
| A–1 | AD20–1–000 | Agency Administrative Matters. |
| A–2 | AD20–2–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD06–3–000 | Market Update. |
| | **Electric** | |
| E–1 | RM20–10–000 | Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act. |
| E–2 | ER19–1965–000, ER19–1965–001. | Alcoa Power Generating Inc. |
| E–3 | ER19–1887–000, ER19–1887–001. | Emera Maine. |
| E–4 | ER19–1961–000, ER19–1961–002. | GridLiance High Plains LLC. |
| E–5 | ER19–1936–000, ER19–1936–001. | Idaho Power Company. |
| E–6 | ER19–1951–000 | ISO New England Inc. and Participating Transmission Owners Administrative Committee. |
| E–7 | ER19–1904–000 | Nevada Power Company. |
| E–8 | ER19–1947–000, ER19–1947–001. | Puget Sound Energy, Inc. |
| E–9 | ER19–2112–000 | Sky River LLC. |
| E–10 | ER19–2233–000, ER19–2233–001. | Smoky Mountain Transmission LLC. |
| E–11 | ER19–2165–001 | Western Interconnect LLC. |
| E–12 | OMITTED | |
| E–13 | OMITTED | |
| E–14 | ER18–462–001 | Midcontinent Independent System Operator, Inc. |
| E–15 | ER11–4081–006 | Midwest Independent Transmission System Operator, Inc. |
| E–16 | ER17–1138–002, ER17–1138–003. | PJM Interconnection, L.L.C. |
| E–17 | ER19–1952–000 | ISO New England Inc., New England Power Pool Participants Committee, and Participating Transmission Owners Administrative Committee. |
| E–18 | RM20–11–000 | Reporting of Transmission Investments. |
| E–19 | ER20–681–000, | Tri-State Generation and Transmission Association, Inc. |
| | ER20–682–000 | Thermo Cogeneration Partnership, L.P. |
| E–20 | ER20–676–000, ER20–683–000, ER20–683–001, EL20–26–000. | Tri-State Generation and Transmission Association, Inc. |
| E–21 | ER20–686–000, ER20–688–000, ER20–688–001, ER20–726–000. ER20–728–000, EL20–25–000. | Tri-State Generation and Transmission Association, Inc. |
| E–22 | ER20–689–000, ER20–690–000, ER20–691–000, ER20–691–001, ER20–693–000, ER20–694–000, ER20–694–001, ER20–695–000, ER20–695–001, ER20–772–000, ER20–782–000, ER20–872–000, ER20–970–000. | Tri-State Generation and Transmission Association, Inc. |
| E–23 | EL20–16–000 | Tri-State Generation and Transmission Association, Inc. |
| E–24 | OMITTED | |
| E–25 | ER20–855–000 | Midcontinent Independent System Operator, Inc. |
| E–26 | ER20–170–000, ER20–170–001. | Midcontinent Independent System Operator, Inc. |
| E–27 | EL15–70–002 | Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc. |
| | EL15–71–002 | The People of the State of Illinois By Illinois Attorney General Lisa Madigan v. Midcontinent Independent System Operator, Inc. |
| | EL15–72–002 | Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc., Dynegy, Inc. and Sellers of Capacity into Zone 4 of the 2015–2016 MISO Planning Resource Auction. |

1066TH MEETING—OPEN MEETING—Continued

[March 19, 2020, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| E–28 | OMITTED | |
| E–29 | TX19–1–000 | Mountain Breeze Wind, LLC. |
| E–30 | EL15–55–003 | Modesto Irrigation District and Turlock Irrigation District v. Pacific Gas and Electric Company |
| E–31 | ER20–629–000 | NYC ENERGY LLC. |
| | **Hydro** | |
| H–1 | P–14991–001 | Premium Energy Holdings, LLC. |
| H–2 | P–606–027, P–606–037 | Pacific Gas and Electric Company. |
| H–3 | P–2800–050 | Essex Company, LLC. |
| | **Certificates** | |
| C–1 | CP19–78–000 | PennEast Pipeline Company, LLC. |
| C–2 | CP19–475–000 | Gulfstream Natural Gas System, L.L.C. |
| C–3 | CP19–474–000 | Florida Gas Transmission Company, LLC. |
| C–4 | CP19–125–000 | Gulf South Pipeline Company, LP. |
| C–5 | CP20–1–000 | ANR Pipeline Company. |
| C–6 | CP18–485–001 | Texas Eastern Transmission, LP and Transcontinental Gas Pipe Line Company, LLC. |
| | CP18–505–001 | Texas Eastern Transmission, LP. |
| C–7 | CP17–495–000 | Jordan Cove Energy Project L.P. |
| | CP17–494–000 | Pacific Connector Gas Pipeline, LP. |

Issued: March 12, 2020.

**Kimberly D. Bose,**

*Secretary.*

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2020–05571 Filed 3–13–20; 11:15 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL20–30–000]**

### Indiana Municipal Power Agency, City of Lawrenceburg, Indiana v. PJM Interconnection, L.L.C., American Electric Power Service Corp., Lawrenceburg Power, LLC; Notice of Complaint

Take notice that on March 9, 2020, pursuant to section 306 of the Federal Power Act 16 U.S.C. 824e, and Rules 206 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 207, Indiana Municipal Power Agency and the City of Lawrenceburg, Indiana (Complainants) filed a complaint against PJM Interconnection, L.L.C., American Electric Power Service Corp., and Lawrenceburg Power, LLC (Respondents). Complainants allege that Respondents' conduct violates the rate regulatory structure of the Federal Power Act and state and local retail rate authority, more fully explained in the complaint.

The Complainants certifies that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainants'.

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 electronic 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 March 30, 2020.

Dated: March 10, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05393 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 6731–015]**

### Coneross Power Corporation; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6731–015.

c. *Date filed:* February 28, 2019.

d. *Applicant:* Coneross Power Corporation.

e. *Name of Project:* Coneross Hydroelectric Project.

f. *Location:* The Coneross Hydroelectric Project is located on Coneross Creek in Oconee County, South Carolina. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810, (978) 935–6039.

i. *FERC Contact:* Jeanne Edwards, (202) 502–6181, or *jeanne.edwards@ferc.gov.*

j. *Deadline for filing scoping comments:* April 9, 2020.

The Commission strongly encourages electronic filing. Please file scoping comments 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–6731–015.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The existing Coneross Project consists of: (1) An existing 288-foot-long, 25-foot-high concrete dam with a 123-foot-long, 20-foot-wide concrete spillway with 1.5-foot-high flashboards; (2) an existing nine-acre reservoir having a gross storage capacity of 13.5 acre-feet at elevation 746.5 feet mean sea level; (3); a 780-foot-long, 8-foot in diameter concrete penstock with an 8-foot-wide and 8-foot-high intake gate and a 25-foot-long, 19-foot-deep trash rack structure with 2.0-inch clear bar spacing; (4) a powerhouse containing three generating units, two Kaplan hydro turbines and one Francis hydro turbine for a total installed capacity of 889 kilowatts; (5) a 95-foot-long tailrace; (6) a 1,300-foot-long bypassed reach between the dam and the tailrace; (7); an existing 93-foot-long, 12.47-kilovolt transmission line; and (8) appurtenant facilities. The average annual generation was 2,215,800 kilowatt-hours for the period 2008 to 2017.

Coneross Power is operated in a modified run-of-river mode using automatic pond level control of the turbine-generator units to minimize fluctuations of the impoundment surface elevation, and maintain the impoundment elevation within 6 inches of the spillway flashboard crest from March 1 through June 30, and within 18 inches of the flashboard crest from July 1 through the end of February. The project bypasses approximately 1,300 feet of the Coneross Creek. A 36-cubic feet per second (cfs) minimum flow is continuously released into the Coneross Creek downstream of the project tailrace. In addition, a continuous minimum flow release of 35 cfs from February 1 to May 31, and 25 cfs from June 1 to January 31, or inflow, whichever is less, is released into the bypassed reach. The minimum bypassed reach flow is provided through a sluice gate in the west non-overflow section of the dam.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *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. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process*

Commission staff intend to prepare a single Environmental Assessment (EA) for the Coneross Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

At this time, we do not anticipate holding on-site public or agency scoping meetings. Instead, we are soliciting your comments and suggestions on the preliminary list of issues and alternatives to be addressed in the EA, as described in scoping document 1 (SD1), issued February 20, 2020. We are extending the comment deadline set in the February 20, 2020 SD1 to provide an additional 30 days from the date of this notice to file comments.

Copies of the SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *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, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: March 10, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05392 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC20–42–000.

*Applicants:* Griffith Energy LLC.

*Description:* Supplement to February 28, 2020 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Griffith Energy LLC.

*Filed Date:* 3/10/20.

*Accession Number:* 20200310–5189.
*Comments Due:* 5 p.m. ET 3/20/20.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER19–2717–000.
*Applicants:* Madison ESS, LLC.
*Description:* Report Filing: Madison ESS Supplemental Refund Report Filing to be effective N/A.
*Filed Date:* 3/10/20.
*Accession Number:* 20200310–5000.
*Comments Due:* 5 p.m. ET 3/31/20.

*Docket Numbers:* ER20–793–001.
*Applicants:* American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: ATSI submits Revised ECSAs, Service Agreement No. 5390 and 5516 to be effective 3/14/2020.
*Filed Date:* 3/10/20.
*Accession Number:* 20200310–5158.
*Comments Due:* 5 p.m. ET 3/20/20.

*Docket Numbers:* ER20–971–001.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Tariff Amendment: 2020–03–10_SA 3421 MEC-Heartland Divide Wind II Substitute GIA (J583) to be effective 1/28/2020.
*Filed Date:* 3/10/20.
*Accession Number:* 20200310–5134.
*Comments Due:* 5 p.m. ET 3/31/20.

*Docket Numbers:* ER20–972–001.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Tariff Amendment: 2020–03–11_SA 3422 ITC-Three Waters Wind Farm Substitute GIA (J720) to be effective 1/28/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5041.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–991–001.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Tariff Amendment: 2020–03–11_SA 1495 NSP-Walleye Wind Substitute 1st Rev GIA (G253 J569) to be effective 1/29/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5090.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–1223–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to ISA, SA No. 5422; Queue No. AC1–158 to be effective 6/14/2019.
*Filed Date:* 3/10/20.
*Accession Number:* 20200310–5151
*Comments Due:* 5 p.m. ET 3/31/20.

*Docket Numbers:* ER20–1224–000.
*Applicants:* Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
*Description:* § 205(d) Rate Filing: 2020–03–11_SA 3455 OTP-Tatanka Ridge Wind FSA (J493) Astoria BSSB In & Out to be effective 3/12/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5073.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–1225–000.
*Applicants:* Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
*Description:* § 205(d) Rate Filing: 2020–03–11_SA 3456 OTP–OTP FSA (J510) Astoria BSSB In & Out to be effective 3/12/20.20.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5074.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–1226–000.
*Applicants:* Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
*Description:* § 205(d) Rate Filing: 2020–03–11_SA 3457 OTP-Tatanka Ridge Wind FSA (J493) Astoria Switching Station to be effective 3/12/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5079.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–1227–000.
*Applicants:* Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
*Description:* § 205(d) Rate Filing: 2020–03–11_SA 3458 OTP–OTP FSA (J510) Astoria Switching Station to be effective 3/12/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5082.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–1228–000.
*Applicants:* Duke Energy Progress, LLC., Duke Energy Carolinas, LLC.
*Description:* § 205(d) Rate Filing: DEC–DEP NC Excess ADIT Credit to be effective 1/1/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5088.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–1232–000.
*Applicants:* Louisville Gas and Electric Company.
*Description:* Tariff Cancellation: EEI IA Notice of Termination to be effective 2/29/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5098.
*Comments Due:* 5 p.m. ET 4/1/20.

*Docket Numbers:* ER20–1233–000.
*Applicants:* Kentucky Utilities Company.
*Description:* Tariff Cancellation: KU Concurrence EEI IA Notice of Termination to be effective 2/29/2020.
*Filed Date:* 3/11/20.
*Accession Number:* 20200311–5101.
*Comments Due:* 5 p.m. ET 4/1/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 11, 2020..

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–05469 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP20–37–000]**

### Texas Eastern Transmission, LP; Notice of Schedule for Environmental Review of the Lilly Compressor Units Replacement Project

On January 10, 2020, Texas Eastern Transmission, LP filed an application in Docket No. CP20–37–000 requesting a Certificate of Public Convenience and Necessity pursuant to Sections 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities in Cambria County, Pennsylvania. The proposed project is known as the Lilly Compressor Unit Replacement Project (Project) and consists of Texas Eastern Transmission, LP's proposed replacement of four existing compressor units at the Lilly Compressor Station with two new more efficient turbine units.

On January 22, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance

of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

**Schedule for Environmental Review**

Issuance of EA June 5, 2020
90-day Federal Authorization Decision Deadline September 3, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Project Description**

The Lilly Compressor Units Replacement Project would comprise replacing the four existing gas turbine units totaling 34,800 horsepower (hp) with two new, more efficient, 18,100 hp gas turbine units. Software controls would be installed on the two new units to limit the total station hp to 34,800 hp, keeping the delivery capacity at the station the same. The Project also involves the construction of a new compressor building to house the two new compressor units. All facilities are located in Cambria County, Pennsylvania.

**Background**

On February 25, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Lilly Compressor Units Replacement Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received no comments to date. All substantive comments will be addressed in the EA.

**Additional Information**

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–37), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 11, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05459 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2221–041]**

### Empire District Electric Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2221–041.

c. *Date Filed:* February 28, 2020.

d. *Applicant:* Empire District Electric Company (Empire District).

e. *Name of Project:* Ozark Beach Hydroelectric Project (Ozark Beach Project).

f. *Location:* The existing project is located on the White River in Taney County, Missouri. The project occupies 5.1 acres of United States lands administered by the U.S. Army Corps of Engineers (Corps).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Tim Wilson, Strategic Projects and Energy Supply, Empire District Electric Company, 602 South Joplin Avenue, P.O. Box 127, Joplin, MO 64802, (913) 458–6437 or *timpedccccc@by.com;* and Randy Richardson, Plant Manager, Empire District Electric Company, 2537 Fir Road, Sarcoxie, MO 64862, (417) 625–6138 or *RRichardson@libertyutilities.com.*

i. *FERC Contact:* Colleen Corballis at (202) 502–8598 or email at *colleen.corballis@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Ozark Beach Project consists of the following existing facilities:* (1) 2,200 acre Lake Taneycomo with a gross storage capacity of 22,000 acre-feet and a usable storage capacity of 6,500 acre-feet at a water surface elevation of 701.35 feet National Geodetic Vertical Datum of 1929; (2) a 1,273-foot-long, 53-foot-high dam consisting of, from west to east: (a) A 420-foot-long earth fill embankment, (b) a 575-foot-long concrete overflow spillway topped with 32 Obermeyer gates, (c) an 18-foot-long concrete overflow spillway, (d) an integral 210-foot-long reinforced concrete powerhouse, and (e) a 50-foot-long concrete non-overflow section; (3) a 210-foot-long, 80-foot-wide, 92-foot-high reinforced concrete integral powerhouse with an operating head of 50 feet; (4) trash racks at the entrance to intakes; (5) four 7,250 horsepower vertical-shaft Francis-type turbines with a total capacity of 29,000 horsepower, each couple to a 4.0 megawatt (MW) generator with a total capacity of 16.0 MW; (6) a 200-foot-long, 4,600-volt overhead transmission line connected to a three phase 22,400-kilovolt ampere 4,600 to 161,000-volt step-up transformer that connects to Empire District Electric Company's 161,000-volt transmission system; and (7) appurtenant facilities.

The existing Ozark Beach Project is situated between two multipurpose projects that are owned by the Corps. The Table Rock Project, which is immediately upstream of the Ozark Beach Project, is operated in a peaking mode based on regional demand requirements. The Ozark Beach Project discharges directly into the Bull Shoals Project reservoir, which is immediately downstream. Using the storage in Lake Taneycomo, the Ozark Beach Project is operated based on various conditions including closely matching the releases of the upstream Table Rock Project, market pricing, Lake Taneycomo water level, Bull Shoals water level and rainfall. The Ozark Beach Project has an estimated annual energy production of about 50,768 megawatt hours. Empire District proposes to continue to operate using the storage in Lake Taneycomo. Empire District does not propose any new construction.

Empire District proposes to modify the project boundary by removing 6,021 acres from the existing area of 8,267 acres for a proposed project boundary of 2,246 acres. Empire District's proposal would reduce the existing area of United States lands administered by the Corps from 5.1 acres to 0.64 acres.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *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, please 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 item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Notice of Acceptance/Notice of Ready for Environmental Analysis | June 2020. |
| Filing of recommendations, preliminary terms and conditions, and fishway prescriptions | October 2020. |
| Commission issues Environmental Assessment (EA) | April 2021. |
| Comments on EA | May 2021. |
| Modified terms and conditions | July 2021. |

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 10, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–05390 Filed 3–16–20; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL—10006–57–OLEM]**

## Resource Conservation and Recovery Act (RCRA); Contractor Access to Confidential Business Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Contractor/Subcontractor Access to Data and Request for Comments.

**SUMMARY:** EPA intends to authorize its contractors, Plateau, and their subcontractor, Eastern Research Group (ERG) as well as SRA International, Inc. to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations that outline business confidentiality provisions for the Agency and require all EPA offices that receive information designated by the submitter as CBI to abide by these provisions.

**DATES:** Comments on this notice are due March 27, 2020. Comments may be sent to LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery, (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery, (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; 703–605–0516.

**SUPPLEMENTARY INFORMATION:**

### Access to Confidential Business Information (CBI)

The EPA has issued regulations at 40 CFR part 2, subpart B that outline business confidentiality provisions for the Agency and require all EPA offices that receive information designated by the submitter as CBI to abide by these provisions. Specifically, 40 CFR 2.305 governs information obtained under the Solid Waste Disposal Act, as amended, including amendments made by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.* In accordance with the provisions of 40 CFR part 2, subpart B, policies and procedures for handling information collected from industry, under the authority of RCRA, have been established, including the RCRA CBI Security Manual.

Pursuant to 40 CFR 2.305(h)(2)-(3), EPA is giving notice that it has entered into a contract with Plateau, Contract GS–35F–0166V, entitled ''Smart Mobile Tools for Field Inspectors'', located in Fairfax, Virginia. To assist in fulfilling this contract, Plateau has entered into a subcontract with the Eastern Research Group (ERG), located in Lexington, Massachusetts. Additionally, SRA International, Inc. is the prime contractor for the EPA Task Order entitled ''Infrastructure Support and Applications Hosting'', Task Order No. GSQ0017AJ0037, which includes a work scope for the Smart Tools project. SRA International, Inc. is located in Chantilly, Virginia. Plateau/ERG and SRA International, Inc. will assist the Office of Enforcement and Compliance Assurance, as well as EPA regional offices, in the electronic storage of information gathered during inspections conducted under the authority of RCRA; some of which may contain RCRA CBI. The Plateau/ERG contract period is from April 30, 2019 to April 29, 2021. The SRA International, Inc. contract period is from March 29, 2017 to March 28, 2022. Plateau/ERG and SRA International, Inc. shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual.

All EPA contractor and subcontractor personnel are bound by the requirements and sanctions contained in their contracts with EPA and in EPA's CBI regulations found at 40 CFR part 2, subpart B. Plateau/ERG will adhere to an EPA-approved security plan which describes procedures to protect CBI. Plateau/ERG will apply the procedures in this plan to CBI previously gathered by EPA and to CBI that may be gathered in the future. The security plan specifies that contractor personnel are required to sign non-disclosure agreements and are briefed on appropriate security procedures before they are permitted access to CBI. No person is automatically granted access to CBI: A need to know must exist.

Dated: February 28, 2020.

**Kathleen Salyer,**

*Acting Office Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2020–05514 Filed 3–16–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2020–0090; FRL–10006–38]**

## Carbaryl and Methomyl Registration Review; Draft Endangered Species Act Biological Evaluations; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of the Environmental Protection Agency's (EPA or the Agency) draft biological evaluations (BEs) for the registration review of the pesticides carbaryl and methomyl and opens a public comment period on these documents.

**DATES:** Comments must be received on or before May 18, 2020.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0090, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Tracy Perry, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 308–0128; email address: *perry.tracy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides and/or the potential impacts of pesticide use on threatened or endangered (listed) species and designated critical habitat. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

### II. What action is the Agency taking?

*A. Authority*

The Endangered Species Act (ESA) requires federal agencies, such as EPA, to ensure that their actions are not likely to jeopardize the continued existence of species listed as threatened or endangered under the ESA or destroy or adversely modify the designated critical habitat of such species. The registration review process of reevaluating a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) constitutes an EPA ''action'' under the ESA. If EPA determines a pesticide may affect a listed species or its designated critical habitat, EPA must initiate consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (collectively referred to as the Services), as appropriate. EPA initiates formal consultation with the Services through the conduct and transmittal of a BE with its findings.

*B. Background*

The Agency has completed comprehensive, nationwide draft BEs for all carbaryl and methomyl uses relative to the potential effects on listed species and their designated critical habitats. The schedule for conducting the carbaryl and methomyl BEs was negotiated as part of a partial settlement agreement pursuant to a joint stipulation filed on October 18, 2019 and entered by the court on October 22, 2019, in *Center for Biological Diversity et al.* v. *EPA et al.* (N.D. Ca) (3:11–cv–00293).

In preparation for conducting the carbaryl and methomyl BEs and consistent with the objective to revise and refine the method used for the first three pilot BEs (final pilot BEs for chlorpyrifos, malathion, and diazinon were completed in January 2017), EPA proposed refinements to the BE process with its Draft Revised Method. EPA sought public comments on this Draft from May to August 2019 (45-day public comment period, extended for an additional 45 days), held a public meeting on June 10, 2019, and conducted tribal outreach and formal tribal consultation from July to October 2019. The Services and the U.S. Department of Agriculture (USDA) provided input on the Draft Revised Method through an interagency workgroup prior to public release of the document for comment. EPA evaluated public input and met again with the Services and USDA to discuss the comments from the public and input from the agencies.

After reviewing comments received during the public comment period on the draft carbaryl and methomyl BEs, EPA will issue final BEs and a response to public comments document. If EPA determines that these pesticides may affect listed species and/or their designated critical habitats, EPA will initiate consultation with the Services.

Based on the BEs, the Services will then develop Biological Opinions for carbaryl and methomyl.

Along with the draft BEs, EPA is posting an updated Revised Method document in this BE docket, as a supporting document. The updated Revised Method will also be posted in the Draft Revised Method docket (see docket ID number EPA–HQ–OPP–2019–0195 at *www.regulations.gov*), along with a response to public comments document. Some elements of the Revised Method include: (1) Incorporation of usage data to inform the likelihood that an ESA-listed species or designated critical habitat may be exposed to a pesticide; (2) incorporation of probabilistic approaches to determine the likelihood that an ESA-listed species will be adversely affected by a pesticide given the variability in the range of potential exposures and toxicological responses to listed species; and (3) incorporation of a weight-of-evidence framework for informing effects determinations.

*C. Public Comments Sought*

Pursuant to 40 CFR 155.53(c) and consistent with the enhanced stakeholder engagement practices (see docket ID number EPA–HQ–OPP–2012–0442), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft BEs for carbaryl and methomyl. Such comments could address, among other things, the application of the Agency's revised risk assessment methodologies and assumptions to these draft BEs for methomyl and carbaryl. In particular, EPA is seeking comment regarding the following specific aspects of the draft BEs.

First, there are uncertainties in the spatial footprint associated with the non-agricultural uses (*e.g.,* residential, forestry, rangeland) of carbaryl and there are limited data available to inform the extent of usage in any given area for these types of uses. EPA has previously requested input on availability of spatial data to define use sites and on usage data for non-agricultural uses, including seeking public comment on: The registration review plan for carbaryl in 2010; the NMFS biological opinion on chlorpyrifos, diazinon, and malathion in 2018; and the draft Revised Method for conducting national level endangered species risk assessments for pesticides in 2019. In light of these data limitations and associated uncertainties, EPA is seeking input on the evaluation of the likelihood of effects to an individual of a listed species from the use of carbaryl on non-agricultural use areas.

Second, EPA has developed a systematic process, using the best available data, to determine if a pesticide is likely to adversely affect an individual of a listed species and, if so, then characterizes the strength of evidence associated with likely to be adversely affected (LAA) determinations. The criteria used to characterize the strength of evidence are described in Attachment 4–1 of the BEs. EPA is seeking input on these strength-of-evidence criteria.

Third, a number of draft LAA determinations were made for methomyl and carbaryl based on potential impacts on prey, pollination, habitat, or dispersal (PPHD) of a listed species using endpoints identified in Table 3 of the Revised Method document and chapter 2 of the BEs. There are uncertainties associated with the magnitude of impact to a particular species' prey base or habitat for a given pesticide that could result in a discernible effect to that listed species. EPA requests public input regarding properties of methomyl and carbaryl or particular characteristics of listed species or their habitats that affect the confidence in the link between thresholds used to evaluate PPHD effects and resulting potential effects to an individual of a listed species.

The file sizes of the draft BEs for carbaryl and methomyl exceed the docket system's file size limitation, therefore these documents are not posted to this BE docket. Instead, the BEs are posted on EPA's endangered species web page (see web links provided in the Table below). Commenters are instructed to post comments on the BEs to this BE docket (EPA–HQ–OPP–2020–0090) in *www.regulations.gov,* as indicated in the Table below.

TABLE—PESTICIDE DOCKET ID NUMBERS FOR POSTING COMMENTS ON THE CARBARYL AND METHOMYL DRAFT BES AND LINKS TO THE DRAFT CARBARYL AND METHOMYL BES

| Document | Pesticide docket ID No. for public comments | Links to the draft BEs |
|---|---|---|
| Carbaryl BE ..... | EPA–HQ–OPP–2020–0090 ..... | *https://www.epa.gov/endangered-species/draft-biological-evaluation-chapters-carbaryl-esa-assessment.* |
| Methomyl BE ..... | EPA–HQ–OPP–2020–0090 ..... | *https://www.epa.gov/endangered-species/draft-biological-evaluation-chapters-methomyl-esa-assessment.* |

1. *Other related information.* Additional information on endangered species risk assessment and the NAS report recommendations are available at *https://www.epa.gov/endangered-species/implementing-nas-report-recommendations-ecological-risk-assessment-endangered-and.* Information on the Agency's registration review program and its implementing regulation is available at *https://www.epa.gov/pesticide-reevaluation.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until

all actions required in the final decision on the registration review case have been completed.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: March 11, 2020.

**Alexandra Dapolito Dunn,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2020–05445 Filed 3–16–20; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

### Notice of Joint Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM) and Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM); Correction

*Time and Date:* Wednesday, April 1, 2020 from 3:30–5:00 p.m. EST

*Place:* Omni Shoreham Hotel, Palladian Ballroom, 2500 Calvert St. NW, Washington, DC 20008

*Correction:* THIS MEETING HAS BEEN CANCELLED.

*Agenda:* Discussion of EXIM policies and programs and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition and policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

*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, you may email *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 *external@exim.gov* no later than 5:00 p.m. EST on Thursday, March 26, 2020.

*Members of the Press:* For members of the press planning to attend the meeting please email *external@exim.gov* to be placed on the attendee list.

*Further Information:* For further information, contact the Office of External Engagement at *external@exim.gov.*

**Joyce Brotemarkle Stone,**

*Assistant Corporate Secretary.*

[FR Doc. 2020–05480 Filed 3–16–20; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

### Sunshine Act Meeting

Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND DATE:** Monday, March 30, 2020 at 2:30 p.m.

**PLACE:** The meeting will be held at Ex-Im Bank in Room 1126, 811 Vermont Avenue NW, Washington, DC 20571.

**STATUS:** The meeting will be open to public observation for Item No. 1 only.

**MATTERS TO BE CONSIDERED:** Item No. 1—Small Business Update.

**CONTACT PERSON FOR MORE INFORMATION:** Members of the public who wish to attend the meeting should call Joyce Stone, Office of the General Counsel, 811 Vermont Avenue NW, Washington, DC 20571 (202) 565–3336 by close of business Wednesday, March 25, 2020.

**Joyce Brotemarkle Stone,**

*Assistant Corporate Secretary.*

[FR Doc. 2020–05603 Filed 3–13–20; 11:15 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FRS 16563]**

### Privacy Act of 1974; Matching Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a re-establishment of a computer matching program.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces the re-establishment of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with agencies from the States of Colorado, Mississippi, New Mexico, and Utah. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Written comments are due on or before April 16, 2020. This computer matching program will commence on April 19, 2020, unless written comments are received that require a contrary determination, and will conclude on October 18, 2021.

**ADDRESSES:** Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program. The purpose of this particular program is to verify Lifeline eligibility by establishing that applicants or subscribers from Colorado, Mississippi, New Mexico, and Utah are enrolled in the SNAP or Medicaid programs.

**PARTICIPATING NON-FEDERAL AGENCIES:**

- Colorado Governor's Office of Information Technology;
- Mississippi Department of Human Services;
- New Mexico Human Services Department; and
- Utah Department of Workforce Services.

**AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:**

47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, *et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

**PURPOSE(S):**

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. *Id.* at 4011–2, paras. 135–7.

**CATEGORIES OF INDIVIDUALS:**

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

**CATEGORIES OF RECORDS:**

The categories of records involved in the matching program include, but are not limited to, Lifeline applicant or subscriber's first or last name; date of birth; and last four digits of Social Security Number. The National Verifier will transfer these data elements to one of the four state agencies, which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program.

**SYSTEM(S) OF RECORDS:**

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 82 FR 38686 (Aug. 15, 2017) and became effective on September 14, 2017.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2020–05547 Filed 3–16–20; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FRS 16552]**

### Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Amendment to notice of public meeting

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VII will hold its fourth meeting via live internet link.

**DATES:** March 17, 2020.

**ADDRESSES:** The Meeting will be held via conference call and available to the public via WebEx at *http://www.fcc.gov/live.*

**FOR FURTHER INFORMATION CONTACT:** Suzon Cameron, Designated Federal Officer, (202) 418–1916 (voice) or *CSRIC@fcc.gov* (email); or, Kurian Jacob, Deputy Designated Federal Officer, (202) 418–2040 (voice) or *CSRIC@fcc.gov* (email).

**SUPPLEMENTARY INFORMATION:** The notice of this meeting was first published in the **Federal Register** on February 25, 2020. This amendment is to inform the public that the meeting will be held electronically only.

The meeting will be held on March 17, 2020, at 1:00 p.m. EDT and may be viewed live, by the public, at *http://www.fcc.gov/live.* Any questions that arise during the meeting should be sent to *CSRIC@fcc.gov* and will be answered at a later date. The meeting is being moved to a wholly electronic format in light of travel restrictions affecting members of the CSRIC related to the ongoing increase in coronavirus (COVID–19) cases.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC to improve the security, reliability, and interoperability of communications systems. On March 15, 2019, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC VII for a period of two years through March 14, 2021. The meeting on March 17, 2020, will be the fourth meeting of CSRIC VII under the current charter.

The Commission will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Suzon Cameron, CSRIC Designated Federal Officer, by email *CSRIC@fcc.gov* or U.S. Postal Service Mail to Suzon Cameron, Senior Attorney, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW, Room 7–B458, Washington, DC 20554. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

*Good Cause for Late Notice:* This Amendment to Notice of public meeting is being published less than 15 days before the meeting date of March 17, 2020. There is good cause for this late notice. Specifically, travel restrictions affecting members of the CSRIC VII related to the ongoing increase in COVID–19 cases, have led the Commission to conclude that, in an abundance of caution, an electronic meeting is appropriate. The Commission has also announced this amendment to the public meeting by Public Notice posted on *https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council-vii.*

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2020–05470 Filed 3–16–20; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

**[OMB No. 3064–0057; –0112; –0127; –0140; –0175; –0198]**

## Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0057; –0112; –0127; –0140; –0175; –0198).

**DATES:** Comments must be submitted on or before May 18, 2020.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

*Proposal to renew the following currently approved collections of information:*

1. *Title:* Quarterly Certified Statement Invoice for Deposit Insurance Assessment.

*OMB Number:* 3064–0057.

*Affected Public:* FDIC-insured depository institutions.

*Burden Estimate:*

SUMMARY OF ANNUAL BURDEN

| Information collection description | Type of burden | Obligation to respond | Estimated number of respondents | Estimated frequency of responses | Estimated time per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| Certified Statement for Quarterly Deposit Insurance Assessment (FDIC Form 6420/07). | Reporting | Mandatory | 5,258 | Quarterly | 20 | 6,941 |

*Total Estimated Annual Burden:* 6,941 hours.

*General Description of Collection:* The FDIC collects deposit insurance assessments on a quarterly basis. Each quarterly assessment is based on an insured depository institution's quarterly report of condition for the prior calendar quarter. The FDIC collects the quarterly assessment payments by means of direct debits through the Automated Clearing House network. The information collection consists of the reporting requirement associated with certifying the review by officials of the insured institutions to confirm that the assessment data are accurate and, in cases of inaccuracy, submission of corrected data.

2. *Title:* Real Estate Lending Standards.

*OMB Number:* 3064–0112.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Burden Estimate:*

SUMMARY OF ANNUAL BURDEN

| Information collection description | Type of burden | Obligation to respond | Estimated number of respondents | Estimated frequency of responses | Estimated time per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| Real Estate Lending Standards | Recordkeeping | Mandatory | 3,344 | On Occasion | 20 | 1,115 |

*Total Estimated Annual Burden:* 1,115 hours.

*General Description of Collection:* Section 1828(o) of the Federal Deposit Insurance Act requires each federal banking agency to adopt uniform regulations prescribing real estate lending standards. Part 365 of the FDIC Rules and Regulations, which implements section 1828(o), requires institutions to have real estate lending policies that include (a) limits and standards consistent with safe and sound banking practices; (b) prudent underwriting standards, including loan-to-value ratio (LTV) limits that are clear and measurable; (c) loan administration policies; (d) documentation, approval and reporting requirements; and (e) a requirement for annual review and approval by the board of directors. The rule also establishes supervisory LTV limits and other underwriting considerations in the form of guidelines. Since banks generally have written policies on real estate lending, the additional burden imposed by this regulation is limited to modifications to existing policies necessary to bring those policies into compliance with the regulation and the development of a system to report loans in excess of the guidelines to the board of directors.

3. *Title:* Fast-Track Generic Clearance for the Collection of Qualitative Feedback.

*OMB Number:* 3064–0127.

*Affected Public:* General public including FDIC insured depository institutions.

*Burden Estimate:*

SUMMARY OF ANNUAL BURDEN

| Information collection description | Type of burden | Obligation to respond | Estimated number of respondents | Estimated frequency of responses | Estimated time per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| Occasional Qualitative Surveys | Reporting | Voluntary | 850 | 15 | 60 | 12,750 |
| Total Estimated Annual Burden | | | | | | 12,750 |

*General Description of Collection:* The FDIC is requesting renewal of this approved collection to use occasional qualitative surveys to gather information from the public. While the subject and nature of the surveys to be deployed under this information collection are yet to be determined, based on prior experience it is expected that the number of respondents will range from a few to, at times several thousands, but, in general, these surveys are expected to involve an average of 850 respondents. Likewise, the time to respond to the surveys can range from a few minutes to several hours. It is expected that the average time to respond to a survey is approximately one hour. These surveys are completely voluntary in nature. FDIC estimates that approximately 15 such surveys will be conducted in any given year.

The purpose of the surveys is, in general terms, to obtain anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer-related exams), the perceived need for regulatory or statutory change, and similar concerns. The information in these surveys is anecdotal in nature, that is, samples are not necessarily random, the results are not necessarily representative of a larger class of potential respondents, and the goal is not to produce a statistically valid and reliable database. Rather, the surveys are expected to yield anecdotal information about the particular experiences and opinions of members of the public, primarily staff at respondent banks or bank customers. The information is used to improve the way FDIC relates to its clients, to develop agendas for regulatory or statutory change, and in some cases simply to learn how particular policies or programs are working, or are perceived in particular cases.

4. *Title:* Insurance Sales Consumer Protection.

*OMB Number:* 3064–0140.

*Affected Public:* Insured State nonmember banks and savings associations that sell insurance products; persons who sell insurance products in or on behalf of insured State nonmember banks and savings associations.

*Type of Burden:* Third-party disclosure.

*Obligation to Respond:* Mandatory.

*Burden Estimate:*

SUMMARY OF ANNUAL BURDEN

| Information collection description | Type of burden | Obligation to respond | Estimated number of respondents | Estimated frequency of response | Estimated time per response (hours) | Estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| Insurance Sales Consumer Protections | Third Party Disclosure. | Mandatory | 1,774 | On Occasion | 5 | 8,870 |
| Total Estimated Annual Burden | | | | | | 8,870 |

*General Description of Collection:* Respondents must prepare and provide certain disclosures to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

5. *Title:* Interagency Guidance on Sound Incentive Compensation Practices.

*OMB Number:* 3064–0175.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Obligation to Respond:* Voluntary.

*Burden Estimate:*

SUMMARY OF ANNUAL BURDEN

| | Type of burden | Estimated number of respondents | Estimated number of responses | Estimated time per response (hours) | Frequency of response | Total annual estimated burden (hours) |
|---|---|---|---|---|---|---|
| Document policies and procedures (Implementation). | Recordkeeping | 1 | 1 | 40 | Annual | 40 |
| Annual maintenance of policies and procedures (Ongoing). | Recordkeeping | 2,164 | 1 | 2 | Annual | 4,328 |
| Total Hourly Burden | | | | | | 4,368 |

*Methodology and Assumptions:* Previously, each institution supervised by the FDIC was estimated to spend 40 hours per year maintaining a record of its policies and procedures regarding incentive based compensation.

However, while an institution without any such policies and procedures may take 40 hours to completely document them for the first time, after performing the initial documentation, unless an institution needs to revise its policies and procedures, there should be no further recordkeeping burden. FDIC is using one respondent as a placeholder to represent any institution that adopt incentive based compensation for the first time. The estimate of 40 hours remains unchanged from the 2017 estimate. Supervisory experience shows that approximately 65% of large FDIC-supervised institutions revise their incentive-based compensation policies and procedures annually. FDIC estimates it takes approximately 2 hours for an institution to update its record of its policies and procedures related to incentive compensation. While a majority of the institutions supervised by the FDIC are small, and may not use incentive based compensation, or may use incentive based compensation arrangements less complex than those used at large institutions, FDIC assumes that each year approximately 65 percent of FDIC-supervised institutions will spend approximately 2 hours each revising their records of their incentive based compensation policies and procedures. As of December 31, 2019, the FDIC supervised 3,344 institutions. FDIC assumes that 2,164 (65%) of those institutions will revise their records of incentive based compensation policies and procedures each year.

*General Description of Collection:* This Guidance helps promote that incentive compensation policies at insured state non-member banks do not encourage excessive risk-taking and are consistent with the safety and soundness of the organization. Under this Guidance, banks are encouraged to: (i) Have policies and procedures that identify and describe the role(s) of the personnel and units authorized to be involved in incentive compensation arrangements, identify the source of significant risk-related inputs, establish appropriate controls governing these inputs to help ensure their integrity, and identify the individual(s) and unit(s) whose approval is necessary for the establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis, an assessment by management of the effectiveness of the design and operation of the organization's incentive compensation system in providing risk-taking incentives that are consistent with the organization's safety and soundness.

6. *Title:* Generic Information Collection for Qualitative Research.

*OMB Number:* 3064–0198.

*Affected Public:* General public including FDIC insured depository institutions.

*Burden Estimate:*

SUMMARY OF ANNUAL BURDEN

| Information collection description | Type of burden | Obligation to respond | Estimated number of respondents | Estimated frequency of responses | Estimated time per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| Occasional Qualitative Surveys | Reporting | Voluntary | 500 | 20 | 60 | 10,000 |
| Total Estimated Annual Burden | | | | | | 10,000 |

*General Description of Collection:* The FDIC is requesting renewal of this approved collection to use occasional qualitative surveys to gather information from the public to inform qualitative research. While the subject and nature of the surveys to be deployed under this information collection are yet to be determined, based on prior experience it is expected that the number or respondents will range from a few to, at times, several thousands, but, in general, these surveys are expected to involve an average of 500 respondents. Likewise, the time to respond to the surveys can range from a few minutes to several hours, but, it is expected that the average time to respond to a survey is approximately one hour. These surveys are completely voluntary in nature. FDIC estimates that approximately 20 such surveys will be conducted in any given year.

Currently, the FDIC has a variety of methods to collect quantitative information from consumers and institutions (*e.g.,* Call Reports, FDIC National Survey of Unbanked and Underbanked Households, etc.). Qualitative data would provide complementary information on insights, opinions, and perceptions that will inform how the FDIC approaches its mission to safeguard financial stability of the banking system and promote consumer protection and economic inclusion. This clearance would allow the FDIC to engage with consumers and other relevant stakeholders through qualitative research methods such as focus groups, in-depth interviews, cognitive testing, and/or qualitative virtual methods.

The purpose of the surveys is, in general terms, to obtain anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer-related exams), the perceived need for regulatory or statutory change, and similar concerns. The information in these surveys is anecdotal in nature, that is, samples are not necessarily random, the results are not necessarily representative of a larger class of potential respondents, and the goal is not to produce a statistically valid and reliable database. Rather, the surveys are expected to yield anecdotal information about the particular experiences and opinions of members of the public, primarily staff at respondent banks or bank customers. The collection is non-controversial and does not raise issues of concern to other Federal agencies; with the exception of information needed to provide remuneration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained.

Participation in this information collection will be voluntary and conducted in-person, by phone, or using other methods, such as virtual technology. The types of collections that this generic clearance covers include, but are not limited to: Small discussion groups; focus groups of consumers, financial industry professionals, or other stakeholders; cognitive laboratory studies, such as those used to refine questions or assess usability of a website; qualitative customer satisfaction surveys (*e.g.,* post-

transaction surveys; opt-out web surveys); and in-person observation testing (*e.g.,* website or software usability tests).

**Request for Comment**

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 12, 2020.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2020–05455 Filed 3–16–20; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1696]**

## Internal Appeals Process for Material Supervisory Determinations and Policy Statement Regarding the Ombudsman for the Federal Reserve System

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final policy.

**SUMMARY:** The Board is revising its internal appeals process for institutions wishing to appeal an adverse material supervisory determination and its policy regarding the Ombudsman for the Federal Reserve System.

**DATES:** The amendments and policy are applicable on April 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Jason A. Gonzalez, Senior Special Counsel, (202) 452–3275, Jay Schwarz, Special Counsel, (202) 452–2970, or Lucas E. Beirne, Counsel, (202) 452–2933, Legal Division, Ryan Lordos, Deputy Associate Director, (202) 452–2961, Division of Supervision & Regulation, or Jeremy Hochberg, Managing Counsel, (202) 452–6496, or Maureen Yap, Senior Counsel, (202) 452–2642, Division of Consumer and Community Affairs, for matters relating to the appeals process; and Margie Shanks, Ombudsman, (202) 452–3584, or Jay Schwarz, Special Counsel, (202) 452–2970, or Lucas E. Beirne, Counsel (202) 452–2933, Legal Division, for matters relating to the functions of the Ombudsman. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In February 2018, the Board of Governors of the Federal Reserve System (''Board'') invited public comment on proposed amendments to its intra-agency process for appeals of material supervisory determinations and to its policy regarding the Ombudsman of the Federal Reserve System (''Federal Reserve'').[1]

*A. Prior Appeals Process and Ombudsman Policy*

The Board first established guidelines for an appeals process in March 1995, when, after providing the opportunity to comment, the Board published final guidelines to implement section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the ''Riegle Act''), 12 U.S.C. 4806. Section 309 requires the Federal banking agencies, including the Board, to maintain an independent, intra-agency appellate process for review of material supervisory determinations.

In general, the prior guidelines provided that all institutions that are subject to Federal Reserve oversight, including bank holding companies, U.S. agencies and branches of foreign banks, and Edge corporations, may appeal any material supervisory determination.[2] Appeals were decided within a specified time frame by a review panel selected by the Reserve Bank, in consultation with Board staff, that was composed of persons who were not employed by the Reserve Bank and had not participated in, or reported to the persons who made the material supervisory determination under review. An institution was granted the further right to appeal an adverse decision by the review panel first to the President of the Reserve Bank that made the material supervisory determination and ultimately to a member of the Board. The prior guidelines also had safeguards to protect institutions that filed appeals from examiner retaliation.

The prior guidelines applied to any ''material supervisory determination,'' which included any material matter relating to the examination or inspection process. The only matters excluded from this appeals process were those matters for which an alternative, independent process of appeal exists, such as the imposition of a Prompt Corrective Action directive or a cease and desist order or other formal actions. As noted in the prior guidelines, institutions were encouraged to express questions or concerns about supervisory determinations during the course of an inspection or examination, consistent with the longstanding Federal Reserve practice of resolving problems informally during the course of the inspection or examination process.

The Board's prior Ombudsman policy was adopted in August 1995. It specified the responsibilities of the Ombudsman, which include serving as a point of contact for complaints regarding any Federal Reserve action, referring complaints to the appropriate person, and investigating and resolving complaints of retaliation.

*B. Proposed Appeals Process and Ombudsman Policy*

The Board proposed to amend its appeals process for material supervisory determinations in several ways. Specifically, the Board proposed to reduce the levels of appeal from three to two and to enhance independent review of the matter by providing that Federal Reserve and Board staff not affiliated with the affected Reserve Bank review the matter at both appeal levels. The Board proposed establishing specific standards of review to be applied in the two levels of appeal. The panel that reviews the initial appeal would be required to approach the determination being appealed as if no determination had previously been made by Federal Reserve staff. The initial review panel would consider a record that includes any relevant materials submitted by the appealing institution and Federal Reserve staff, and have the discretion to augment the record in appropriate circumstances. The final review panel would consider whether the decision of the initial review panel is reasonable and supported by a preponderance of the evidence in the record, but would not seek to augment the record with new information. To maximize transparency, the decision of the final review panel would be made public. Finally, the Board proposed to establish an accelerated process for appeals that relate to or cause an institution to become critically undercapitalized under the Prompt Corrective Action (''PCA'') framework to better assure that a review of an adverse material supervisory determination occurs within the PCA time frame of 90 days.

The Board also proposed changes to the Ombudsman policy. The proposed

[1] 83 FR 8391 (Feb. 27, 2018).

[2] 60 FR 16470 (Mar. 30, 1995).

revisions would formalize many of the current practices of the Ombudsman, including receiving supervisory-related complaints and material supervisory determination appeals. In addition, the proposed revisions would allow the Ombudsman to attend meetings or deliberations relating to an appeal as an observer, if requested by the institution or Federal Reserve staff. The proposed changes also would formalize the Ombudsman's role as the decision-maker with respect to claims of retaliation.

Additional details of the proposed process and policy are described further below in connection with the comments that relate to them.

**II. Overview of Changes to the Proposal**

*General Summary of Comments*

The Board received five comment letters regarding the proposal from industry trade associations and a law firm. While commenters generally expressed support for the proposed amendments, most commenters recommended revisions to the proposed amendments. Among the suggestions made by the commenters are that the proposal be revised to:

- Clarify that Matters Requiring Attention (''MRAs'') and Matters Requiring Immediate Attention (''MRIAs'') are appealable material supervisory determinations;
- Permit an institution's senior management to decide whether to appeal a material supervisory determination instead of requiring the board of directors to approve filing an appeal;
- Permit extensions of the time to file an appeal of a material supervisory determination;
- Permit an institution to meet with the review panels when the institution makes the request in a timely manner;
- Articulate a clear and unequivocal *de novo* standard of review;
- Empower the Ombudsman to act as the decision-maker in the appeals process; and
- Empower the Ombudsman to decide whether an examiner should be excluded from future examinations for substantiated claims of retaliation.

In response to the comments, the Board has revised the final appeals process in a number of significant ways. In particular, as discussed below, the Board has modified the proposal to:

- Clarify that MRAs and MRIAs are appealable material supervisory determinations;
- Permit an institution's senior management to file an appeal, provided that management informs the institution's board of directors of their decision to file an appeal and keeps the board informed of the status of the appeal;
- Permit an institution to request an extension of time to file an appeal in appropriate circumstances; and
- Clarify that, at an institution's request, the initial review panel must schedule a meeting with the institution.

The final appeals process will apply to all material supervisory determination appeals initiated after the effective date.

*Appeals Process*

Since 1995, the Board has had the opportunity to observe the operation of the appeals guidelines over a significant period of time and receive feedback from supervised institutions. Based on that experience and feedback, the Board proposed to amend its appellate process in several ways. In particular, the proposal was designed to improve and expedite the appeals process, particularly for institutions that are in troubled condition. In doing so, the proposal attempted to strike an equitable balance among accommodating the interests of the institutions the Federal Reserve supervises in a substantive review of material supervisory determinations, the institutions' due process rights, the institutions' interest in achieving a swift resolution of any material supervisory determination in dispute, and the interests of both an appealing institution and the Federal Reserve in the efficient use of limited resources. In addition, the proposal was intended to lay out a more explicit process that will allow more uniform application than has occurred under the existing guidelines.

Definition of Material Supervisory Determination

The proposal included a detailed description of what constitutes a material supervisory determination in order to promote a better understanding of whether a supervisory determination is material.

Commenters suggested that the proposal be clarified with respect to what qualifies as a material supervisory determination. In particular, commenters indicated that MRAs and MRIAs should be specifically listed as appealable material supervisory determinations. That Board agrees that MRAs and MRIAs are material by definition and the final appeals process has been modified to clarify that they will all be appealable as material supervisory determinations. The Board recognizes, however, that some examination findings are issued jointly with other agencies. In these circumstances, the Board will consider an appeal to the extent the material supervisory determination was issued by the Board, unless an independent right of appeal has been established, such as with respect to Shared National Credit program determinations. Likewise, actions by the Board to refer matters to other relevant government agencies, such as a written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (''ECOA'') or a notice of a referral to the Secretary of Housing and Urban Development (''HUD'') for violations of the ECOA or the Fair Housing Act are not appealable material supervisory determinations because they are referrals of information upon which another agency may make a determination. In addition, the Board is clarifying that it only issues material supervisory determinations in writing.

Who Must Approve an Appeal

The proposal maintained the requirement in the Board's current appeals process that the decision to bring an appeal must be made by an institution's board of directors. One commenter suggested that the Board should permit senior management to bring an appeal because the decision to pursue an appeal falls within management's role of conducting the day-to-day operations of the institution, and it would be appropriate for management to keep the institution's board of directors apprised of any such decision, consistent with the board of directors' oversight role. The Board has revised the appeals process to adopt this suggestion because it is consistent with an efficient and timely appeals process and reflects a reasonable balance of responsibilities between senior management and the institution's board of directors. To reflect the significance, however, of the decision to bring an appeal, the process imposes an obligation on senior management to inform the institution's board of directors of the decision, and to keep the board of directors informed of the status of the appeal.

Timing of Appeals and Levels of Review

The Board's current appeals process was designed with three levels of appeal in an attempt to ensure objectivity in the appeals process. However, experience has shown that objectivity can be ensured with a more streamlined and efficient process. With these goals in mind, the proposal reduced the levels of appeal from three to two and enhanced independent review of the matter by providing that Federal Reserve and

Board experts not affiliated with the affected Reserve Bank review the matter at both appeals levels.

In addition to removing one level of appeal, the proposal addresses a timing conflict between the PCA framework under section 38 of the Federal Deposit Insurance Act and the Board's existing appeals process.[3] The PCA framework requires that, no later than 90 days after an insured depository institution becomes critically undercapitalized, the appropriate Federal banking agency must either appoint a receiver for the institution or take such other action that the agency determines, with the concurrence of the Federal Deposit Insurance Corporation (''FDIC''), would better achieve the purposes of PCA.[4] Although the banking agency's decision to appoint a receiver for a critically undercapitalized institution is not appealable under the Riegle Act, some material supervisory determinations (such as reclassifications of loans) may cause an institution to become critically undercapitalized and, unless reversed, result in receivership.

The proposal described an accelerated process for appeals that relate to or cause an institution to become critically undercapitalized under the PCA framework in order to better assure that a review of such an adverse material supervisory determination occurs within the PCA time frame of 90 days. The goal of this accelerated process is to provide a thorough, adequate, and independent review of the material supervisory determination that places the institution at risk of receivership. Notwithstanding the proposal's timeline, situations may arise that would prevent an appeal from being completed before the PCA framework requires a receivership to be imposed. In these situations, the existence of an outstanding appeal would not prevent the Board from meeting its statutorily mandated obligation under the PCA framework to appoint a receiver, in which case an appeal would become moot.

One commenter suggested that an institution be permitted to seek a 30-day extension of the time to file an initial appeal or a final appeal. Given that the appeals process is intended to be efficient and provide a swift resolution of disputes, in most circumstances extensions will not be warranted. Nevertheless, the final appeals process has been revised to permit an institution to seek reasonable extensions of time to file the initial appeal or the final appeal for good cause, which may be granted in the discretion of the appropriate division director in consultation with the Board's General Counsel or his designee. Relatedly, there may also be situations where, given the facts, circumstances, or complexity of an appeal, the final review panel may need additional time to consider the matter. The final guidelines have been modified, therefore, to permit the final review panel to grant itself an extension in appropriate circumstances.

One commenter further suggested that the proposal be clarified to include more detail regarding how deadlines are calculated. The final appeals process has been revised to clarify that days mean calendar days, and that when a deadline falls on a weekend or federal holiday, the deadline moves to the following business day.

Contents of Appeal, Record, and Scope

The proposal provided that prior to a material supervisory determination being made, it is expected that the institution will have provided all available information it believes to be relevant to the examination staff to assist them in making the determination. That is, generally, the initial review panel should be able to reach its decision based on the facts and data developed during the examination process. To clarify this point, the final appeals process has been revised to state that, absent good cause, as determined in the discretion of the initial review panel, any facts or data submitted by the institution in connection with the appeal will be limited to those which were made available to examination staff prior to the date on which the written material supervisory determination was delivered to the institution. However, as noted in the proposal, the initial review panel may, in its discretion, conduct additional fact-finding.

One commenter suggested that the final review panel be permitted to review evidence that was not available at the time of the initial review panel's consideration of the appeal. Given the final review panel's more circumscribed and deferential review, the final review panel will be confined to the record before it. Accordingly, the institution should take all necessary steps to insure that all relevant information has been presented to the initial review panel in a timely manner.

Initial Review Panel

The proposal provided that the initial review panel be composed of three Reserve Bank employees. For certain matters, however, the panel may benefit from the specialized expertise of a Board employee to aid evaluation of the appropriateness of the material supervisory determination. Accordingly, the final appeals process has been revised to allow the division director, in appropriate circumstances, to appoint a Board employee as one of the three members of the initial review panel.

Meetings With Appeals Panels

The proposal provided that the initial review panel and the final review panel could choose to meet with the appealing institution. One commenter suggested that the institution be permitted to meet with each review panel in all instances in which an institution timely requests such a meeting. The final appeals process has been revised to provide that the initial review panel must schedule a meeting with the institution if requested by the institution. The initial review panel should consult with the institution with respect to the selection of the time and date of the meeting; however, the final decision of a time and date for the informal meeting remains at the discretion of the initial review panel. Even if the institution does not request a meeting with the initial review panel, the panel retains the discretion to schedule such a meeting. Given the more circumscribed review conducted by the final review panel and the tighter deadlines for issuing the decision, whether an informal meeting with the institution should occur is left to the discretion of the final review panel.

Standard of Review

The proposal described specific standards of review to be applied at each level of appeal. The panel that reviews the initial appeal would make its own supervisory determination and not defer to the judgment of the Reserve Bank staff that made the material supervisory determination. Under this standard, the panel would have the discretion to rely on examination workpapers and other materials developed by Federal Reserve staff during an examination or materials submitted by the institution if it determines it is reasonable to do so. In addition, the standard was clarified to reflect that the support provided by the record is to be evaluated for a preponderance of the evidence. As noted by a few commenters, this approach may be considered a *de novo* standard of review.

The proposal provided that the final review panel will consider whether the decision of the initial review panel is reasonable. One commenter suggested that the final review panel standard of review should be *de novo.* The role of

[3] 12 U.S.C. 1831*o.*

[4] *See* 12 U.S.C. 1831*o.*

the final review panel in the proposal is to serve a role analogous to that of an appeals court that corrects errors in the decision made by the initial review panel. Accordingly, a *de novo* standard is not appropriate given the panel's function.

Notice of Decision

One commenter suggested that the appealing institution be provided the record on appeal from the initial review panel. In many instances, the record will include the voluminous and confidential examination work papers, the majority of which are not pertinent to the determination being appealed and not appropriate for dissemination to the appealing institution. The final appeals process has been revised to require that the initial review panel be precise in identifying the information upon which it relied in reaching its conclusion, and that it promptly provide such information to the institution upon the institution's request to the extent permitted by law.

Final Decisionmaker

The proposal provided that if the appealing institution continues to have concerns regarding the material supervisory determination following the initial review panel's decision, the appealing institution may request a subsequent final review conducted by a review panel composed primarily of Board staff. One commenter suggested that the final decision should rest with the Ombudsman or a Governor. The revised policy, however, relies on the decisionmakers having specialized subject matter expertise. Moreover, the policy permits either the institution or Federal Reserve personnel to request that the Ombudsman observe the appeals process.

Publication of Decisions

In order to maximize transparency, the proposal provided that the decision of a final review panel would be made public with appropriate redactions. Several commenters asked that any information that could potentially reveal the identity of the appealing institution be redacted from published decisions and summaries of decisions. Redaction of identifying information will generally be appropriate, particularly when disclosure would cause harm to the institution. Moreover, where redaction would be inadequate to ensure the confidentiality of the appealing institution, the proposal provided the Board the discretion to publish a summary of the decision instead. The final appeals process retains discretion for the Board to determine what types of redactions are appropriate or if a summary should be published instead. Several commenters requested that a centralized location on the Board's website be dedicated to published decisions. The published decisions will be made available on the Board's public website in a findable, searchable manner. One commenter further suggested that redacted initial review panel decisions also be published. The majority of initial review panel members are not Board staff or policymakers, and accordingly, their decisions should not be available for citation or precedent.

Ombudsman Policy

The Board finalized a revised Ombudsman policy in conjunction with finalizing the changes to the appeals process. Currently, the Ombudsman receives complaints related to the Federal Reserve's supervisory process, which may include an appeal request. The revisions to the policy formalize the Ombudsman's role with respect to appeals and provide that the Ombudsman may attend meetings or deliberations relating to the appeal as an observer, if requested by the institution or Federal Reserve personnel. In addition, the revisions formalize the Ombudsman's role as the decisionmaker with respect to claims of retaliation. The revisions also emphasize the Ombudsman's availability to facilitate the informal resolution of concerns that could ultimately lead to formal appeals and provide for tracking of complaints made by regulated institutions. Finally, the Board has updated the policy with respect to the Ombudsman's role in consumer complaint appeals. The revisions add detail regarding the consumer complaint appeal process and align current practices with the policy. In particular, the policy now explains with whom a consumer may file an appeal, who reviews appeals, and how the Ombudsman collaborates with other Board staff on certain appeals.

One commenter suggested that the Board should articulate procedures for educating examiners about the types of actions that would constitute retaliation and the penalties that would result for retaliation. This comment is well taken, but the Ombudsman policy is not the appropriate place for it to be addressed. The Board expects to take this comment into consideration as it develops training materials for its examiners.

Similarly, a commenter suggested that the Ombudsman should be empowered to decide whether an examiner should be excluded from future examinations of the institution where a finding has been made that the examiner retaliated against that institution. The Ombudsman's role is to investigate claims of retaliation, and to make factual findings. The Ombudsman may also recommend to the appropriate division director(s) that the next examination of the institution that may lead to a material supervisory determination exclude personnel involved in the claim of retaliation. However, the ultimate responsibility for the assignment of examiners correctly rests with the appropriate division director at the Board.

Other Issues

In addition to the comments received regarding the appeals process and Ombudsman policy, the Board also received several comments unrelated to either proposal. First, one commenter suggested that the Board examine why the internal appeals process has historically not been used by Board regulated institutions. One of the Board's goals in putting revisions to the appeals process out for public comment was to identify changes that would make the process more useful and approachable for institutions. The Board encourages institutions to make use of the revised process.

Next, a commenter suggested that the Board suspend the supervisory framework over insurance savings and loan holding companies pending a complete review of how best to supervise such institutions. This comment is outside the scope of the appeals process and Ombudsman policy and will not be addressed here. Relatedly, a commenter asked that the Board provide institutions with regular interim updates by on-site examiners and provide drafts of ratings determinations before formally issuing ratings letters. These comments are also outside the scope of the appeals process and Ombudsman policy; however, the Board believes that on-site examiners ordinarily engage in updates and communications throughout the course of the examination.

**Process for Appeals of Material Supervisory Determinations**

The Board is committed to maintaining an independent, intra-agency process to review appeals of material supervisory determinations that complies with section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4806.

The purpose of this document is to establish a comprehensive appellate process for material supervisory determinations. In order to ensure that institutions will be granted the same

appellant rights regardless of the Federal Reserve district in which they reside, appeals will be administered using procedures that are consistent with this process. This process includes an accelerated review process to improve its alignment with the Prompt Corrective Action (''PCA'') framework under section 38 of the Federal Deposit Insurance Act (''FDI Act''.)

*A. In General*

Any institution about which the Federal Reserve makes a written material supervisory determination is eligible to utilize the appeals process. An eligible institution includes a state member bank, bank holding company and its nonbank subsidiaries, U.S. agency or branch of a foreign bank, Edge and agreement corporation, savings and loan holding company, third party electronic data processing servicer, systemically important nonbanking financial organization identified by the Financial Stability Oversight Council, and any other entity examined or inspected by the Federal Reserve.

An appeal under this process may be made of any written material supervisory determination. A ''material supervisory determination'' includes, but is not limited to, any material determination relating to examination or inspection composite ratings, material examination or inspection component ratings, the adequacy of loan loss reserves and/or capital, significant loan classification, accounting interpretation, Matters Requiring Attention (''MRAs''), Matters Requiring Immediate Attention (''MRIAs''), Community Reinvestment Act ratings (including component ratings), and consumer compliance ratings. The term does not include any supervisory determination for which an independent right of appeal exists or a referral to another government agency. Excluded actions include, for example, PCA directives issued pursuant to section 38 of the FDI Act; an action to impose administrative enforcement actions under the FDI Act, the Home Owners' Loan Act of 1933, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bank Holding Company Act of 1956 (''BHC Act'') or other applicable act; a capital directive; an order related to approval or denial of a transaction issued pursuant to section 3 or 4 of the BHC Act; written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (''ECOA'') or a notice to the Secretary of Housing and Urban Development for violations of the ECOA or the Fair Housing Act; and determinations made under the Shared National Credit Program.

*B. General Procedures for Appealing a Material Supervisory Determination*

In general, the appeals process is an informal process that is not subject to the adjudicative provisions of the Administrative Procedures Act (5 U.S.C. 554, 556–557). An appeal of a material supervisory determination shall be filed and considered pursuant to the following procedures:

(1) Authorization to File. Any appeal must be approved by the board of directors of the eligible institution or by its senior management in consultation with its board of directors. Senior management is defined as the core group of individuals directly accountable to the board of directors for the sound and prudent day-to-day management of the firm, or in the case of a U.S. agency or branch of a foreign bank, responsible for the bank's U.S. operations. Senior management shall inform the board of directors of the substance of the appeal before filing the appeal and shall keep the board of directors informed of the status of the appeal.

(2) Timelines and Contents. The institution must file the appeal in writing with the Board's Ombudsman within 30 calendar days of the earlier of the date the material supervisory determination was sent electronically, the date the institution received the written determination, or the date the Reserve Bank received confirmation that the institution received the determination, with a copy to the officer in charge of supervision at the appropriate Reserve Bank. When the deadline for filing an appeal falls on a weekend or federal holiday, the deadline for the appeal shall be the next business day. The institution may file a written request for an extension of the time to file an appeal with the Ombudsman, which request shall state good cause for granting the extension. Such request shall be granted in the sole discretion of the director of the appropriate division of the Board in consultation with the Board's General Counsel or his designee. The appeal must include a clear and complete statement of all relevant facts and issues, as well as all arguments that the institution wishes to present, and must include all relevant and material documents that the institution wishes to be considered. Prior to a material supervisory determination being made, it is expected that the institution will have provided all available information it believes to be relevant to the examination staff to assist them in making the determination. Accordingly, absent good cause, as determined in the discretion of the initial review panel, any facts or data submitted by the institution in connection with the appeal shall be limited to those that were made available to examination staff prior to the date on which the written material supervisory determination was delivered to the institution.

(3) Distribution of Appeal. After receipt of a request for an appeal, the Board's Ombudsman shall promptly notify the director of the appropriate division of the Board and the Board's General Counsel of the appeal.

(4) Initial Review Panel. Within ten calendar days of receipt of a timely appeal, the director of the appropriate division of the Board or an officer designated by the appropriate division director must appoint three Reserve Bank employees to serve as an initial review panel to consider the appeal and an attorney to advise the initial review panel in the exercise of its responsibilities. In appropriate circumstances, the appropriate division director may appoint a Board employee as one of the three members of the initial review panel. The members of the initial review panel and the appointed attorney must not have been substantively involved in any matter at issue; must not directly or indirectly report to any person(s) who made the material supervisory determination under review; must not be employed by the Reserve Bank that made the material supervisory determination under review; and must have relevant experience to contribute to the review of the material supervisory determination. An individual shall be considered to have been substantively involved in a material supervisory determination if the individual was personally consulted regarding the issue being determined and provided guidance regarding how it should be resolved. The initial review panel shall determine all procedural issues regarding the initial review.

(5) Initial Review Meeting. The initial review panel shall conduct an informal appeal meeting if the institution requests such a meeting at the time it files its appeal or if the panel, in its discretion, decides to hold such a meeting. If such a meeting is to be conducted, the panel should, in consultation with the institution, schedule a meeting for a date that is no later than 21 calendar days after the date the appeal is received. The panel shall notify the institution in writing of the date, time, and place of the meeting. The institution may appear at the appeal meeting personally or through counsel to make an oral presentation to the panel. Panel members may ask

questions of any person participating in the meeting. The institution and the Reserve Bank may not cross-examine persons participating in the meeting. A verbatim transcript of the meeting may be taken if the institution requests a transcript and agrees to pay all expenses, and if the initial review panel determines that a transcript would assist the panel in carrying out its responsibilities. The meeting provided under this process is not governed by formal rules of evidence. No formal discovery is required or permitted. The initial review panel may make any rulings reasonably necessary to facilitate the effective and efficient operation of the meeting.

(6) Record. The record of the appeal shall at a minimum include the original material supervisory determination being appealed, the materials submitted by the institution in connection with the appeal, and the materials identified by Federal Reserve staff as relevant to the material supervisory determination being appealed, including workpapers. In addition, the initial review panel may, in its discretion, conduct additional fact finding. For example, the initial review panel may supplement the record by soliciting the views of outside parties, including staff from the Board, the Reserve Banks, other supervisory agencies (for example, in cases of joint examinations or inspections), and the Federal Reserve staff who participated in making the material supervisory determination being appealed. The entire record of the appeal, including the decision of the initial review panel and any meeting transcripts or material(s) submitted in connection with any subsequent final review, shall be considered confidential supervisory information of the Board.

(7) Standard of Review Applied by Initial Review Panel. The initial review panel shall conduct a review of the material supervisory determination on appeal. The panel must consider whether the Reserve Bank's material supervisory determination is consistent with applicable laws, regulations, and policy, and supported by a preponderance of the evidence in the record. In doing so, the panel shall make its own supervisory determination and shall not defer to the judgment of the Reserve Bank staff that made the material supervisory determination though it may rely on any examination workpapers developed by the Reserve Bank or materials submitted by the institution if it determines it is reasonable to do so.

(8) Notice of Decision. Within 45 calendar days after the date the appeal is received, the initial review panel shall provide written notice of its decision to the senior management and the board of directors of the institution. A copy of the decision will be provided to the director of the appropriate division of the Board, the officer in charge of supervision at the appropriate Reserve Bank, and the Board's Ombudsman. The notice of decision shall contain a statement of the basis for the initial review panel's decision to continue, terminate, or otherwise modify the material supervisory determination(s) at issue or to remand consideration of the material supervisory determination at issue to the examiners that made the determination to allow them to consider additional evidence presented in connection with the appeal. The notice of decision shall identify the information upon which the panel relied in reaching its conclusion, and the panel shall promptly provide that information to the institution upon the institution's request to the extent permitted by law. Such request must be made within seven calendar days of receipt of the notice of decision. The notice of decision shall also indicate that the institution may request a final review as set forth in this subpart by filing a written request with the Board's Ombudsman. The initial review panel may extend the period for issuing a decision by up to 30 calendar days if the panel determines that the record is incomplete and additional fact-finding is necessary for the panel to issue a decision.

(9) Use of Confidential Supervisory Information. If the Reserve Bank or the Board has confidential supervisory information from another regulated institution that is pertinent to the appeal, they may elect to use that information, provided that the information is entered into the record for the appeal and provided to the appealing institution, subject to limitations on disclosure, including those imposed by the Board's applicable regulations,[5] and redaction of all information not relevant to the appeal.

(10) Request for Final Review. Within 14 calendar days after notice of decision by the initial review panel, the institution, at the direction of its board of directors or senior management in consultation with the board of directors, may appeal that decision to a final review panel by filing a written request for final review with the Board's Ombudsman, with a copy to the officer in charge of supervision at the appropriate Reserve Bank. Senior management shall inform the board of directors of the substance of the appeal before filing the appeal and shall keep the board of directors informed of the status of the appeal. The request for final review must state all the reasons, legal and factual, the institution disagrees with the initial review panel's decision. The institution may file a written request for an extension of the time to file an appeal with the Ombudsman, which request shall state good cause for granting the extension. The decision to grant such a request shall be in the sole discretion of the director of the appropriate division of the Board in consultation with the Board's General Counsel or his designee.

(11) Waiver of Final Review. Failure to timely request final review in a manner consistent with this process shall constitute a waiver of the opportunity for final review, and the decision of the initial review panel shall constitute a final and unappealable material supervisory determination.

(12) Distribution of Final Review Request. After receipt of a request for final review, the Board's Ombudsman shall promptly notify the director of the appropriate division of the Board and the Board's General Counsel of the request for final review.

(13) Final Review Panel. When an institution files a request for final review, the director of the appropriate division of the Board shall promptly appoint three individuals to serve as a final review panel to permit completion of the appeal within the applicable period. The final review panel shall include at least two Board employees, at least one of whom must be an officer of the Board at the level of associate director or higher. The Board's General Counsel shall appoint an attorney to advise the final review panel in the exercise of its responsibilities. The members of the final review panel and the appointed attorney must not be employed by the Reserve Bank that made the material supervisory determination under review; must not have been members of the initial review panel; and must not have been personally consulted regarding the issue being determined and provided guidance regarding how it should be resolved, or directly or indirectly report to the person(s) who made the material supervisory determination under review. The final review panel shall determine all procedural issues regarding the final review.

(14) Final Review Meeting. The final review panel may determine in its discretion to have an informal appeal meeting at which a representative of the institution or counsel may appear

[5] See 12 CFR 261.20.

personally to make an oral presentation to the panel. No facts may be introduced in this meeting that are not contained in the record upon which the initial review panel made its decision. In the event the panel decides to have a meeting with the appealing institution, panel members may ask questions of any person participating in the meeting. The institution may not cross-examine persons participating in the meeting. A verbatim transcript of the meeting may be taken at the cost of the Board if the final review panel determines that a transcript would assist the panel in carrying out its responsibilities. A meeting provided under this process is not governed by formal rules of evidence. No formal discovery is required or permitted. The final review panel may make any procedural rulings reasonably necessary to facilitate the effective and efficient operation of the meeting.

(15) Scope of Final Review. The scope of the final review shall be confined to the record upon which the initial review panel made its decision.

(16) Standard of Review of Final Review. The final review panel shall determine whether the decision of the initial review panel is reasonable. In reaching this determination, the panel should consider whether the decision was based on a consideration of the applicable law, regulations, and policy, and whether there has been a clear error of judgment. The final review panel may affirm the decision of the initial review panel even if it is possible to draw a contrary conclusion from the record presented on appeal.

(17) Notice of Final Review Decision. Within 21 calendar days of the filing of a request for final review, the director of the appropriate division of the Board shall provide written notice of the decision of the final review panel to the senior management and the board of directors of the institution. The final review panel may continue, terminate, or otherwise modify the material supervisory determination(s) at issue or remand consideration of the material supervisory determination at issue to the examiners who made the determination to allow them to consider additional evidence presented in connection with the appeal. The notice of decision shall contain a statement of the basis for the final review panel's decision. A copy of the decision will be provided to the director of the appropriate division of the Board, the officer in charge of supervision at the appropriate Reserve Bank, and the Board's Ombudsman. A copy of the decision will be published on the Board's public website as soon as practicable, and the published decision will be redacted to avoid disclosure of exempt information. In cases in which redaction is deemed insufficient to prevent improper disclosure, the published decision may be presented in summary form. The final review panel may extend the period for issuing a decision by up to 30 calendar days if the panel determines that, based on the facts and circumstances of the appeal, an extension is appropriate.

(18) Ombudsman Participation. The Board's Ombudsman may attend, as an observer, meetings or deliberations relating to the appeal at either level if requested by either the institution or System personnel. The Ombudsman will not have substantive involvement in or act as a decision-maker with respect to the appeal.

*C. Expedited Procedures for Appealing a Material Supervisory Determination*

When a material supervisory determination relates to or causes an institution to become critically undercapitalized, as defined by section 38 of the FDI Act, the review of any appeal of that supervisory determination will be processed on an expedited basis.

Notwithstanding any other provision in this process, a matter processed under expedited review will be subject to the same policies that govern all appeals except that the initial review panel will issue a decision within 35 calendar days following the date the appeal is received (such period may be extended by up to an additional 7 calendar days if the initial review panel decides that such time is required to supplement the record and to consider any additional information received), the institution shall have 7 days to file an appeal of the initial review panel's decision, and the final review panel will issue a decision within 10 calendar days.

*D. Effect of Appeal on Material Supervisory Determinations*

A material supervisory determination shall remain in effect while under appeal unless and until such time as it is modified or terminated through the appeals process. An appeal does not prevent or suspend the Federal Reserve or any other appropriate agency from taking any supervisory or enforcement action–either formal or informal–it deems appropriate to discharge the agency's supervisory responsibilities. In such cases, the rights of appeal provided for in the statutes and regulations concerning those actions shall govern.

In addition, an appeal does not prevent or suspend the operation of the PCA framework under section 38 of the FDI Act, prevent or suspend an appropriate authority from appointing a receiver for the institution or otherwise causing the closure of an institution, or prevent or suspend an appropriate authority from taking any other action under the PCA framework. If the institution is placed into receivership while an appeal is outstanding, the appeal will be considered moot and will not be completed.

*E. Safeguards Against Retaliation*

Neither the Federal Reserve nor any employee of the Federal Reserve may retaliate against an institution or person, including based on the filing or outcome of an appeal under this process. In accordance with longstanding Federal Reserve practice, the appeals framework is intended to foster an environment where concerns and issues may be freely and openly discussed.

Each Reserve Bank shall provide institutions with notice of the Board's anti-retaliation policy in connection with each Federal Reserve led examination.

An institution that believes that it has suffered retaliation or any other form of unfair treatment is encouraged to contact the appropriate Reserve Bank, and may file a claim of retaliation with the Board's Ombudsman. The Ombudsman may attempt to resolve a claim of retaliation informally by engaging in discussions with the concerned institution and the appropriate Board or Reserve Bank staff.

Nothing in this guidance is intended to prevent the Ombudsman from initiating a factual inquiry into alleged retaliation at any time. The Ombudsman may initiate a factual inquiry into a claim of retaliation, at any time, by providing notice to the director of the appropriate division of the Board and appropriate Board committee, and the officer in charge of supervision at the appropriate Reserve Bank. As part of the inquiry, the Ombudsman may collect and review documents, interview witnesses, and consult Board and Reserve Bank staff with subject matter expertise. The Ombudsman also may request that the director of the appropriate division of the Board authorize or assign such additional resources as necessary to assist the Ombudsman in fully reviewing the matter.

Upon the completion of a factual inquiry into a claim of retaliation, if the Ombudsman concludes that retaliation has occurred, the Ombudsman will forward the claim of retaliation, along with the Ombudsman's factual findings to the director of the appropriate

division of the Board. These officials will take appropriate action consistent with the Board's or relevant Reserve Bank's policies and procedures to resolve the matter. In addition, to prevent future retaliation for an appeal, the Ombudsman may recommend to the director of the appropriate division of the Board that the next examination of the institution or review that may lead to a material supervisory determination exclude personnel involved in the claim of retaliation. The division director(s) will make the final decision as to whether any examination staff should be excluded.

The Board's Ombudsman will contact institutions within six months after a material supervisory determination appeal has been decided to inquire whether the institution believes retaliation has occurred.

*F. Availability of Procedures*

The Federal Reserve, through the Board and Reserve Banks, shall make this process readily available on its public website and to any member of the public who requests it.

**Ombudsman for the Federal Reserve System**

*Policy Statement*

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4806, requires each of the Federal banking agencies to appoint an Ombudsman. Section 309 provides that the Ombudsman:

(1) Is to act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and

(2) Is to assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Mission of the Ombudsman. The Ombudsman is charged with performing three major functions: (1) Serving as a facilitator and moderator for the fair and timely resolution of complaints related to the Federal Reserve System's regulatory activities; (2) reporting to the Board on issues that are likely to have a significant impact on the Federal Reserve System's missions, activities, or reputation that arise from the Ombudsman's review of complaints, such as patterns of issues that occur in multiple complaints; and (3) receiving, reviewing, and deciding claims of retaliatory conduct by Federal Reserve System staff. The Ombudsman also serves as the initial recipient for appeals of material supervisory determinations and plays a role in resolving appeals of some consumer complaints. In addition, the Ombudsman ensures that safeguards exist to encourage complainants to come forward and to protect confidentiality.

Serving as a Complaint Facilitator. The Ombudsman assists institutions with issues and questions related to Reserve Bank or Board regulatory activities. In doing so, the Ombudsman shall operate independently of the supervisory process to the extent necessary to ensure that appropriate safeguards exist to encourage complainants to come forward and preserve confidentiality.

In situations where the Board has not established a process for addressing a certain type of question or complaint, the Ombudsman is available to facilitate the resolution of the question or complaint. Although the Ombudsman does not have decision-making authority regarding any substantive matters, including supervisory determinations and regulatory action (other than for retaliation claims), the Ombudsman is available to assist institutions, and particularly community banks, in locating the correct Federal Reserve System staff person to address or resolve such a question or complaint and may coordinate meetings and facilitate discussions between the institution and System staff, including senior officials, as necessary. In order to facilitate this process, the Ombudsman may investigate the situation in order to identify the relevant facts and circumstances. The Ombudsman may also participate in meetings or discussions related to the matter if requested by either the institution or System staff, and may require updates from System staff, as appropriate, until the matter is resolved. If the Ombudsman believes such a complaint has not been satisfactorily addressed, the Ombudsman may raise the matter with the appropriate division director or Board committee, as appropriate.

When an issue is brought to the attention of the Ombudsman for which the Board's rules or procedures provide an avenue of appeal or another appropriate forum for resolution, the Ombudsman will explain the process to the complaining party, and direct the party to the appropriate appeals process or forum for the complaint.[6] In addition, the Ombudsman is also available to facilitate informal discussions between a potential appellant and the appropriate Reserve Bank or Board staff in order to explore solutions before an appeal is filed. Such discussions do not stay or otherwise alter any of the deadlines under the Board's rules or procedures.

The Ombudsman will serve as the initial recipient for an appeal of a material supervisory determination and may attend, as an observer, meetings or deliberations relating to the appeal if requested by either the institution or System personnel. In any event, the Ombudsman will not have any substantive involvement in or act as a decision-maker with respect to the appeal.

Providing Feedback on Patterns of Issues. The Ombudsman is in a unique position to identify and report patterns of issues arising from complaints related to Reserve Bank or Board regulatory activities. The Ombudsman will track inquiries and complaints based on relevant characteristics, such as geographic location, scope, policy implications, and final disposition, to help identify any such trends, including trends that implicate differently sized institutions disproportionately. This tracking will be conducted in a manner designed to preserve confidentiality of the complainant to the maximum extent possible. As appropriate, the Ombudsman will report findings of patterns of issues to the appropriate Board committee or division director and Reserve Bank or Board staff. The Ombudsman will also report any issue stemming from a complaint that is likely to have a significant impact on the Federal Reserve System's mission, activities, or reputation.

Retaliation Claims by Supervised Persons. The Board does not tolerate retaliation by Federal Reserve System staff against a supervised institution or its employees (''supervised persons''). Retaliation is defined as any action or decision by Reserve Bank or Board staff that causes a supervised person to be treated differently or more harshly than other similarly situated institutions because the supervised person attempted to resolve a complaint by filing an appeal of a material supervisory determination or utilized any other Board mechanisms for resolving complaints. Retaliation includes, but is not limited to, delaying or denying action that might benefit a

[6] For example, the Ombudsman may explain some of the existing mechanisms for resolutions of complaints, such as: Material supervisory determinations pursuant to section 309(a) of the Riegle Act; actions delegated to the Reserve Banks or Board staff pursuant to 12 CFR part 265; prompt corrective action directives under section 38 of the FDI Act; denials or partial denials of Freedom of Information or Privacy Act requests; issuance of capital directives pursuant to 12 CFR 263.80–263.85; decisions with respect to applications; and matters within the jurisdiction of the Board's Inspector General or Federal or State investigatory or prosecutorial authorities.

supervised person without a sound supervisory reason or subjecting a supervised institution to heightened examination standards without a sound supervisory reason.

The Ombudsman is authorized to receive, review, and determine the merits of complaints of retaliatory conduct by Reserve Bank or Board staff. The Ombudsman may attempt to resolve retaliation claims informally by engaging in discussions with the concerned supervised person and the appropriate Board or Reserve Bank staff. If a complaint cannot be resolved informally, the Ombudsman may initiate a full investigation into the underlying facts and circumstances.

To commence a factual investigation of a complaint of retaliatory conduct, the Ombudsman should provide written notice to the appropriate Board committee and division director and the appropriate Reserve Bank officer in charge of supervision. As part of the investigation, the Ombudsman may, among other things, collect and review documents, interview witnesses, and seek any other relevant information. The Ombudsman may also consult Board and Reserve Bank staff with subject matter expertise. Where necessary, the appropriate Board committee or division director may authorize or assign such additional resources as may be needed to assist the Ombudsman in fully reviewing the matter.

Upon completion of the factual investigation of a complaint of retaliatory conduct, the Ombudsman will decide whether a member of Federal Reserve System staff retaliated, as defined above. The Ombudsman will report this determination to the appropriate Board committee or Governor and division director and the appropriate Reserve Bank officer in charge of supervision and may make recommendations for resolution of the matter to those parties. In addition, to prevent future retaliation for an appeal, the Ombudsman may recommend to the appropriate division director(s) that the next examination of the institution or review that may lead to a material supervisory determination exclude personnel involved in the claim of retaliation. The division director(s) will make the final decision as to whether any examination staff should be excluded. However, the Ombudsman shall not make recommendations regarding disciplinary action against a Federal Reserve System staff member. The appropriate staff will consider further action consistent with the Board's and relevant Reserve Bank's policies and procedures. The Ombudsman's determination regarding retaliation will be communicated in writing to the supervised person.

To further ensure that supervised persons are not subjected to retaliation, as defined above, the Ombudsman will contact a supervised institution within six months after an appeal has been decided to inquire whether the institution believes retaliation occurred. Where possible, the Ombudsman will also contact the institution after the next examination following an appeal. In the event an institution complains of retaliation, the Ombudsman will initiate the process outlined above to informally review the matter or initiate a factual investigation.

Consumer Complaints and Appeals. Independent of the Ombudsman function, the Federal Reserve System operates a consumer complaint and inquiry program to assist members of the public who are experiencing problems with their financial institution. If the Ombudsman receives a consumer complaint directly, the Ombudsman will refer the complaint to the Board's Division of Consumer and Community Affairs (''DCCA'') to determine handling and send appropriate consumer complaints to the Federal Reserve Consumer Help Center (''FRCH'') for processing.

A request for an independent review of a consumer complaint previously investigated by a Reserve Bank is treated as an appeal. Consumers should be advised that they can file an appeal through FRCH or with the Ombudsman if the consumer requests confidential treatment of the appeal or prefers that the Ombudsman handle the appeal.

If an appeal is received by the Ombudsman, he or she will consult with DCCA to determine who will handle the appeal, unless the consumer has requested confidential treatment or that the Ombudsman's Office handle the appeal. In many instances, DCCA will be responsible for investigating and responding to the appeal. For the appeals referred to DCCA by the Ombudsman, DCCA will consult with the Ombudsman during the appeal investigation to help ensure that the matter is fully and fairly addressed and provide a final copy of the response letter to the Ombudsman.

The Ombudsman handles appeals seeking further investigation of DCCA's handling of an initial appeal, appeals where the consumer requests confidential treatment, and appeals where the consumer requests that the Ombudsman's Office handle the initial appeal. The Ombudsman may handle other appeals, as determined in collaboration with DCCA. The Ombudsman will send an acknowledgement letter for each appeal it receives.

With respect to appeals seeking further investigation of DCCA's handling of an initial appeal or where the consumer requests that the Ombudsman handle the appeal, the Ombudsman will typically consult with DCCA during the investigation. For appeals where the consumer requests confidential treatment, the Ombudsman typically will not consult with DCCA during the investigation.

For all appeals the Ombudsman handles, the Ombudsman will review the matter. In doing so, the Ombudsman will collect and review the complaint documents from DCCA and seek any other relevant information, unless confidential treatment is requested. The Ombudsman may also consult Board and Reserve Bank staff to discuss the details of the previous complaint investigations. The Ombudsman is responsible for responding to the complainant with its determination. As appropriate, the Ombudsman will contact the appropriate Board division director and Reserve Bank staff with feedback or concerns.

Safeguards. These policies, processes, and practices are intended as safeguards to encourage complainants to come forward with issues or complaints related to the Federal Reserve System's supervisory activities.

To the extent possible, the Ombudsman will honor requests to keep confidential the identity of a complaining party. It must be recognized, however, that it may not be possible for the Ombudsman to resolve certain complaints, including complaints of retaliation, if the Ombudsman cannot disclose the identity of the complaining party to other members of Federal Reserve staff.

Procedures. A party may contact the Ombudsman at any time regarding concerns or issues resulting from the regulatory activities of the Board or the Reserve Banks by calling 1–800–337–0429, by sending a fax to 202–530–6208, by writing to the Office of the Ombudsman, Board of Governors of the Federal Reserve System, Washington, DC 20551, or by sending an email to *Ombudsman@frb.gov.*

By order of the Board of Governors of the Federal Reserve System, March 12, 2020.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2020–05491 Filed 3–16–20; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–MA–2020–02; Docket No. 2020–0002; Sequence No. 9]**

### Revision to Foreign Gift Minimal Value

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Notice of GSA Bulletin FMR B–50, Foreign Gift and Decoration Minimal Value.

**SUMMARY:** GSA, in consultation with the U.S. Department of State, must redefine the minimal value of foreign gift items to reflect changes in the Consumer Price Index (CPI) for the preceding 3-year period, as specified under the law concerning the Receipt and Disposition of Foreign Gifts and Decorations. The minimal value was last defined effective January 1, 2017, and must be redefined effective as of January 1, 2020.

This bulletin cancels FMR Bulletin B–41, ''Foreign Gift and Decoration Minimal Value,'' issued January 12, 2017, as this bulletin provides updated information on the same topic.

**DATES:** *Applicability Date:* January 1, 2020.

This notice applies to foreign gifts and decorations received on or after January 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. William Garrett, Director, Personal Property Policy, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–368–8163, or by email at *william.garrett@gsa.gov.* Please cite Notice of GSA Bulletin FMR B–50.

**SUPPLEMENTARY INFORMATION:**

#### Background

Foreign gifts and decorations above the GSA-defined minimal value are handled differently than lesser-valued foreign gifts and decorations under the provisions of 5 U.S.C. 7342 and FMR § 102–42.

Foreign gifts and decorations above the minimal value become the property of the Federal Government and must be reported to GSA for disposal if not immediately needed by the agency for official purposes. Additionally, those items initially retained by the agencies for official use are reported to GSA upon termination of official use.

The foreign gifts and decorations minimal value was last redefined effective January 1, 2017, at $390, and therefore, must be redefined as of January 1, 2020, to reflect the CPI increase of 6.35 percent for the preceding three years.

Pursuant to FMR § 102–42.10, the approved revised minimal value will be published in an FMR Bulletin posted on OGP's website (*www.gsa.gov/personalpropertypolicy*).

Calculations using the consumer prices over the past three years show that the minimal value must increase 6.35 percent from its current $390, which yields an amount of $414.77. As in previous years, GSA is rounding the amount to the nearest five dollar increments.

Therefore, GSA is adjusting the new minimal value to $415.00. Per FMR § 102–42.10, an agency may, by regulation, specify a lower value than this Government-wide value for its agency employees.

**Jessica Salmoiraghi,**

*Associate Administrator, Office of Government-wide Policy.*

[FR Doc. 2020–05375 Filed 3–16–20; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—Funding Opportunity Announcement (FOA), PAR 16–098, Cooperative Research Agreements to the World Trade Center Health Program (U01); Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—FOA, PAR 16–098, Cooperative Research Agreements to the World Trade Center Health Program (U01); March 10, 2020; and March 11, 2020, Day One: 8:00 a.m.–5:00 p.m., EDT; and Day Two: 8:00 a.m.–12:00 p.m., EDT, in the original FRN.

Courtyard Marriott Decatur Downtown/Emory, 130 Clairmont Avenue, Decatur, Georgia 30030, Telephone: (404) 371–0201, which was published in the **Federal Register** on January 14, 2020, Volume 85, Number 9, page 2136.

The meeting is being amended to a virtual meeting, and the meeting time has been extended to 4:00 p.m., EDT on March 11, 2020. The meeting is closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Nina Turner, Ph.D., Scientific Review Officer, CDC/NIOSH, 1095 Willowdale Road, Mailstop G905, Morgantown, West Virginia 26505, Telephone: (304) 285–5975.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2020–05374 Filed 3–16–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; National Child Abuse and Neglect Data System (OMB #0970–0424)

**AGENCY:** Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF) is requesting a 3-year extension of the National Child Abuse and Neglect Data System (NCANDS) collection (OMB #0970–0424, expiration 02/28/2021). There are no changes requested to this data collection.

**DATES:** *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

**ADDRESSES:** Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The Child Abuse Prevention and Treatment Act (CAPTA)

was amended in 1988 to direct the Secretary of HHS to establish a national data collection and analysis program, which would make available state child abuse and neglect reporting information. HHS responded by establishing NCANDS as a voluntary national reporting system.

In 1996, CAPTA was amended to require all states that receive funds from the Basic State Grant program to work with the Secretary of HHS to provide specific data elements, to the maximum extent practicable, about children who had been maltreated. Most of the required data elements were added to the NCANDS data collection. Subsequent CAPTA reauthorizations and amendments added required data elements. The current list of CAPTA-required data elements includes:

1) The number of children who were reported to the state during the year as victims of child abuse or neglect.

2) Of the number of children described in paragraph (1), the number with respect to whom such reports were—

a) Substantiated;

b) Unsubstantiated; or

c) Determined to be false.

3) Of the number of children described in paragraph (2)—

a) the number that did not receive services during the year under the state program funded under this section or an equivalent state program;

b) the number that received services during the year under the state program funded under this section or an equivalent state program; and

c) the number that were removed from their families during the year by disposition of the case.

4) The number of families that received preventive services, including use of differential response, from the state during the year.

5) The number of deaths in the state during the year resulting from child abuse or neglect.

6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

7)

a) The number of child protective service personnel responsible for the—

i.) intake of reports filed in the previous year;

ii.) screening of such reports;

iii.) assessment of such reports; and

iv.) investigation of such reports.

b) The average caseload for the workers described in subparagraph (A).

8) The agency response time with respect to each report pertaining to the initial investigation of child abuse or neglect.

9) The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.

10) For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the state—

a) information on the education, qualifications, and training requirements established by the state for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;

b) data of the education, qualifications, and training of such personnel;

c) demographic information of the child protective service personnel; and

d) information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.

11) The number of children reunited with their families or receiving family preservation services that, within 5 years, result in subsequent substantiated reports of child abuse or neglect, including the death of the child.

12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

13) The annual report containing the summary of activities of the citizen review panels of the state required by subsection (c)(6).

14) The number of children under the care of the state child protection system who are transferred into the custody of the state juvenile justice system.

15) The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

16) The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*).

17) The number of children determined to be victims described in subsection (b)(2)(B)(xxiv).

18) The number of infants—

a) identified under subsection (b)(2)(B)(ii);

b) for whom a plan of safe care was developed under subsection (b)(2)(B)(iii); and

c) for whom a referral was made for appropriate services, including services for the affected family or caregiver, under subsection (b)(2)(B)(iii).

The items listed under number (10), (13), and (14) are not collected by NCANDS.

The Children's Bureau proposes to continue collecting the NCANDS data through the two files of the Detailed Case Data Component, the Child File (the case-level component of NCANDS), and the Agency File (additional aggregate data, which cannot be collected at the case level). There are no proposed changes to the NCANDS data collection instruments. New data elements were added during the previous OMB clearance cycle in response to the Justice for Victims of Trafficking Act of 2015 and the Comprehensive Addiction and Recovery Act of 2016, both of which amended CAPTA.

*Respondents:* State governments, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Total number of responses per respondent | Average burden hours per response | Total burden hours | Annual burden hours |
|---|---|---|---|---|---|
| Detailed Case Data Component (Child File and Agency File) | 52 | 3 | 106 | 16,536 | 5,512 |

*Estimated Total Annual Burden Hours:* 5,512.

*Comments:* The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

(Authority: 42 U.S.C. 5101 *et seq.*)

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2020–05500 Filed 3–16–20; 8:45 am]

**BILLING CODE 4184–29–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Data Collection for the Next Generation of Enhanced Employment Strategies Project (New Collection)

**AGENCY:** Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Office of Planning, Research, and Evaluation (OPRE) within the Administration for Children and Families (ACF) is proposing data collection activities conducted for the Next Generation of Enhanced Employment Strategies (NextGen) Project. The objective of this project is to identify and rigorously evaluate innovative interventions designed to promote employment and economic security among low-income individuals with complex challenges to employment. The project will include an experimental impact study, descriptive study, and cost study.

**DATES:** *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**SUPPLEMENTARY INFORMATION:**

*Description:* To further build the evidence around effective strategies for helping low-income individuals find and sustain employment, OPRE is conducting the NextGen Project. This project will identify and test up to 10 innovative, promising employment interventions designed to help individuals facing complex challenges secure a pathway toward economic independence. These challenges may be physical and mental health conditions, a criminal history, or limited work skills and experience.

The project is actively coordinating with the Building Evidence on Employment Strategies for Low-Income Families Project (0970–0537), another OPRE project focused on strengthening ACF's understanding of effective interventions aimed at supporting low-income individuals to find jobs, advance in the labor market, and improve their economic security. Additionally, the project is working closely with the Social Security Administration (SSA) to incorporate a focus on employment-related early interventions for individuals with current or foreseeable disabilities who have limited work history and are potential applicants for Supplemental Security Income (SSI).

The NextGen Project will use a two-phased approach for approval of this proposed information collection activity. In Phase 1 (current request) the research team seeks approval to formally recruit programs, to administer the informed consent form and baseline participant survey, and to collect identifying and contact information for study participants. The project intends for these data collections to be uniform across programs selected for evaluation and it does not anticipate that they will require revisions.

Under Phase 2 of the request, the project will update the information collection request for the remaining instruments to tailor to each program selected for the evaluation, as needed.

The proposed information collection activities cover an experimental impact study, descriptive study, and cost study. Data collection activities for the impact study include: (1) Baseline survey and identifying and contact information data collection, (2) a first follow-up survey, and (3) a second follow-up survey. Data collection activities for the descriptive study include: (1) Program service receipt tracking; (2) staff characteristics survey; (3) program leadership survey; (4) semi-structured program discussion guide (conducted with program leaders, supervisors, partners, staff, and providers); (5) semi-structured employer discussion guide (for those interventions that include an employer component); and (6) in-depth participant interviews. Data collection activities for the cost study include an Excel-based cost workbook.

*Respondents:* Program staff, program partners, employer staff, and individuals enrolled in the NextGen Project. Program staff and partners may include case managers, health professionals, workshop instructors, job developers, supervisors, managers, and administrators. Employers may include administrators, human resources staff, and worksite supervisors.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| **PHASE 1** | | | | | |
| Baseline survey & identifying and contact information—participants | 10,000 | 3,333 | 1 | 0.42 | 1,400 |
| Baseline survey & identifying and contact information—staff | 200 | 67 | 50 | 0.42 | 1,407 |
| Estimated Total Annual Burden Hours, Phase 1: | | | | | 2,807 |

ANNUAL BURDEN ESTIMATES—Continued

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| **PHASE 2 ESTIMATES** | | | | | |
| First follow-up survey—participants | 8,000 | 2,667 | 1 | 0.83 | 2,214 |
| Second follow-up survey—participants | 8,000 | 2,667 | 1 | 0.83 | 2,214 |
| Service receipt tracking—program staff | 200 | 67 | 250 | 0.08 | 1,340 |
| Staff characteristics survey—program staff | 200 | 67 | 1 | 0.42 | 28 |
| Program leadership survey—program leaders | 50 | 17 | 1 | 0.25 | 4 |
| Semi-structured program discussion guide—program leaders | 40 | 13 | 1 | 1.5 | 20 |
| Semi-structured program discussion guide—program supervisors and partners | 80 | 27 | 1 | 1.0 | 27 |
| Semi-structured program discussion guide—program staff, providers | 80 | 27 | 1 | 0.75 | 20 |
| Semi-structured employer discussion guide—employers | 50 | 17 | 1 | 1.0 | 17 |
| In-depth participant interview guide—participants | 200 | 67 | 1 | 2.0 | 134 |
| Cost workbook—program staff | 40 | 13 | 1 | 32.0 | 416 |
| Estimated Total Annual Burden Hours, Phase 2: | | | | | 6,434 |

**Authority:** Section 413 of the Social Security Act, as amended by the FY 2017 Consolidated Appropriations Act, 2017 (Public Law 115–31).

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2020–05440 Filed 3–16–20; 8:45 am]

**BILLING CODE 4184–09–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2019–N–3077; FDA–2013–N–0403; FDA–2013–N–0579; FDA–2016–N–2474; FDA–2013–N–0717; FDA–2018–N–3728; FDA–2013–N–0797; FDA–2013–N–0578; FDA–2013–N–0879; FDA–2012–N–0197; FDA–2016–N–3586; FDA–2016–N–4319; and FDA–2013–N–0764]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *http://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

| Title of collection | OMB Control No. | Date approval expires |
|---|---|---|
| Obtaining Information to Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities | 0910–0883 | 1/31/2021 |
| Protection of Human Subjects; Informed Consent; and Institutional Boards | 0910–0130 | 1/31/2023 |
| Biological Products: Reporting and Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Deviations in Manufacturing | 0910–0458 | 1/31/2023 |
| Reporting Associated with Designated New Animal Drugs for Minor Use and Minor Species | 0910–0605 | 1/31/2023 |
| Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaign | 0910–0753 | 1/31/2023 |
| Collection of Conflict of Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs | 0910–0882 | 1/31/2023 |
| Human Tissue Intended for Transplantation | 0910–0302 | 2/28/2023 |
| General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h | 0910–0338 | 2/28/2023 |
| Procedures for the Safe Processing and Importing of Fish and Fishery Products | 0910–0354 | 2/28/2023 |
| Medical Devices; Shortages Data Collection System | 0910–0491 | 2/28/2023 |
| Focus Groups About Drug Products as Used by the Food and Drug Administration | 0910–0677 | 2/28/2023 |

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB—Continued

| Title of collection | OMB Control No. | Date approval expires |
|---|---|---|
| Unique Device Identification System | 0910–0720 | 2/28/2023 |
| Animal Feed Regulatory Program Standards | 0910–0760 | 2/28/2023 |

Dated: March 11, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05354 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–N–0908]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Food and Drug Administration Form 3503

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations for submission of petitions, including food and color additive petitions (FAPs and CAPs) (including labeling) submission of information to a master file in support of petitions, and electronic submission using Form FDA 3503.

**DATES:** Submit either electronic or written comments on the collection of information by May 18, 2020.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 18, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 18, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2020–N–0908 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Food and Drug Administration Form 3503.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the

docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Submission of Petitions: Food Additive, Color Additive (Including Labeling); Submission of Information to a Master File in Support of Petitions; Electronic Submission Using FDA Form 3503—21 CFR 70.25, 71.1, 171.1, 172, 173, 179, and 180**

*OMB Control Number 0910–0016—Revision*

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under § 409 that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under § 409(h) is effective. FAPs are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 179, and 180 (21 CFR parts 172, 173, 179, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the FD&C Act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under § 721(f). CAPs are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 of the Agency's regulations (21 CFR 71.1) specifies the information that a petitioner must submit to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

FDA scientific personnel reviews FAPs to ensure the safety of the intended use of the additive in or on food, or that may be present in food as a result of its use in articles that contact food. Likewise, FDA personnel review CAPs to ensure the safety of the color additive prior to its use in food, drugs, cosmetics, or medical devices.

Respondents may transmit FAP or CAP regulatory submissions in electronic format or paper format to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition (CFSAN) using Form FDA 3503. Form FDA 3503 helps the respondent organize their submission to focus on the information needed for FDA's safety review. Form FDA 3503 can also be used to organize information within a master file submitted in support of petitions according to the items listed on the form. Master files can be used as repositories for information that can be referenced in multiple submissions to the Agency, thus minimizing paperwork burden for food and color additive approvals. FDA estimates that the amount of time for respondents to complete Form FDA 3503 will continue to be 1 hour.

We are revising the information collection to reflect ongoing modernization efforts. We have augmented our FDA Unified Registration and Listing System (FURLS) with the CFSAN Online Submission Module (''COSM''). The COSM provides a real-time user interface process we believe will assist respondents in preparing and making submissions to Offices in CFSAN. The COSM is a web-based tool that supports electronic submissions, thereby eliminating the need for printing and mailing of paper submissions. COSM is available 24 hours a day and seven days a week. Information submitted to COSM is the same information respondents would submit to the FURLS system. Information about COSM, including user instruction, is available on the internet at: *https://www.fda.gov/food/registration-food-facilities-and-other-submissions/cfsan-online-submission-module-cosm.*

*Description of respondents:* Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section/form | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours | Total operating and maintenance costs |
|---|---|---|---|---|---|---|
| **Color Additive Petitions** | | | | | | |
| 70.25, 71.1 | 2 | 1 | 2 | 1,337 | 2,674 | $5,600 |
| **Food Additive Petitions** | | | | | | |
| 171.1 | 3 | 1 | 3 | 7,093 | 21,279 | 0 |
| Form FDA 3503 | 6 | 1 | 6 | 1 | 6 | 0 |
| Total | | | | | 23,959 | 5,600 |

[1] There are no capital costs associated with this collection of information.

Our estimate of burden attributable to food additive or color additive petitions is based on our experience with the information collection, which has not changed since our last review, and we therefore retain the currently approved burden. This estimate reflects the average number of petitions we have received annually over a period of 10 years. The attendant burden we estimate also reflects an industry average, although burden associated with individual petitions may vary depending on the complexity of the petition, and the amount and type of data needed for scientific analysis.

Color additive petitions are subject to fees. The listing fee for a color additive petition ranges from $1,600 to $3,000, depending on the intended use of the color additive and the scope of the requested amendment. A complete schedule of fees is set forth in § 70.19. An average of one Category A and one Category B color additive petition is expected per year. The maximum color additive petition fee for a Category A petition is $2,600 and the maximum color additive petition fee for a Category B petition is $3,000. Because an average of 2 CAPs are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $5,600 ((1 × $2,600) + (1 × $3,000) listing fees = $5,600). There are no capital costs associated with CAPs. The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the FD&C Act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §§ 70.25 and 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 179, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: March 10, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05447 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–3131]**

### Jagen D. Lewicki: Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Jagen Lewicki for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Lewicki was convicted, as defined in the FD&C Act, of one felony count under Federal law for conspiracy to distribute Human Growth Hormone (HGH) imported from China for a purpose other than the treatment of a disease or other recognized medical condition, the use of which had been authorized by the Secretary of Health and Human Services, and not pursuant to an order of a physician, in violation of the FD&C Act. The factual basis supporting this felony conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Lewicki was given notice of the proposed debarment and, in accordance with the FD&C Act and FDA's regulations, was given an opportunity to request a hearing to show why he should not be debarred. As of October 28, 2019 (30 days after receipt of the notice), Mr. Lewicki had not responded. Mr. Lewicki's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

**DATES:** This order is applicable March 17, 2020.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa, Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, or at *debarments@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if the FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has

been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On December 20, 2018, Mr. Lewicki was convicted as defined in section 306(l)(1)(B) of the FD&C Act, in the United States District Court for the Eastern District of Virginia, when the court accepted his plea of guilty for the offense of conspiracy to distribute HGH imported from China for unapproved purposes in violation of 18 U.S.C. 371 and 21 U.S.C. 333(e) (section 303(e) of FD&C Act).

The FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the Stipulation of Facts incorporated into the Plea Agreement, filed on December 20, 2018, from on or about January 2017 to February 2018, Mr. Lewicki conspired with certain other known and unknown individuals to unlawfully distribute HGH imported from China. Specifically, Mr. Lewicki submitted periodic orders, and gave money, for HGH to co-conspirators, for the purchase of HGH from manufacturers based in China. In addition, Mr. Lewicki set up various post office boxes at private carriers in the Eastern District of Virginia. The Chinese based manufacturers delivered vials of HGH from China to Mr. Lewicki at post office boxes he set up. Mr. Lewicki received approximately 90 packages from Chinese manufacturers, each containing 200 vials of HGH. Mr. Lewicki would then sell these vials to individual customers throughout the United States for bodybuilding and other unapproved purposes. Mr. Lewicki's actions were in violation of 18 U.S.C. 371 and 21 U.S.C. 333(e) (section 303(e) of the FD&C Act).

As a result of this conviction FDA sent Mr. Lewicki, by certified mail on September 25, 2019, a notice proposing to debar him for 5 years from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Lewicki's felony conviction for conspiracy in violation of 18 U.S.C. 371 and section 303(e) of the FD&C Act was for conduct relating to the importation into the United States of any drug or controlled substance because on multiple occasions, he imported HGH from China and conspired to distribute it within the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Lewicki's offense and, for the reasons detailed in the notice, concluded that his offense warranted a 5-year period of debarment under section 306(c)(2)(A)(iii).

The proposal informed Mr. Lewicki of the proposed debarment and offered Mr. Lewicki an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Lewicki received the proposal and notice of opportunity for a hearing on September 28, 2019. Mr. Lewicki failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Lewicki has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years.

As a result of the foregoing finding, pursuant to section 306(b)(1)(D) of the FD&C Act, Mr. Lewicki is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of, Mr. Lewicki is a prohibited act.

Any application by Mr. Lewicki for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2019–N–3131 and sent to the Dockets Management Staff (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket, and will be viewable at *http://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 11, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05449 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–3474]**

### Zhang Xiao Dong: Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Zhang Xiao Dong for a period of 5 years from importing articles of food (including dietary supplements) or offering such articles for importation into the United States. FDA bases this order on a finding that Mr. Dong was convicted, as defined in the FD&C Act, of a felony count under Federal law for conduct relating to the importation into the United States of an article of food. Mr. Dong was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of November 19, 2019 (30 days after receipt of the notice), Mr. Dong has not responded. Mr. Dong's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

**DATES:** This order is applicable March 17, 2020.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa, Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, or at *debarments@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 306(b)(1)(C) of the FD&C Act (21 U.S.C. 335a(b)(1)(C)) permits FDA to debar an individual from importing an article of food or offering such an article for import into the United States if FDA finds, as required by section 306(b)(3)(A) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any food.

On December 20, 2018, Mr. Dong was convicted as defined in section

306(l)(1)(A) of the FD&C Act, in the United States District Court for the Northern District of Texas Dallas Division, when the court entered judgment against him for the offense of Mail Fraud in violation of 18 U.S.C. 1343.

FDA's finding that the debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the Factual Resume in his case, filed on March 12, 2018, Mr. Dong, along with other employees of his employer Genabolix USA, Inc. and Shanghai Yongyi Biotechnology Co., Ltd. (Genabolix), did in or around February 2017, agree to sell synthetic stimulant ingredients, including 1,4 Dimethylamylamine (1,4-DMAA), to a purported dietary supplement manufacturer. That manufacturer told Mr. Dong that the ingredients supplied by Mr. Dong would not be accurately listed on the labels of the finished dietary supplements produced with those ingredients. As Mr. Dong knew, the synthetic stimulant ingredients would be omitted from the ingredient label of the dietary supplements so that American retailers would sell the product. Mr. Dong then sent unlabeled shipments of these ingredients to a third party in the United States. Subsequently, on June 8, 2017, Mr. Dong (along with others) caused 50kg of 1,3 Dimethylamylamine (1,3-DMAA) to be shipped via commercial carrier in interstate commerce in the United States.

As a result of this conviction, FDA sent Mr. Dong, by certified mail on October 18, 2019, a notice proposing to debar him for a period of 5 years from importing articles of food or offering such articles for import into the United States. The proposal was based on a finding under section 306(b)(1)(C) of the FD&C Act that Mr. Dong's felony conviction for Mail Fraud in violation of 18 U.S.C. 1343, constitutes conduct relating to the importation into the United States of an article of food because Mr. Dong unlawfully imported synthetic stimulant ingredients which Mr. Dong then caused to be shipped in interstate commerce and ultimately used in dietary supplements that did not list the synthetic stimulants as an ingredient.

The proposal was also based on a determination, after consideration of the relevant factors set forth in section 306(c)(3) of the FD&C Act, that Mr. Dong should be subject to a 5-year period of debarment. The proposal also offered Mr. Dong an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Dong failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(1)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Dong has been convicted of a felony count under Federal law for conduct relating to the importation into the United States of an article of food and that he is subject to a 5-year period of debarment.

As a result of the foregoing finding, Mr. Dong is debarred for a period of 5 years from importing articles of food or offering such articles for import into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of Mr. Dong is a prohibited act.

Any application by Mr. Dong for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2019–N–3474 and sent to the Dockets Management Staff (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at *http://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES)** between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 11, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05443 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–N–0419]**

## Pan American Laboratories, LLC, et al.; Withdrawal of Approval of Three New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of three new drug applications (NDAs) from multiple holders of those NDAs. The basis for the withdrawal is that these NDA holders have repeatedly failed to file required annual reports for those NDAs.

**DATES:** Approval is withdrawn as of March 17, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kimberly S. Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

**SUPPLEMENTARY INFORMATION:** The holder of an approved application to market a new drug for human use is required to submit annual reports to FDA concerning its approved application in accordance with § 314.81 (21 CFR 314.81).

In the **Federal Register** of November 18, 2019 (84 FR 63661), FDA published a notice offering an opportunity for a hearing (NOOH) on a proposal to withdraw approval of these NDAs because the holders of those NDAs had repeatedly failed to submit the required annual reports for those NDAs. The holders of the NDAs identified in table 1 did not respond to the NOOH. Failure to file a written notice of participation and request for hearing as required by § 314.200 (21 CFR 314.200) constitutes an election by those holders of the NDAs not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of their NDAs and a waiver of any contentions concerning the legal status of the drug products. Therefore, FDA is withdrawing approval of the three applications listed in table 1 of this document. FDA notes that the NOOH also proposed to withdraw approval of NDA 018663, but FDA has decided not to pursue withdrawal of approval of this NDA at this time.

TABLE 1—APPROVED NDAS FOR WHICH REQUIRED REPORTS HAVE NOT BEEN SUBMITTED

| Application No. | Drug | NDA holder |
|---|---|---|
| NDA 014217 ... | Maolate (chlorphenesin carbamate) Tablet, 400 milligrams (mg). | Pan American Laboratories, LLC, 4099 Highway 190, Covington, LA 70433. |
| NDA 020530 ... | Iontocaine (epinephrine and lidocaine hydrochloride (HCl)) Topical Solution, 0.01 mg/milliliter; 2%. | Iomed, Inc., 2441 South 3850 West, Suite A, Salt Lake City, UT 84120–9941. |
| NDA 021504 ... | LidoSite Topical System: LidoSite Patch (lidocaine HCl and epinephrine topical iontophoretic patch) 10%/0.1% and LidoSite Controller. | Vyteris, Inc., 13–01 Pollitt Dr., Fair Lawn, NJ 07410. |

FDA finds that the holders of the NDAs listed in table 1 have repeatedly failed to submit reports required by § 314.81. In addition, under § 314.200, FDA finds that the holders of the NDAs have waived any contentions concerning the legal status of the drug products. Therefore, under these findings, approval of the NDAs listed in table 1 and all amendments and supplements thereto are hereby withdrawn as of March 17, 2020.[1]

Dated: March 12, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05498 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–3310]**

### Matthew Dailey: Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Matthew Dailey for a period of 10 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Dailey was convicted, as defined in the FD&C Act, of one felony count under Federal law for introducing misbranded drugs into interstate commerce and one felony count of importing merchandise contrary to law. The factual basis supporting both felony convictions, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Dailey was given notice of the proposed debarment and was given an opportunity to request a hearing within the timeframe prescribed by regulation to show why he should not be debarred. As of November 8, 2019 (30 days after receipt of the notice), Mr. Dailey had not responded. Mr. Dailey's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

**DATES:** This order is applicable March 17, 2020.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa (ELEM–4029), Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743 or at *debarments@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if the FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On May 8, 2019, Mr. Dailey was convicted as defined in section 306(*l*)(1) of the FD&C Act, in the U.S. District Court for the Eastern District of Michigan, when the court accepted his plea of guilty and entered judgment against him for the offenses of introducing misbranded drugs into interstate commerce in violation of section 301(a) of the FD&C Act (21 U.S.C. 331(a)) and importing merchandise contrary to law in violation of 18 U.S.C. 545.

The FDA's finding that debarment is appropriate is based on the felony convictions referenced herein. The factual basis for these convictions is as follows: As contained in the Stipulation of Facts incorporated into the Plea Agreement, filed on January 8, 2019, from on or about March 2011 through November 2016, Mr. Dailey imported hundreds of shipments of kratom into the United States. To evade the lawful regulatory authority of FDA, he instructed his foreign suppliers to label shipments of bulk kratom with materially false statements that described the kratom as ''incense,'' ''paint pigment,'' and other substances not regulated by the FDA. Mr. Dailey also provided the FDA (sometimes through import brokers) materially false written descriptions of his bulk kratom imports. After receiving the kratom, Mr. Dailey then apportioned bulk shipments of kratom into smaller portions and repackaged the kratom into smaller plastic bags at a location not registered as a facility that manufactures, prepares, propagates, compounds, and processes drugs. Mr. Dailey then sold kratom products to hundreds of consumers through the United States through a website he managed. The labeling of his kratom products did not include any directions for use, such as indications, dosage instructions, methods of administration, or contraindications. In selling his kratom product, Mr. Dailey intended that consumers use his kratom products as a ''drug'' within the meaning of section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)). Specifically, Mr. Dailey intended that consumers use the kratom he imported to treat and mitigate diseases, including but not limited to chronic pain, fibromyalgia, opiate withdrawal, and Lyme disease, and to affect the structure and function of the human body by taking the kratom products as substitutes for drugs of abuse and prescription pills. As stated in the Stipulation of Facts, Mr. Dailey's actions were in violation of section 301(a) of the FD&C Act and 18 U.S.C. 545.

As a result of this conviction, FDA sent Mr. Dailey by certified mail on October 2, 2019, a notice proposing to debar him for 2 consecutive 5-year periods (10 years) from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C)

[1] Although it was not a factor in FDA's determination, we note that all three drugs covered by these NDAs are in discontinued marketing status.

of the FD&C Act that Mr. Dailey's felony convictions for introducing misbranded drugs into interstate commerce and importing merchandise contrary to law were for conduct relating to the importation into the United States of any drug or controlled substance because he illegally imported kratom, a misbranded drug, for repackaging, sale, and distribution to U.S. consumers. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Dailey's offenses, and concluded that each of these felony offenses independently warranted a 5-year period of debarment, and proposed that these debarment periods be served consecutively under section 306(c)(2)(A)(iii) of the FD&C Act.

The proposal informed Mr. Dailey of the proposed debarment and offered Mr. Dailey an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Dailey received the proposal and notice of opportunity for a hearing on October 7, 2019. Mr. Dailey failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Dailey has been convicted of two felony counts under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that each offense should be accorded a debarment period of 5 years. Under section 306(c)(2)(A)(iii) of the FD&C Act, in the case of a person debarred for multiple offenses, FDA shall determine whether the periods of debarment shall run concurrently or consecutively. FDA has concluded that the 5-year period of debarment for each of the 2 offenses of conviction needs to be served consecutively, resulting in a total debarment period of 10 years.

As a result of the foregoing finding, Mr. Dailey is debarred for a period of 10 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act, the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Dailey is a prohibited act.

Any application by Mr. Dailey for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2019–N–3310 and sent to the Dockets Management Staff (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *http://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 11, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05450 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–P–4523]**

### Determination That Potassium Chloride in 5% Dextrose and 0.225% Sodium Chloride Injection, 5 Milliequivalents, 10 Milliequivalents, 15 Milliequivalents, 20 Milliequivalents, 30 Milliequivalents, and 40 Milliequivalents, in Plastic Containers, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that the potassium chloride drug products listed in this notice were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) that refer to these drug products, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Linda Jong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6288, Silver Spring, MD 20993–0002, 301–796–3977, *Linda.Jong@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

The drug products listed in table 1 of this notice are no longer being marketed. All the products listed in table 1 are the subject of NDA 018365, held by ICU Medical, Inc., and initially approved on May 29, 1980. The products are indicated in patients requiring parenteral administration of potassium chloride with minimal carbohydrate calories and sodium chloride.

TABLE 1

| Drug | Dosage form/route | Strength |
|---|---|---|
| Potassium Chloride (5 milliequivalents (mEq)) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Injectable/Injection | 5 grams (g)/100 milliliters (mL); 74.5 milligrams (mg)/100 mL; 225 mg/100 mL. |
| Potassium Chloride (5 mEq) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Do | 5 g/100 mL; 149 mg/100 mL; 225 mg/100 mL. |
| Potassium Chloride (10 mEq) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Do | 5 g/100 mL; 74.5 mg/100 mL; 225 mg/100 mL. |
| Potassium Chloride (10 mEq) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Do | 5 g/100 mL; 149 mg/100 mL; 225 mg/100 mL. |
| Potassium Chloride (15 mEq) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Do | 5 g/100 mL; 224 mg/100 mL; 225 mg/100 mL. |
| Potassium Chloride (20 mEq) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Do | 5 g/100 mL; 298 mg/100 mL; 225 mg/100 mL. |
| Potassium Chloride (30 mEq) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Do | 5 g/100 mL; 224 mg/100 mL; 225 mg/100 mL. |
| Potassium Chloride (40 mEq) in 5% dextrose and 0.225% sodium chloride, in plastic container. | Do | 5 g/100 mL; 298 mg/100 mL; 225 mg/100 mL. |

The products listed in table 1 are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book. Fresenius Kabi USA, LLC, submitted a citizen petition dated September 26, 2019 (Docket No. FDA–2019–P–4523), under 21 CFR 10.30, requesting that the Agency determine whether the products listed in table 1 were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that the potassium chloride drug products listed in this notice were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that the potassium chloride drug products listed in this notice were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of the potassium chloride drug products listed in this notice from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that the potassium chloride drug products listed in this notice were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list the potassium chloride drug products listed in this notice, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 11, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05442 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–N–2734]**

### Robert Richard Jodoin: Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Robert Richard Jodoin for a period of 5 years from importing any drug into the United States. FDA bases this order on a finding that Mr. Jodoin was convicted, as defined in the FD&C Act, of one felony count under Federal law for unlawfully importing and attempting to import a controlled substance into the United States. The factual basis supporting the conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Jodoin was given notice of the proposed debarment and, in accordance with the FD&C Act, was given an opportunity to request a hearing to show why he should not be debarred. As of November 9, 2019 (30 days after receipt of the notice), Mr. Jodoin had not responded. Mr. Jodoin's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

**DATES:** This order is applicable March 17, 2020.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa, Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at, *debarments@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On February 25, 2019, Mr. Jodoin was convicted as defined in section 306(l)(1)(B) of the FD&C Act, in the United States District Court for the Middle District of Florida, Jackson Division, when the court accepted his plea of guilty and entered judgment against him for multiple offenses, one of which is relevant to this debarment. Specifically, FDA's finding that debarment is appropriate is based on Mr. Jodoin's felony conviction for

knowingly and intentionally attempting to import into the United States a mixture and substance containing a detectable amount of gamma-Hydroxybutyric Acid, a Schedule I controlled substance in violation of 21 U.S.C. 952(a), 960(a)(1), 960(b)(3), and 963 on or about April 16, 2018, as described in the Superseding Indictment in his case dated October 10, 2018.

As a result of this conviction, FDA sent Mr. Jodoin by certified mail on September 25, 2019, a notice proposing to debar him for 5 years from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Jodoin's felony conviction was for conduct relating to the importation into the United States of any drug or controlled substance because he smuggled into the United States a Schedule I controlled substance. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Jodoin's offense and concluded Mr. Jodoin's felony offense warranted a 5-year period of debarment.

The proposal informed Mr. Jodoin of the proposed debarment and offered Mr. Jodoin an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Jodoin received the proposal and notice of opportunity for a hearing on October 8, 2019. Mr. Jodoin failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Jodoin has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that this offense should be accorded a debarment period of 5 years.

As a result of the foregoing finding, Mr. Jodoin is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see DATES). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Jodoin is a prohibited act.

Any application by Mr. Jodoin for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2019–N–2734 and sent to the Dockets Management Staff (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 11, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–05444 Filed 3–16–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on February 1, 2020, through February 29, 2020. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated

to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: March 11, 2020.

**Thomas J. Engels,**

*Administrator.*

### List of Petitions Filed

1. Megan Sebasky, Madison, Wisconsin, Court of Federal Claims No: 20–0122V
2. Dorothy Stradford, Hillside, New Jersey, Court of Federal Claims No: 20–0124V
3. Tammie Attaway, Salinas, California, Court of Federal Claims No: 20–0125V
4. Linda Fletcher, Port St. Lucie, Florida, Court of Federal Claims No: 20–0127V
5. Michael Cook, Zionsville, Indiana, Court of Federal Claims No: 20–0128V
6. Tammy Kleyle on behalf of A. N. K., Marrero, Louisiana, Court of Federal Claims No: 20–0129V
7. Julia Conroy, Tucson, Arizona, Court of Federal Claims No: 20–0131V
8. Edwin John Sherry and Kimberly Diane Sherry on behalf of Anjalie Leana-Rose Sherry, Deceased, Charlotte, North Carolina, Court of Federal Claims No: 20–0132V
9. Dan Noel and Haley Noel on behalf of H. N., Colorado Springs, Colorado, Court of Federal Claims No: 20–0134V
10. Ronald Piccolotti, Dallas, Texas, Court of Federal Claims No: 20–0135V
11. Christine Schultz, Frederick, Maryland, Court of Federal Claims No: 20–0136V
12. Katherine Mensinger on behalf of The Estate of Thomas Mensinger, Deceased, Benton Harbor, Michigan, Court of Federal Claims No: 20–0138V
13. Katelyn Uglialoro on behalf of LinMarie Uglialoro, Hershey, Pennsylvania, Court of Federal Claims No: 20–0139V
14. Carol Joan Gonzales, Puyallup, Washington, Court of Federal Claims No: 20–0140V
15. Neil Silver, New York, New York, Court of Federal Claims No: 20–0141V
16. Jeffrey E. Olson, Deceased, Waupun, Wisconsin, Court of Federal Claims No: 20–0142V
17. Joel Miles, Green Bay, Wisconsin, Court of Federal Claims No: 20–0146V
18. Enye McHugh on behalf of S. M., Madison, Wisconsin, Court of Federal Claims No: 20–0148V
19. Francis E. Sethman, Jr., Greensboro, North Carolina, Court of Federal Claims No: 20–0149V
20. Nancy Bender-Kelner, Shorewood, Minnesota, Court of Federal Claims No: 20–0151V
21. Maureen Miller, Berkeley, California, Court of Federal Claims No: 20–0152V
22. Sarah Eichorn, Des Moines, Iowa, Court of Federal Claims No: 20–0154V
23. Rebecca Viancourt, Cleveland, Ohio, Court of Federal Claims No: 20–0155V
24. Heidi M. Brill on behalf of A. B., Fond du Lac, Wisconsin, Court of Federal Claims No: 20–0156V
25. Mario A. Flores, Jr., Harlingen, Texas, Court of Federal Claims No: 20–0157V
26. Pamela M. Leathers, Camas, Washington, Court of Federal Claims No: 20–0162V
27. Ania Oliva-Guedes, Rochester, New York, Court of Federal Claims No: 20–0165V
28. Julie Lechner, Aberdeen, South Dakota, Court of Federal Claims No: 20–0170V
29. Helane Stein, Conshohocken, Pennsylvania, Court of Federal Claims No: 20–0171V
30. Lee Ann Sender, Washington, District of Columbia, Court of Federal Claims No: 20–0172V
31. Jeffrey Horning, Washington, District of Columbia, Court of Federal Claims No: 20–0173V
32. Jakeisha Saville, Dallas, Texas, Court of Federal Claims No: 20–0174V
33. Robert Introini, Mansfield, Massachusetts, Court of Federal Claims No: 20–0176V
34. Dustin Gibson, Humboldt, Iowa, Court of Federal Claims No: 20–0177V
35. Kamalika Saha, Cambridge, Massachusetts, Court of Federal Claims No: 20–0178V
36. Leticia Palencia on behalf of C. A. P., Harlingen, Texas, Court of Federal Claims No: 20–0180V
37. John Gavin, Washington, District of Columbia, Court of Federal Claims No: 20–0181V
38. Hilary Harris, Washington, District of Columbia, Court of Federal Claims No: 20–0182V
39. John Holloway, Oakland, California, Court of Federal Claims No: 20–0184V
40. Marylou LaLonde, Boston, Massachusetts, Court of Federal Claims No: 20–0186V
41. Gary Allen, Idaho Springs, Colorado, Court of Federal Claims No: 20–0187V
42. Rina Schnaufer, Rochester, New York, Court of Federal Claims No: 20–0189V
43. Rodney Koehl, Peoria, Illinois, Court of Federal Claims No: 20–0190V
44. Gelacio Valdez, Dixon, Illinois, Court of Federal Claims No: 20–0191V
45. Montana Smithey on behalf of E. S., Burlington, North Carolina, Court of Federal Claims No: 20–0192V
46. Joseph Dweck, Brooklyn, New York, Court of Federal Claims No: 20–0193V
47. Jennifer Bonilla-Edgington, Stroudsburg, Pennsylvania, Court of Federal Claims No: 20–0194V
48. Brenda Anderson, Grand Rapids, Michigan, Court of Federal Claims No: 20–0195V
49. Betty A. Dennis on behalf of Estate of Richard P. Dennis, Deceased, La Crosse, Wisconsin, Court of Federal Claims No: 20–0198V
50. Nicole Matley, Monroe, Wisconsin, Court of Federal Claims No: 20–0199V
51. Betty Davis, Decatur, Texas, Court of Federal Claims No: 20–0201V
52. Esther Reeves, Naples, Florida, Court of Federal Claims No: 20–0202V
53. Sandeep Bains, Abington, Pennsylvania, Court of Federal Claims No: 20–0203V
54. John Davenport, Tucson, Arizona, Court of Federal Claims No: 20–0206V
55. Phyllis Doyle, Seattle, Washington, Court of Federal Claims No: 20–0207V
56. David Carpenter, Jr., Nashville, Tennessee, Court of Federal Claims No: 20–0208V
57. Tracy Sue Beach, Newark, Ohio, Court of Federal Claims No: 20–0209V
58. Lindsay Corum on behalf of the Estate of Stephen M. Corum, Deceased on behalf of the Estate of Marshall Wayne Corum, Deceased, Henderson, Kentucky, Court of Federal Claims No: 20–0210V
59. Trina Lower, Moose Lake, Minnesota, Court of Federal Claims No: 20–0211V
60. Robert Clendaniel, Millville, New Jersey, Court of Federal Claims No: 20–0213V
61. Wayne Phillip Anderson, Bellevue, Washington, Court of Federal Claims No: 20–0214V
62. Patricia Alex Freeman, North Bend, Washington, Court of Federal Claims No: 20–0215V
63. Raymond Small, Harleysville, Pennsylvania, Court of Federal Claims No: 20–0216V
64. Susie Bjalobok, Pittsburgh, Pennsylvania, Court of Federal Claims No: 20–0217V
65. Jennifer Kilgrow, Salt Lake City, Utah, Court of Federal Claims No: 20–0218V
66. Ignacio Montes, Fontana, California, Court of Federal Claims No: 20–0219V
67. Adam Mackay, Dresher, Pennsylvania, Court of Federal Claims No: 20–0220V
68. Patricia Lopez, Brownsville, Texas, Court of Federal Claims No: 20–0223V
69. Selina Villafranca on behalf of N. L. V., Brownsville, Texas, Court of Federal Claims No: 20–0224V
70. Kim Warner on behalf of D. W., Dublin,

Ohio, Court of Federal Claims No: 20–0225V
71. Shannon Pyers, Dresher, Pennsylvania, Court of Federal Claims No: 20–0231V
72. Lisa Macon, Englewood, New Jersey, Court of Federal Claims No: 20–0232V

[FR Doc. 2020–05525 Filed 3–16–20; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID–19

**ACTION:** Notice of declaration.

**SUMMARY:** The Secretary is issuing this Declaration pursuant to section 319F–3 of the Public Health Service Act to provide liability immunity for activities related to medical countermeasures against COVID–19.

**DATES:** The Declaration was effective as of February 4, 2020.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Kadlec, MD, MTM&H, MS, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; Telephone: 202–205–2882.

**SUPPLEMENTARY INFORMATION:** The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving ''willful misconduct'' as defined in the PREP Act. This Declaration is subject to amendment as circumstances warrant.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F–3, which addresses liability immunity, and Section 319F–4, which creates a compensation program. These sections are codified at 42 U.S.C. 247d-6d and 42 U.S.C. 247d–6e, respectively.

The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, was enacted on March 13, 2013. Among other things, PAHPRA added sections 564A and 564B to the Federal Food, Drug, and Cosmetic (FD&C) Act to provide new authorities for the emergency use of approved products in emergencies and products held for emergency use. PAHPRA accordingly amended the definitions of ''Covered Countermeasures'' and ''qualified pandemic and epidemic products'' in Section 319F–3 of the Public Health Service Act (PREP Act provisions), so that products made available under these new FD&C Act authorities could be covered under PREP Act Declarations. PAHPRA also extended the definition of qualified pandemic and epidemic products that may be covered under a PREP Act Declaration to include products or technologies intended to enhance the use or effect of a drug, biological product, or device used against the pandemic or epidemic or against adverse events from these products.

COVID–19 is an acute respiratory disease caused by the SARS-CoV-2 betacoronavirus or a virus mutating therefrom. This virus is similar to other betacoronaviruses, such as Middle Eastern Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). Although the complete clinical picture regarding SARS-CoV-2 or a virus mutating therefrom is not fully understood, the virus has been known to cause severe respiratory illness and death in a subset of those people infected with such virus(es).

In December 2019, the novel coronavirus was detected in Wuhan City, Hubei Province, China. Today, over 101 countries, including the United States have reported multiple cases. Acknowledging that cases had been reported in five WHO regions in one month, on January 30, 2020, WHO declared the COVID–19 outbreak to be a Public Health Emergency of International Concern (PHEIC) following a second meeting of the Emergency Committee convened under the International Health Regulations (IHR).

To date, United States traveler-associated cases have been identified in a number of States and community-based transmission is suspected. On January 31, 2020, Secretary Azar declared a public health emergency pursuant to section 319 of the PHS Act, 42 U.S.C. 247d, for the entire United States to aid in the nation's health care community response to the COVID–19 outbreak.[1] The outbreak remains a significant public health challenge that requires a sustained, coordinated proactive response by the Government in order to contain and mitigate the spread of COVID–19.[2]

#### Description of This Declaration by Section

*Section I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency*

Before issuing a Declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may constitute such an emergency. This determination is separate and apart from the Declaration issued by the Secretary on January 31, 2020 under Section 319 of the PHS Act that a disease or disorder presents a public health emergency or that a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other Declarations or determinations made under other authorities of the Secretary. Accordingly in Section I of the Declaration, the Secretary determines that the spread of SARS-CoV-2 or a virus mutating therefrom and the resulting disease, COVID–19, constitutes a public health emergency for purposes of this Declaration under the PREP Act.

*Section II. Factors Considered by the Secretary*

In deciding whether and under what circumstances to issue a Declaration with respect to a Covered Countermeasure, the Secretary must consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the countermeasure. In Section II of the Declaration, the Secretary states that he has considered these factors.

*Section III. Activities Covered by This Declaration Under the PREP Act's Liability Immunity*

The Secretary must delineate the activities for which the PREP Act's liability immunity is in effect. These activities may include, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more Covered Countermeasures

[1] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[2] CDC COVID–19 Summary; *https://www.cdc.gov/coronavirus/2019-ncov/summary.html,* accessed 27Feb2020,

(Recommended Activities). In Section III of the Declaration, the Secretary sets out the activities for which the immunity is in effect.

*Section IV. Limited Immunity*

The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities. These liability protections provide that, ''[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a Declaration has been issued with respect to such countermeasure.'' In Section IV of the Declaration, the Secretary states that liability protections are in effect with respect to the Recommended Activities.

*Section V. Covered Persons*

Section V of the Declaration describes Covered Persons, including Qualified Persons. The PREP Act defines Covered Persons to include, among others, the United States, and those that manufacturer, distribute, administer, prescribe or use Covered Countermeasures. This Declaration includes all persons and entities defined as Covered Persons under the PREP Act (PHS Act 317F–3(i)(2)) as well as others set out in paragraphs (3), (4), (6), (8)(A) and (8)(B).

The PREP Act's liability immunity applies to ''Covered Persons'' with respect to administration or use of a Covered Countermeasure. The term ''Covered Persons'' has a specific meaning and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States. The PREP Act further defines the terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' as described below.

A manufacturer includes a contractor or subcontractor of a manufacturer; a supplier or licenser of any product, intellectual property, service, research tool or component or other article used in the design, development, clinical testing, investigation or manufacturing of a Covered Countermeasure; and any or all the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

A distributor means a person or entity engaged in the distribution of drugs, biologics, or devices, including but not limited to: Manufacturers; re-packers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

A program planner means a state or local government, including an Indian tribe; a person employed by the state or local government; or other person who supervises or administers a program with respect to the administration, dispensing, distribution, provision, or use of a Covered Countermeasure, including a person who establishes requirements, provides policy guidance, or supplies technical or scientific advice or assistance or provides a facility to administer or use a Covered Countermeasure in accordance with the Secretary's Declaration. Under this definition, a private sector employer or community group or other ''person'' can be a program planner when it carries out the described activities.

A qualified person means a licensed health professional or other individual authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the Covered Countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Secretary's Declaration. Under this definition, the Secretary can describe in the Declaration other qualified persons, such as volunteers, who are Covered Persons. Section V describes other qualified persons covered by this Declaration.

The PREP Act also defines the word ''person'' as used in the Act: A person includes an individual, partnership, corporation, association, entity, or public or private corporation, including a federal, state, or local government agency or department.

*Section VI. Covered Countermeasures*

As noted above, Section III of the Declaration describes the activities (referred to as ''Recommended Activities'') for which liability immunity is in effect. Section VI of the Declaration identifies the Covered Countermeasures for which the Secretary has recommended such activities. The PREP Act states that a ''Covered Countermeasure'' must be a ''qualified pandemic or epidemic product,'' or a ''security countermeasure,'' as described immediately below; or a drug, biological product or device authorized for emergency use in accordance with Sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product means a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that is (i) manufactured, used, designed, developed, modified, licensed or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or limit the harm such a pandemic or epidemic might otherwise cause; (ii) manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by such a drug, biological product, or device; (iii) or a product or technology intended to enhance the use or effect of such a drug, biological product, or device.

A security countermeasure is a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that (i)(a) The Secretary determines to be a priority to diagnose, mitigate, prevent, or treat harm from any biological, chemical, radiological, or nuclear agent identified as a material threat by the Secretary of Homeland Security, or (b) to diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent; and (ii) is determined by the Secretary of Health and Human Services to be a necessary countermeasure to protect public health.

To be a Covered Countermeasure, qualified pandemic or epidemic products or security countermeasures also must be approved or cleared under the FD&C Act; licensed under the PHS Act; or authorized for emergency use under Sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product also may be a Covered Countermeasure when it is subject to an exemption (that is, it is permitted to be used under an Investigational Drug Application or an Investigational Device Exemption) under the FD&C Act and is the object of research for possible use for diagnosis, mitigation, prevention, treatment, or cure, or to limit harm of a pandemic or epidemic or serious or life-threatening condition caused by such a drug or device.

A security countermeasure also may be a Covered Countermeasure if it may reasonably be determined to qualify for approval or licensing within 10 years after the Department's determination that procurement of the countermeasure is appropriate.

Section VI lists medical countermeasures against COVID–19 that

are Covered Countermeasures under this declaration.

Section VI also refers to the statutory definitions of Covered Countermeasures to make clear that these statutory definitions limit the scope of Covered Countermeasures. Specifically, the Declaration notes that Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

*Section VII. Limitations on Distribution*

The Secretary may specify that liability immunity is in effect only to Covered Countermeasures obtained through a particular means of distribution. The Declaration states that liability immunity is afforded to Covered Persons for Recommended Activities related to (a) present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other federal agreements; or (b) activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a Declaration of an emergency.

Section VII defines the terms ''Authority Having Jurisdiction'' and ''Declaration of an emergency.'' We have specified in the definition that Authorities having jurisdiction include federal, state, local, and tribal authorities and institutions or organizations acting on behalf of those governmental entities.

For governmental program planners only, liability immunity is afforded only to the extent they obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles. This last limitation on distribution is intended to deter program planners that are government entities from seizing privately held stockpiles of Covered Countermeasures. It does not apply to any other Covered Persons, including other program planners who are not government entities.

*Section VIII. Category of Disease, Health Condition, or Threat*

The Secretary must identify in the Declaration, for each Covered Countermeasure, the categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure. In Section VIII of the Declaration, the Secretary states that the disease threat for which he recommends administration or use of the Covered Countermeasures is COVID–19 caused by SARS-CoV-2 or a virus mutating therefrom.

*Section IX. Administration of Covered Countermeasures*

The PREP Act does not explicitly define the term ''administration'' but does assign the Secretary the responsibility to provide relevant conditions in the Declaration. In Section IX of the Declaration, the Secretary defines ''Administration of a Covered Countermeasure,'' as follows:

Administration of a Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution, and dispensing of the countermeasures to recipients; management and operation of countermeasure programs; or management and operation of locations for purpose of distributing and dispensing countermeasures.

The definition of ''administration'' extends only to physical provision of a countermeasure to a recipient, such as vaccination or handing drugs to patients, and to activities related to management and operation of programs and locations for providing countermeasures to recipients, such as decisions and actions involving security and queuing, but only insofar as those activities directly relate to the countermeasure activities. Claims for which Covered Persons are provided immunity under the Act are losses caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a Covered Countermeasure consistent with the terms of a Declaration issued under the Act. Under the definition, these liability claims are precluded if they allege an injury caused by a countermeasure, or if the claims are due to manufacture, delivery, distribution, dispensing, or management and operation of countermeasure programs at distribution and dispensing sites.

Thus, it is the Secretary's interpretation that, when a Declaration is in effect, the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a vaccine, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct. Likewise, the Act precludes a liability claim relating to the management and operation of a countermeasure distribution program or site, such as a slip-and-fall injury or vehicle collision by a recipient receiving a countermeasure at a retail store serving as an administration or dispensing location that alleges, for example, lax security or chaotic crowd control. However, a liability claim alleging an injury occurring at the site that was not directly related to the countermeasure activities is not covered, such as a slip and fall with no direct connection to the countermeasure's administration or use. In each case, whether immunity is applicable will depend on the particular facts and circumstances.

*Section X. Population*

The Secretary must identify, for each Covered Countermeasure specified in a Declaration, the population or populations of individuals for which liability immunity is in effect with respect to administration or use of the countermeasure. Section X of the Declaration identifies which individuals should use the countermeasure or to whom the countermeasure should be administered—in short, those who should be vaccinated or take a drug or other countermeasure. Section X provides that the population includes ''any individual who uses or who is administered a Covered Countermeasure in accordance with the Declaration.''

It should be noted that under the PREP Act, liability protection extends beyond the Population specified in the Declaration. Specifically, liability immunity is afforded (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population, and (2) to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population. Section X of the Declaration includes these statutory conditions in the Declaration for clarity.

*Section XI. Geographic Area*

The Secretary must identify, for each Covered Countermeasure specified in the Declaration, the geographic area or areas for which liability immunity is in effect, including, as appropriate, whether the Declaration applies only to

individuals physically present in the area or, in addition, applies to individuals who have a described connection to the area. Section XI of the Declaration provides that liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation. This could include claims related to administration or use in countries outside the U.S. It is possible that claims may arise in regard to administration or use of the Covered Countermeasures outside the U.S. that may be resolved under U.S. law.

In addition, the PREP Act specifies that liability immunity is afforded (1) to manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the geographic areas, and (2) to program planners and qualified persons when the countermeasure is either used or administered in the geographic areas or the program planner or qualified person reasonably could have believed the countermeasure was used or administered in the areas. Section XI of the Declaration includes these statutory conditions in the Declaration for clarity.

*Section XII. Effective Time Period*

The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Section XII of the Declaration extends the effective period for different means of distribution of Covered Countermeasures through October 1, 2024.

*Section XIII. Additional Time Period of Coverage*

The Secretary must specify a date after the ending date of the effective time period of the Declaration that is reasonable for manufacturers to arrange for disposition of the Covered Countermeasure, including accepting returns of Covered Countermeasures, and for other Covered Persons to take appropriate actions to limit administration or use of the Covered Countermeasure. In addition, the PREP Act specifies that, for Covered Countermeasures that are subject to a Declaration at the time they are obtained for the Strategic National Stockpile (SNS) under 42 U.S.C. 247d-6b(a), the effective period of the Declaration extends through the time the countermeasure is used or administered. Liability immunity under the provisions of the PREP Act and the conditions of the Declaration continue during these additional time periods. Thus, liability immunity is afforded during the ''Effective Time Period,'' described under Section XII of the Declaration, plus the ''Additional Time Period'' described under Section XIII of the Declaration.

Section XIII of the Declaration provides for 12 months as the Additional Time Period of coverage after expiration of the Declaration. Section XIII also explains the extended coverage that applies to any product obtained for the SNS during the effective period of the Declaration.

*Section XIV. Countermeasures Injury Compensation Program*

Section 319F–4 of the PHS Act, 42 U.S.C. 247d-6e, authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to eligible individuals who sustain a serious physical injury or die as a direct result of the administration or use of a Covered Countermeasure. Compensation under the CICP for an injury directly caused by a Covered Countermeasure is based on the requirements set forth in this Declaration, the administrative rules for the Program, and the statute. To show direct causation between a Covered Countermeasure and a serious physical injury, the statute requires ''compelling, reliable, valid, medical and scientific evidence.'' The administrative rules for the Program further explain the necessary requirements for eligibility under the CICP. Please note that, by statute, requirements for compensation under the CICP may not align with the requirements for liability immunity provided under the PREP Act. Section XIV of the Declaration, ''Countermeasures Injury Compensation Program,'' explains the types of injury and standard of evidence needed to be considered for compensation under the CICP.

Further, the administrative rules for the CICP specify that if countermeasures are administered or used outside the United States, only otherwise eligible individuals at United States embassies, military installations abroad (such as military bases, ships, and camps) or at North Atlantic Treaty Organization (NATO) installations (subject to the NATO Status of Forces Agreement) where American servicemen and servicewomen are stationed may be considered for CICP benefits. Other individuals outside the United States may not be eligible for CICP benefits.

*Section XV. Amendments*

Section XV of the Declaration confirms that the Secretary may amend any portion of this Declaration through publication in the **Federal Register.**

Declaration

Declaration for Public Readiness and Emergency Preparedness Act Coverage for medical countermeasures against COVID–19.

I. Determination of Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that the spread of SARS-CoV–2 or a virus mutating therefrom and the resulting disease COVID–19 constitutes a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are ''manufacturers,'' ''distributors,'' ''program planners,'' ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in Section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and

volunteers, following a Declaration of an emergency; (b) any person

authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with Section 564 of the FD&C Act; and (c) any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the

FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID–19, or the transmission of SARS-CoV–2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a Declaration of an emergency.

As used in this Declaration, the terms Authority Having Jurisdiction and Declaration of Emergency have the following meanings:

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A Declaration of Emergency means any Declaration by any authorized local, regional, state, or federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a federal Declaration in support of an Emergency Use Authorization under Section 564 of the FD&C Act unless such Declaration specifies otherwise;

I have also determined that, for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is COVID–19 caused by SARS-CoV–2 or a virus mutating therefrom.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures through means of distribution, as identified in Section VII(a) of this Declaration, other than in accordance with the public health and medical response of the Authority Having Jurisdiction and extends through October 1, 2024.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect, or (2) October 1, 2024, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the SNS during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *http://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Amendments to this Declaration will be published in the **Federal Register**, as warranted.

**Authority:** 42 U.S.C. 247d–6d.

Dated: March 10, 2020.

**Alex M. Azar II,**

*Secretary of Health and Human Services.*

[FR Doc. 2020–05484 Filed 3–12–20; 4:15 pm]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–18–423: NIDDK Multi-Center Clinical Study Implementation Planning Cooperative Agreements (U34) in Digestive Diseases.

*Date:* May 22, 2020.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–7682, *campd@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 10, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05361 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular Sciences, March 19, 2020 08:00 a.m. to March 20, 2020, 01:00 p.m., Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314 which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting location is being held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, at 09:00 a.m. The meeting date remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05417 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR 19–059: Global Noncommunicable Diseases and Injury Across the Lifespan (R21), March 23, 2020, 8:00 a.m. to 5:00 p.m., at the Hotel Palomar, 2121 P Street NW, Washington, DC 20037, which was published in the **Federal Register** on February 25, 2020, 85 FR 10708.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The format of the meeting has been changed to a Video Assisted Meeting. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05419 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Consortium for the Study of Chronic Pancreatitis, Diabetes, and Pancreatic Cancer Clinical Centers Special Emphasis Panel.

*Date:* April 2, 2020.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452 (301) 594–4721, *kozelp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05429 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR Panel: Fogarty Global Brain Disorders, March 19, 2020, 8:00 a.m. to March 20, 2020, 5:00 p.m. at the Embassy Suites, Chevy Chase Pavillion, 4300 Military Road NW, Washington, DC 20015, which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The format of the meeting has been changed to a Video Assisted Meeting. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05416 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the, Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Study Section, March 19, 2020, 8:00 a.m. to March 19, 2020, 5:00 p.m. at the Washington Marriott Georgetown, 1221 22nd Street, Washington, DC which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting location is being changed to the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting format is being changed to a Video Assisted Meeting. Time and date stay the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05406 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; 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 National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Career Development (Ks) and Conference support (R13) Review.

*Date:* April 3, 2020.

*Time:* 09:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John P. Holden, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, (301) 496–8775, *john.holden@nih.gov.*

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review C–SEP.

*Date:* June 1, 2020.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Plaza, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: March 10, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05359 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Biomaterials, Delivery, and Nanotechnology, March 24, 2020, 8:00 a.m. to March 25, 2020, 5:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville MD 20852, which was published in the **Federal Register** on March 04, 2020, 85 FR 12796.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05425 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, And Blood Institute Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, March 27, 2020, 08:30 a.m. to March 27, 2020, 05:00 p.m., Hyatt Regency, Bethesda, Bethesda, MD 20814 which was published in the **Federal Register** on January 29, 2020, 85 FR 5221.

The NHLBI Special Emphasis Panel meeting is being amended due to a change in the meeting format. This one-day meeting to be held on March 27, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05435 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Exploration of Antimicrobial Therapeutics and Resistance, March 19, 2020, 8:00 a.m. to March 20, 2020, 5:00 p.m., which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The time has been changed to March 19, 2020, 9:00 a.m. to March 20, 2020, 6:00 p.m. The dates remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05415 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR19–232: NIGMS Mature Synchrotron Resources for Structural Biology (P30), April 2, 2020, 8:00 a.m. to 8:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015, which was published in the **Federal Register** on March 10, 2020, 85 FR 13909.

The meeting will be held at National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 from 10 a.m. to 7:00 p.m. The date remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05409 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, And Blood Institute Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Heart, Lung, and Blood Program Project Review Committee, March 20, 2020, 08:00 a.m. to March 20, 2020, 02:00 p.m., Sheraton BWI (Baltimore), 1100 Old Eldridge Landing Road, Baltimore, MD 21090 which was published in the **Federal Register** on January 29, 2020, 85 FR 5219.

The NHLBI IRG meeting is being amended due to a change in the meeting format. This one-day meeting to be held on March 20, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05437 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Fellowships: Cardiovascular and Respiratory Sciences, March 26, 2020, 8:00 a.m. to March 27, 2020, 1:00 p.m. Courtyard Silver Spring Downtown, 8506 Fenton Street, Silver Spring, MD 20910, which was published in the **Federal Register** on March 3, 2020, 85 FR 12570.

The meeting location is being held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05427 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, March 19, 2020, 8:00 a.m. to March 20, 2020, 4:30 p.m., Bethesda North Marriott Hotel and Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852 which was published in the **Federal Register** on February 18, 2020, 85 FR 8881.

The NHLBI Special Emphasis Panel meeting is being amended due to a change in the meeting format. This one-day meeting to be held on March 19, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05431 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, April 1, 2020, 09:00 a.m. to April 1, 2020, 04:00 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817 which was published in the **Federal Register** on March 04, 2020, 85 FR 12799.

The NHLBI Special Emphasis Panel meeting is being amended due to a change in the meeting format. This one day meeting to be held on April 1, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05438 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center For Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Advisory Council, March 30, 2020, 8:30 a.m. to 3:00 p.m. at National Institutes of Health, 6700B Rockledge Drive Conference Room A&B, Bethesda, MD 20817 which was published in the **Federal Register** on January 30, 2020, 85 FR 5459.

The meeting will be held at National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 starting at 1:00 p.m. as a Video Assisted Meeting. The meeting date remains the same. The meeting is open to the public.

Dated: March 10, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05360 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Biological Chemistry, Biophysics, and Assay Development, March 18, 2020, 8:00 a.m. to March 19, 2020 6:00 p.m., Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on February 20, 2020, 85 FR 9787.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05400 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel Study Section, Topics in Bacterial Pathogenesis, March 18, 2020, 8:00 a.m. to March 18, 2020, 6:00 p.m., at the Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD which was published in the **Federal Register** on February 20, 2020, 85 FR 9787.

The meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. Meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05422 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Topics in Bacterial Pathogenesis, March 30, 2020, 8:00 a.m. to March 31, 2020 6:00 p.m., at the Residence Inn Bethesda, 735 Wisconsin Avenue, Bethesda, MD which was published in the **Federal Register** on March 09, 2020, 85 FR 13668.

The meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. Meeting dates and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05428 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Fellowship: Infectious Diseases and Microbiology, March 23, 2020, 8:00 a.m. to March 24, 2020, 5:00 p.m., at The St. Gregory Hotel Dupont Circle, 2033 M St. NW, Washington, DC 20036 which was published in the **Federal Register** on February 25, 2020, 85 FR 10708.

The meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD. Meetings dates and times remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05413 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the HIV Immunopathogenesis and Vaccine Development Study Section, March 19, 2020, 8:00 a.m. to March 20, 2020 6:00 p.m., at the Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037, which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892. The format of the meeting has been changed to a Video Assisted Meeting. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05418 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Cancer Drug Development and Therapeutics, March 23, 2020 08:00 a.m. to March 24, 2020, 06:00 p.m. Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852, which was published in the **Federal Register** on February 25, 2020, 85 FR 11376.

The meeting location is being held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05424 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

*Date:* March 30, 2020.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Allergy and Infectious Diseases, National Institutes of Health 5601 Fishers Lane, Room 3F52 Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Margaret A. Morris Fears, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20852, *maggie.morrisfears@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 11, 2020.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05522 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: The Cancer Biotherapeutics Development (CBD), March 27, 2020 08:00 a.m. to March 27, 2020, 05:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015, which was published in the **Federal Register** on March 4, 2020, 85 FR 12799.

The meeting location is being held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remain the same.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05430 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the NHLBI Mentored Clinical and Basic Science Review Committee, March 19, 2020, 10:30 a.m. to March 20, 2020, 03:00 p.m., Holiday Inn National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202 which was published in the **Federal Register** on January 29, 2020, 85 FR 5219.

The NHLBI IRG meeting is being amended due to a change in the meeting format. This two-day meeting to be held on March 19–20, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05436 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, which was published in the **Federal Register** on January 30, 2020, 85 FRN 5461.

The NIAMS Special Emphasis Panel meeting is being amended due to a

change in the meeting format. This one-day meeting held on 3/27/2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 12, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05523 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, April 7, 2020, 01:00 p.m. to April 8, 2020, 01:00 p.m., Embassy Suites at Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 which was published in the **Federal Register** on March 04, 2020, 85 FR 12799.

The NHLBI Special Emphasis Panel meeting is being amended due to a change in the meeting format. This two day meeting to be held on April 7–8, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05439 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR Panel: Cancer Health Disparities, March 23, 2020, 8:00 a.m. to March 24, 2020, 5:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852, which was published in the **Federal Register** on February 25, 2020, 85 FR 11376.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05403 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Health Informatics, March 19, 2020, 8:00 a.m., to March 20, 2020, 5:00 p.m., The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854 which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05401 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, March 30, 2020, 8:30 a.m. to March 30, 2020, 5:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD, 20852 which was published in the **Federal Register** on February 18, 2020, 85 FR 8882.

This notice is to amend the NIMH Clinical Trials Effectiveness Studies (R34/R01/R01 Collaborative) meeting from an in-person meeting to a teleconference. All other meeting information remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05358 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, March 25, 2020, 08:30 a.m. to March 25, 2020, 05:00 p.m., Embassy Suite, Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 which was published in the **Federal Register** on January 29, 2020, 85 FR 5221.

The NHLBI Special Emphasis Panel meeting is being amended due to a change in the meeting format. This one-day meeting to be held on March 25, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05434 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis ond Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, which was published in the **Federal Register** on January 30, 2020, 85 FRN 5461.

The NIAMS Special Emphasis Panel meeting is being amended due to a change in the meeting format. This one-day meeting held on 3/31/2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 12, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05524 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular and Molecular Immunology—B Study Section, March 19, 2020, 8:00 a.m. to March 20, 2020, 6:00 p.m., at the William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

Meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting format is being changed to a Video Assisted Meeting. Meeting time and date stay the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05423 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Biomedical Sensing, Measurement and Instrumentation, March 19, 2020, 08:00 a.m. to March 20, 2020, 05:00 p.m., Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109, which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting location is being held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remains the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05402 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–NS–18–018: Brain Initiative.

*Date:* March 27, 2020.

*Time:* 11:30 a.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:* Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05420 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel RFA–RM–19–008: NIH Director's Early Independence Award Review, March 18, 2020, 9:00 a.m. to March 19, 2020, 3:00 p.m. at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on February 20, 2020, 85 FR 9787.

The meeting format of the Special Emphasis Panel RFA–RM–19–008: NIH Director's Early Independence Award Review has been changed to a Video Assisted Meeting. The meeting date, time and location remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05405 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, NIH Research Enhancement Award (R15) in Oncological Sciences, March 31, 2020, 10:00 a.m. to March 31, 2020, 06:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on March 09, 2020, 85 FR 13668.

The meeting format is being changed to a Virtual Meeting. The meeting location, date and time remain the same.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05407 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Endocrinology, Metabolism, Nutrition and Reproductive Sciences Study Section, March 19, 2020, 8:00 a.m. to March 19, 2020, 1:00 p.m., at the Washington Marriott Georgetown, 1221 22nd Street, Washington, DC which was

published in the **Federal Register** on February 25, 2020, 85 FR 10707.

The meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The format is being changed to a Video Assisted Meeting. Time and date remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05408 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Microbial (non-HIV) Diagnostics and Detection of Infectious Agents, Food and Waterborne Pathogens, and Methods in Microbial Sterilization, Disinfection and Bioremediation, March 26, 2020, 8:00 a.m. to March 27, 2020, 6:00 p.m. which was published in the **Federal Register** on March 03, 2020, 85 FR 12570.

The meeting location is being changed to National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD. Start time has changed, March 26, 2020, 9:00 a.m. to March 27, 2020, 6:00 p.m. Meeting dates remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05410 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR 17–190: Maximizing Investigators' Research Award for Early Stage Investigators (R35), March 19, 2020, 8:00 a.m. to March 20, 2020, 5:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814, which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting will be held at National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05412 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel BRAIN Initiative: Targeted BRAIN Circuits Projects, March 18, 2020, 8:00 a.m. to March 19, 2020, 6:00 p.m. at the Washington Plaza Hotel, 10 Thomas Circle NW, Washington, DC 20005, which was published in the **Federal Register** on February 20, 2020, 85 FR 9787.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The format of the meeting has been changed to a Virtual Meeting. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05404 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular Sciences, March 25, 2020 8:00 a.m. to March 25, 2020, 6:00 p.m. Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814, which was published in the **Federal Register** on March 4, 2020, 85 FR 12794.

The meeting location is being held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05426 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel Member Conflict: Cognitive Processing and Neuropsychiatric Disorders, March 25, 2020, 1:00 p.m. to 5:00 p.m. at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on March 04, 2020, 85 FR 12794.

The date of the meeting of the Center for Scientific Review Special Emphasis Panel: Member Conflict: Cognitive Processing and Neuropsychiatric Disorders has been changed to March 26, 2020. The meeting location and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05421 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, March 23, 2020, 08:00 a.m. to March 23, 2020, 03:00 p.m., Sheraton BWI (Baltimore), 1100 Old Elkridge Landing Road, Baltimore, MD 21090 which was published in the **Federal Register** on January 29, 2020, 85 FR 5221.

The NHLBI Special Emphasis Panel meeting is being amended due to a change in the meeting format. This one-day meeting to be held on March 23,

2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05432 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, RFA–RM–16–005: 2020 Pioneer Award Review, April 1, 2020, 8:00 a.m., to April 3, 2020, 5:00 p.m., The Bethesdan Hotel, Tapestry Collection by Hilton, 8120 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on March 09, 2020, 85 FR 13665.

The meeting will be held at National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05414 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Anti-Infective Therapeutics Study Section, March 19, 2020, 8:00 a.m. to March 20, 2020, 6:00 p.m., at the Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda MD, which was published in the **Federal Register** on February 20, 2020, 85 FR 9791.

The meeting location is being changed to the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting dates and times remain the same. The meeting is closed to the public.

Dated: March 11, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05411 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, March 24, 2020, 09:00 a.m. to March 24, 2020, 01:00 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817 which was published in the **Federal Register** on January 29, 2020, 85 FR 5221.

The NHLBI Special Emphasis Panel meeting is being amended due to a change in the meeting format. This one-day meeting to be held on March 24, 2020 will be a teleconference meeting. The meeting is closed to the public.

Dated: March 11, 2020.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–05433 Filed 3–16–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2019–0750]**

### National Offshore Safety Advisory Committee; Initial Solicitation for Members

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard is requesting applications from persons interested in serving as a member of the National Offshore Safety Advisory Committee (''Committee''). This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the Coast Guard. Please read this notice for a description of the 15 Committee positions we are seeking to fill.

**DATES:** Your completed application should reach the Coast Guard on or before May 18, 2020.

**ADDRESSES:** Applicants should send a cover letter expressing interest in an appointment to the National Offshore Safety Advisory Committee and a resume detailing the applicant's experience. We will not accept a biography.

Applications should be submitted via one of the following methods:

- By *Email: Patrick.w.clark@uscg.mil* (preferred)
- *By Fax:* 202–372–8382 ; ATTN: Patrick W. *Clark@uscg.mil,* Alternate Designated Federal Officer; or
- *By Mail:* Patrick W. Clark, Alternate Designated Federal Officer, Commandant (CG–OES–2), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. Clark, Alternate Designated Federal Officer of the National Offshore Safety Advisory Committee; Telephone 202–372–1358; or Email at *Patrick.W.Clark@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The National Offshore Safety Advisory Committee is a Federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act* (5 U.S.C. Appendix 2), and the administrative provisions in Section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2018, by the *Frank LoBiondo Coast Guard Authorization Act of 2018,* which added section 15106, National Offshore Safety Advisory Committee, to Title 46 of the U.S. Code (46 U.S.C. 15106). The Committee will advise the Secretary of the Department of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources to the extent that such matters are within the jurisdiction of the Coast Guard.

We expect the Committee will hold meetings at least twice a year, but they may meet even more frequently. They are required to meet at least once a year. The meetings are generally held in Houston, Texas and New Orleans, Louisiana.

All members serve at their own expense and receive no salary or other compensation from the Federal Government.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your

membership term will expire on December 31 of the third full year after the effective date of your appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4). In this initial solicitation for Committee members, we will consider applications for all 15 positions:

- Two members shall represent entities engaged in the production of petroleum;
- Two members shall represent entities engaged in offshore drilling;
- Two members shall represent entities engaged in the support, by offshore supply vessels or other vessels, of offshore mineral and oil operations, including geophysical services;
- One member shall represent entities engaged in the construction of offshore exploration and recovery facilities;
- One member shall represent entities engaged in diving services related to offshore construction, inspection, and maintenance;
- One member shall represent entities engaged in safety and training services related to offshore exploration and construction;
- One member shall represent entities engaged in pipelaying services related to offshore construction;
- Two members shall represent individuals employed in offshore operations and, of the two, one shall have recent practical experience on a vessel or offshore unit involved in the offshore mineral and energy industry;
- One member shall represent national environmental entities;
- One member shall represent deepwater ports; and
- One member shall represent the general public (but not a specific environmental group).

Each member of the Committee must have particular expertise, knowledge, and experience of their respective industries.

If you are selected as a member drawn from the general public, you will be appointed and serve as a Special Government Employee as defined in 18 U.S.C. 202(a). Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure Report (OGE Form 450) for new entrants and if appointed as a member must submit Form 450 annually. The Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal Court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*), or by calling or emailing the individual listed above in the **FOR FURTHER INFORMATION CONTACT** section. Applications for member drawn from the general public must be accompanied by a completed OGE Form 450.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See ''*Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions*'' (79 FR 47482, August 13, 2014). Registered lobbyists are ''lobbyists,'' as defined in 2 U.S.C. 1602, who are required by 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Patrick Clark, Alternate Designated Federal Officer of the National Offshore Safety Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. If you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: March 11, 2020.

**Jeffrey G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2020–05382 Filed 3–16–20; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2020–0002]**

### 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 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 Mapping and Insurance 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. |
|---|---|---|---|---|---|
| Alabama: Limestone (FEMA Docket No.: B–1981). | City of Huntsville (19–04–3429P). | The Honorable Thomas Battle, Jr., Mayor, City of Huntsville, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801. | City Hall, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801. | Mar. 9, 2020 | 010153 |
| Colorado: | | | | | |
| Boulder (FEMA Docket No.: B–1974). | City of Boulder (19–08–0629P). | The Honorable Suzanne Jones, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80302. | Central Records Department, 1777 Broadway Street, Boulder, CO 80302. | Feb. 24, 2020 | 080024 |
| Larimer (FEMA Docket No.: B–1981). | Unincorporated areas of Larimer County (19–08–0367P). | The Honorable Tom Donnelly, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522. | Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521. | Feb. 21, 2020 | 080101 |
| Delaware: | | | | | |
| New Castle (FEMA Docket No.: B–1974). | Unincorporated areas of New Castle County (19–03–0220P). | Mr. Matthew Meyer, New Castle County Executive, 87 Reads Way, New Castle, DE 19720. | New Castle County Government Center, 87 Reads Way, New Castle, DE 19720. | Feb. 6, 2020 | 105085 |
| New Castle (FEMA Docket No.: B–1981). | Unincorporated areas of New Castle County (19–03–0484P). | The Honorable Matthew Meyer, New Castle County Executive, 87 Read Way, New Castle, DE 19720. | New Castle County Land Use Department, 87 Read Way, New Castle, DE 19720. | Feb. 13, 2020 | 105085 |
| Florida: | | | | | |
| Monroe (FEMA Docket No.: B–1981). | Unincorporated areas of Monroe County (19–04–6687P). | 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. | Mar. 2, 2020 | 125129 |
| Osceola (FEMA Docket No.: B–1981). | City of St. Cloud (19–04–0759P). | The Honorable Nathan Blackwell, Mayor, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769. | City Hall, 1300 9th Street, St. Cloud, FL 34769. | Feb. 28, 2020 | 120191 |
| Osceola (FEMA Docket No.: B–1981). | Unincorporated areas of Osceola County (19–04–0759P). | The Honorable Fred Hawkins, Jr., Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741. | Osceola County Human Resources Department, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741. | Feb. 28, 2020 | 120189 |
| Pasco (FEMA Docket No.: B–1981). | Unincorporated areas of Pasco County (19–04–0816P). | Mr. Dan Biles, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34652. | Pasco County Facilities Management Department, 38301 McDonald Street, Dade City, FL 33525. | Feb. 24, 2020 | 120230 |
| Sarasota (FEMA Docket No.: B–1981). | City of Sarasota (19–04–4552P). | The Honorable Liz Alpert, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236. | Development Services Department, 1565 1st Street, Sarasota, FL 34236. | Feb. 24, 2020 | 125150 |
| Louisiana: | | | | | |
| Lafayette (FEMA Docket No.: B–1981). | City of Youngsville (18–06–2837P). | The Honorable Ken Ritter, Mayor, City of Youngsville, 305 Iberia Street, Youngsville, LA 70592. | City Hall, 305 Iberia Street, Youngsville, LA 70592. | Feb. 6, 2020 | 220358 |
| Montana: | | | | | |
| Gallatin (FEMA Docket No.: B–1981). | City of Bozeman (19–08–0500P). | Ms. Andrea Surratt, City of Bozeman Manager, P.O. Box 1230, Bozeman, MT 59771. | City Hall, 20 East Olive Street, Bozeman, MT 59715. | Mar. 2, 2020 | 300028 |
| Gallatin (FEMA Docket No.: B–1981). | Unincorporated areas of Gallatin County (19–08–0500P). | The Honorable Joe P. Skinner, Chairman, Gallatin County Board of Commissioners, 311 West Main Street, Room 306, Bozeman, MT 59715. | Gallatin County Department of Planning and Community Development Department, Bozeman, MT 59715. | Mar. 2, 2020 | 300027 |
| Nevada: | | | | | |
| Clark (FEMA Docket No.: B–1981). | City of Henderson (19–09–0090P). | Mr. Richard A. Derrick, City of Henderson Manager, P.O. Box 95050, Henderson, NV 89009. | Public Works Department, 240 South Water Street, Henderson, NV 89009. | Feb. 5, 2020 | 320005 |
| Clark (FEMA Docket No.: B–1981). | Unincorporated areas of Clark County (19–09–0090P). | The Honorable Marilyn Kirkpatrick, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155. | Clark County Drainage Review Department, 500 South Grand Central Parkway, Las Vegas, NV 89155. | Feb. 5, 2020 | 320003 |
| North Carolina: | | | | | |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|---|---|---|---|---|---|
| Cleveland (FEMA Docket No.: B–1981). | Unincorporated areas of Cleveland County (19–04–0261P). | The Honorable Susan K. Allen, Chair, Cleveland County Board of Commissioners, 311 East Marion Street, Shelby, NC 28150.. | Cleveland County Planning Department, 1333 Fallston Road, Shelby, NC 28150. | Mar. 6, 2020 | 370302 |
| Cumberland (FEMA Docket No.: B–2006). | Town of Hope Mills (18–04–6701P). | The Honorable Jackie Warner, Mayor, Town of Hope Mills, 5770 Rockfish Road, Hope Mills, NC 28348. | Town Hall, 5770 Rockfish Road, Hope Mills, NC 28348. | Mar. 6, 2020 | 370312 |
| Cumberland (FEMA Docket No.: B–2006). | Unincorporated areas of Cumberland County (18–04–6701P). | The Honorable W. Marshall Faircloth, Chairman, Cumberland County Board of Commissioners, P.O. Box 1829, Fayetteville, NC 28302l | Cumberland County Engineering and Infrastructure Department, 130 Gillespie Street, Suite 214, Fayetteville, NC 28301l | Mar. 6, 2020 | 370076 |
| Ohio: | | | | | |
| Warren (FEMA Docket No.: B–1974). | City of Lebanon (19–05–2274P). | The Honorable Amy Brewer, Mayor, City of Lebanon, 50 South Broadway Street, Lebanon, OH 45036. | Engineering Department, 50 South Broadway Street, Lebanon, OH 45036. | Feb. 10, 2020 | 390557. |
| Oklahoma: | | | | | |
| Canadian (FEMA Docket No.: B–1974). | City of Oklahoma City (19–06–3217P). | The Honorable David Holt, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, OK 73102. | Department of Public Works, 420 West Main Street, Suite 700, Oklahoma City, OK 73102. | Feb. 21, 2020. | 405378 |
| Tulsa (FEMA Docket No.: B–1974). | City of Collinsville (19–06–1337P). | The Honorable Bud York, Mayor, City of Collinsville, P.O. Box 730, Collinsville, OK 74021. | Engineering Department, 106 North 12th Street, Collinsville, OK 74021. | Feb. 10, 2020 | 400360 |
| Tulsa (FEMA Docket No.: B–1974). | Unincorporated areas of Tulsa County (19–06–1337P). | The Honorable Karen Keith, Chair, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103. | Tulsa County Inspections Department, 633 West 3rd Street, Tulsa, OK 74127. | Feb. 10, 2020 | 400462 |
| Texas: | | | | | |
| Bexar (FEMA Docket No.: B–1981). | City of Schertz (19-06-1878P). | The Honorable Michael Carpenter, Mayor, City of Schertz, 1400 Schertz Pkwy, Schertz, TX 78154. | Public Works Department, Floodplain Management Division, 10 Commercial Place, Schertz, TX 78154. | Feb. 10, 2020 | 480269 |
| Bexar (FEMA Docket, No.: B–1981). | Unincorporated areas of Bexar County (19–06–0327P). | The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205. | Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214. | Feb. 18, 2020 | 480035 |
| Collin (FEMA Docket No.: B–1981). | City of Murphy (19–06–0931P). | The Honorable Scott Bradley, Mayor, City of Murphy, 206 North Murphy Road, Murphy, TX 75094. | City Hall, 206 North Murphy Road, Murphy, TX 75094. | Feb. 10, 2020 | 480137 |
| Collin (FEMA Docket, No.: B–1981). | City of Plano (20–06–0039P). | The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074. | Department of Engineering, 1520 K Avenue, Plano, TX 75074. | Feb. 28, 2020 | 480140 |
| Collin (FEMA Docket No.: B–1981). | City of Sachse (19–06–0931P). | The Honorable Mike Felix, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048. | Public Works Department, 3815 Sachse Road, Building B, Sachse, TX 75048. | Feb. 10, 2020 | 480186 |
| Denton (FEMA Docket No.: B–1981). | Town of Argyle (19–06–1846P). | The Honorable Donald Moser, Mayor, Town of Argyle, P.O. Box 609, Argyle, TX 76226. | Town Hall, 308 Denton Street, Argyle, TX 76226. | Feb. 28, 2020 | 480775 |
| Johnson (FEMA Docket No.: B–1981). | City of Burleson (19–06–0971P). | The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028. | City Hall, 141 West Renfro Street, Burleson, TX 76028. | Feb. 24, 2020 | 485459 |
| McClennan (FEMA Docket No.: B–1981). | City of Waco (18–06–2475P). | The Honorable Kyle Deaver, Mayor, City of Waco, P.O. Box 2570, Waco, TX 76702. | Public Works Department, 401 Franklin Avenue, Waco, TX 76701. | Feb. 7, 2020 | 480461 |
| Tarrant (FEMA Docket No.: B–1981). | City of Arlington (19–06–1226P). | The Honorable Jeff Williams, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004. | Public Works and Transportation Department, 101 West Abram Street, Arlington, TX 76010. | Feb. 27, 2020 | 485454 |
| Tarrant (FEMA Docket No.: B–1974). | City of Euless (19–06–0184P). | The Honorable Linda Martin, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039. | Planning and Engineering Department, 201 North Ector Drive, Euless, TX 76039. | Feb. 6, 2020 | 480593 |
| Tarrant (FEMA Docket No.: B–1974). | City of Fort Worth (19–06–0498P). | The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102. | Feb. 6, 2020 | 480596 |
| Tarrant (FEMA Docket, No.: B–1981). | City of Fort Worth (19–06–0840P). | The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works, Engineering Department, 200 Texas Street, Fort Worth, TX 76102. | Mar. 2, 2020 | 480596 |
| Tarrant (FEMA Docket No.: B–1981). | City of Fort Worth (19–06–3630P). | The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works, Engineering Department, 200 Texas Street, Fort Worth, TX 76102. | Feb. 28, 2020 | 480596 |
| Tarrant (FEMA Docket, No.: B–1974). | City of Haltom City (19–06–0498P). | The Honorable An Truong, Mayor, City of Haltom City, 5024 Broadway Avenue, Haltom City, TX 76117. | Public Works Services Department, 4200 Hollis Street, Haltom City, TX 76111. | Feb. 6, 2020 | 480599 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|---|---|---|---|---|---|
| Utah: Salt Lake (FEMA Docket No.: B–1974) | City of Riverton (19–08–0446P) | The Honorable Trent Staggs, Mayor, City of Riverton, 12830 South Redwood Road, Riverton, UT 84065 | Public Works Department, 12526 South 4150 West, Riverton, UT 84096 | Feb. 13, 2020 | 490104 |
| Washington (FEMA Docket No.: B–1981). | City of St. George (19–08–0174P). | The Honorable Jon Pike, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770. | Public Works Department, 175 East 200 North, St. George, UT 84770. | Feb. 21, 2020 | 490177 |
| Washington (FEMA Docket No.: B–1981). | City of Santa Clara (19–08–0174P). | The Honorable Rick Rosenberg, Mayor, City of Santa Clara, 2603 Santa Clara Drive, Santa Clara, UT 84765. | Building Department, 2603 Santa Clara Drive, Santa Clara, UT 84765. | Feb. 21, 2020 | 490178 |

[FR Doc. 2020–05518 Filed 3–16–20; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2020–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The date of June 19, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**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 and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below. (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 |
|---|---|
| **Fulton County, Georgia and Incorporated Areas<br>Docket No.: FEMA–B–1808 and FEMA B–1905** | |
| City of Milton | City Hall, 2006 Heritage Walk, Milton, GA 30004. |
| City of Roswell | City Hall, 38 Hill Street, Suite 235, Roswell, GA 30075. |
| **Ada County, Idaho and Incorporated Areas<br>Docket Nos.: FEMA–B–1703 and FEMA–B–1832** | |
| City of Boise | City Hall, 150 North Capitol Boulevard, Boise, ID 83702. |
| City of Eagle | City Hall, 660 East Civic Lane, Eagle, ID 83616. |
| City of Garden City | City Hall, 6015 North Glenwood Street, Garden City, ID 83714. |
| City of Meridian | Public Works Department, 33 East Broadway Avenue, Suite 200, Meridian, ID 83642. |
| City of Star | City Hall, 10769 West State Street, Star, ID 83669. |
| Unincorporated Areas of Ada County | Ada County Courthouse, 200 West Front Street, Boise, ID 83702. |

| Community | Community map repository address |
|---|---|
| **Floyd County, Iowa and Incorporated Areas<br>Docket No.: FEMA–B–1906** | |
| City of Charles City | City Hall, 105 Milwaukee Mall, Charles City, IA 50616. |
| City of Floyd | City Hall, 617 Monroe Street, Floyd, IA 50435. |
| City of Marble Rock | City Hall, 105 Main Street South, Marble Rock, IA 50653. |
| City of Nora Springs | City Hall, 45 North Hawkeye Avenue, Nora Springs, IA 50458. |
| City of Rockford | City Hall, 206 West Main Avenue, Rockford, IA 50468. |
| City of Rudd | City Hall, 402 Chickasaw Street, Rudd, IA 50471. |
| Unincorporated Areas of Floyd County | Floyd County Courthouse, 101 South Main Street, Suite 206, Charles City, IA 50616. |
| **Winnebago County, Iowa and Incorporated Areas<br>Docket No.: FEMA–B–1906** | |
| City of Buffalo Center | City Hall, 201 2nd Avenue Southwest, Buffalo Center, IA 50424. |
| City of Lake Mills | City Hall, 105 West Main Street, Lake Mills, IA 50450. |
| City of Leland | City Hall, 316 Walnut Street, Leland, IA 50453. |
| City of Rake | Town Hall, 101 East Grace Street, Rake, IA 50465. |
| City of Scarville | City Hall, 121 Main Street, Scarville, IA 50473. |
| City of Thompson | City Hall, 167 2nd Avenue West, Thompson, IA 50478. |
| Unincorporated Areas of Winnebago County | Winnebago County Courthouse, 126 South Clark Street, Forest City, IA 50436. |
| **Barnstable County, Massachusetts (All Jurisdictions)<br>Docket No.: FEMA–B–1842** | |
| Town of Bourne | Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, MA 02532. |
| **Norfolk County, Massachusetts (All Jurisdictions)<br>Docket No.: FEMA–B–1842** | |
| Town of Cohasset | Town Hall, 41 Highland Avenue, Cohasset, MA 02025. |
| **Monroe County, Michigan (All Jurisdictions)<br>Docket No.: FEMA–B–1873** | |
| Charter Township of Berlin | Berlin Charter Township Hall, 8000 Swan View Road, Newport, MI 48166. |
| Charter Township of Frenchtown | Frenchtown Charter Township Building, 2744 Vivian Road, Monroe, MI 48162. |
| Charter Township of Monroe | Township Hall, 4925 East Dunbar Road, Monroe, MI 48161. |
| City of Luna Pier | City Hall, 4357 Buckeye Street, Luna Pier, MI 48157. |
| City of Monroe | City Hall, 120 East First Street, Monroe, MI 48161. |
| Township of Erie | Township Hall, 2065 Erie Road, Erie, MI 48133. |
| Township of LaSalle | Township Hall, 4111 LaPlaisance Road, LaSalle, MI 48145. |
| Village of Estral Beach | Estral Beach Village Hall, 7194 Lakeview Boulevard, Newport, MI 48166. |
| **Beaufort County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| City of Washington | Town Hall, 102 East Second Street, Washington, NC 27889. |
| Town of Aurora | Town Hall, 295 Main Street, Aurora, NC 27806. |
| Town of Bath | Town Hall, 103 South King Street, Bath, NC 27808. |
| Town of Belhaven | Building and Inspection Department, 315 East Main Street, Belhaven, NC 27810. |
| Town of Chocowinity | Public Works Department, 3391 Highway 17 South, Chocowinity, NC 27817. |
| Town of Pantego | Town Hall, 142 Swamp Road, Pantego, NC 27860. |
| Town of Washington Park | Washington Park Town Office, 408 Fairview Avenue, Washington, NC 27889. |
| Unincorporated Areas of Beaufort County | Beaufort County Building Inspections, 220 North Market Street, Washington, NC 27889. |
| **Carteret County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Town of Cedar Point | Town Hall, 427 Sherwood Avenue, Cedar Point, NC 28584. |
| Town of Emerald Isle | Town Hall, 7500 Emerald Drive, Emerald Isle, NC 28594. |
| Unincorporated Areas of Carteret County | Carteret County Planning and Inspections Department, 402 Broad Street, Beaufort, NC 28516. |

| Community | Community map repository address |
|---|---|
| **Craven County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| City of Havelock | Planning Department, 199 Cunningham Boulevard, Havelock, NC 28532. |
| City of New Bern | City Hall, 300 Pollock Street, New Bern, NC 28560. |
| Town of Bridgeton | Town Hall, 201 Highway 17 North, Bridgeton, NC 28519. |
| Town of River Bend | Town Hall, 45 Shoreline Drive, River Bend, NC 28562. |
| Town of Trent Woods | Town Hall, 912 Country Club Drive, Trent Woods, NC 28562. |
| Unincorporated Areas of Craven County | Craven County GIS and Mapping Department, 226 Pollock Street, New Bern, NC 28560. |
| **Currituck County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1616** | |
| Unincorporated Areas of Currituck County | Currituck County Planning and Inspections Department, 153 Courthouse Road, Currituck, NC 27929. |
| **Dare County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Town of Duck | Administrative Office, 1200 Duck Road, Duck, NC 27949. |
| Town of Kill Devil Hills | Planning and Inspections, 102 Town Hall Drive, Kill Devil Hills, NC 27948. |
| Town of Kitty Hawk | Town Hall, 101 Veterans Memorial Drive, Kitty Hawk, NC 27949. |
| Town of Manteo | Town Hall, 407 Budleigh Street, Manteo, NC 27954. |
| Town of Nags Head | Planning Department, 5401 South Croatan Highway, Nags Head, NC 27959. |
| Town of Southern Shores | Town Hall, 5375 North Virginia Dare Trail, Southern Shores, NC 27949. |
| Unincorporated Areas of Dare County | Dare County GIS, Administration Building, 954 Marshall C. Collins Drive, Manteo, NC 27954. |
| **Hyde County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Unincorporated Areas of Hyde County | Hyde County Building Inspections Department, 1223 Main Street, Swan Quarter, NC 27885. |
| **Jones County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Unincorporated Areas of Jones County | Jones County Government Office, 418 Highway 58 North, Trenton, NC 28585. |
| **Lenoir County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Unincorporated Areas of Lenoir County | Lenoir County Administration Building, 101 North Queen Street, Kinston, NC 28502. |
| **Onslow County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| City of Jacksonville | City Hall, 815 New Bridge Street, Jacksonville, NC 28540. |
| Town of Holly Ridge | Town Hall, 212 North Dyson Street, Holly Ridge, NC 28445. |
| Town of North Topsail Beach | Town Hall, 2008 Loggerhead Court, North Topsail Beach, NC 28460. |
| Town of Richlands | Town Hall, 302 South Wilmington Street, Richlands, NC 28574. |
| Town of Swansboro | Town Hall, Zoning Department, 601 West Corbett Avenue, Swansboro, NC 28584. |
| Unincorporated Areas of Onslow County | Onslow County Floodplain Administration, 234 Northwest Corridor Boulevard, Jacksonville, NC 28540. |
| **Pamlico County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Town of Alliance | Pamlico County Building Inspector's Office, 202 Main Street, Bayboro, NC 28515. |
| Town of Bayboro | Town Hall, 208 North Street, Bayboro, NC 28515. |
| Town of Grantsboro | Pamlico County Building Inspector's Office, 202 Main Street, Bayboro, NC 28515. |
| Town of Mesic | Pamlico County Building Inspector's Office, 202 Main Street, Bayboro, NC 28515. |
| Town of Minnesott Beach | Minnesott Beach Town Hall, 11758 NC Highway 306 South, Arapahoe, NC 28510. |

| Community | Community map repository address |
|---|---|
| Town of Oriental | Town Hall, 507 Church Street, Oriental, NC 28571. |
| Town of Stonewall | Town Hall, 74 Spain Farm Road, Stonewall, NC 28583. |
| Unincorporated Areas of Pamlico County | Pamlico County Building Inspector's Office, 202 Main Street, Bayboro, NC 28515. |
| **Pitt County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| City of Greenville | City Hall, 200 West 5th Street, Greenville, NC 27858. |
| Town of Grimesland | Town Hall, 7592 Pitt Street, Grimesland, NC 27837. |
| Unincorporated Areas of Pitt County | Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834. |
| Village of Simpson | Village Hall, 2768 Thompson Street, Simpson, NC 27879. |
| **Tyrrell County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Unincorporated Areas of Tyrrell County | Tyrrell County Planning Department, 108 South Water Street, Columbia, NC 27925. |
| **Washington County, North Carolina and Incorporated Areas<br>Docket No.: FEMA–B–1718** | |
| Unincorporated Areas of Washington County | Washington County Permits, Inspections and Emergency Management Department, 205 East Main Street, Plymouth, NC 27962. |
| **Scioto County, Ohio and Incorporated Areas<br>Docket No.: FEMA–B–1902** | |
| City of Portsmouth | City Hall, 728 2nd Street, Portsmouth, OH 45662. |
| Unincorporated Areas of Scioto County | Scioto County Floodplain Office, 602 7th Street, Portsmouth, OH 45662. |
| Village of New Boston | Village Office, 3980 Rhodes Avenue, New Boston, OH 45662. |
| **Newport County, Rhode Island (All Jurisdictions)<br>Docket No.: FEMA–B–1842** | |
| Town of Little Compton | Town Hall, 40 Commons, Little Compton, RI 02837. |
| Town of Tiverton | Town Hall, 343 Highland Road, Tiverton, RI 02878. |
| **Bexar County, Texas and Incorporated Areas<br>Docket No.: FEMA–B–1865** | |
| City of San Antonio | Transportation and Capital Improvements Department, Storm Water Division, 114 West Commerce Street, 6th Floor, San Antonio, TX 78205. |
| City of Terrell Hills | Terrell Hills City Hall, 5100 North New Braunfels Avenue, San Antonio, TX 78209. |
| **Denton County, Texas and Incorporated Areas<br>Docket No.: FEMA–B–1865** | |
| City of Corinth | City Hall, 3300 Corinth Parkway, Corinth, TX 76208. |
| City of Lake Dallas | Development Services, 212 Main Street, Lake Dallas, TX 75065. |
| Town of Shady Shores | Town Hall, 101 South Shady Shores Road, Shady Shores, TX 76208. |
| Unincorporated Areas of Denton County | Denton County Public Works-Planning, 1505 East McKinney Street, Suite 175, Denton, TX 76209. |
| **Utah County, Utah and Incorporated Areas<br>Docket No.: FEMA–B–1838** | |
| City of Alpine | Public Works Building, 181 East 200 North, Alpine, UT 84004. |
| City of American Fork | City Administration, 51 East Main Street, American Fork, UT 84003. |
| City of Cedar Hills | City Hall, 10246 North Canyon Road, Cedar Hills, UT 84062. |
| City of Draper | City Hall, 1020 East Pioneer Road, Draper, UT 84020. |
| City of Highland | City Hall, 5400 West Civic Center Drive, Suite 1, Highland, UT 84003. |
| City of Lehi | City Hall, 153 North 100 East, Lehi, UT 84043. |
| City of Lindon | City Center, 100 North State Street, Lindon, UT 84042. |
| City of Mapleton | City Office, 125 West Community Center Way, Mapleton, UT 84664. |
| City of Orem | City Center, 56 North State Street, Orem, UT 84057. |
| City of Payson | City Hall, 439 West Utah Avenue, Payson, UT 84651. |
| City of Provo | City Center, 351 West Center Street, Provo, UT 84601. |
| City of Salem | City Office, 30 West 100 South, Salem, UT 84653. |
| City of Saratoga Springs | City Hall, 1307 North Commerce Drive, Suite 200, Saratoga Springs, UT 84045. |

| Community | Community map repository address |
|---|---|
| City of Spanish Fork | City Hall, 40 South Main Street, Spanish Fork, UT 84660. |
| City of Springville | City Hall, 110 South Main Street, Springville, UT 84663. |
| City of Vineyard | City Hall, 125 South Main Street, Vineyard, UT 84059. |
| Town of Genola | Town Office, 74 West 800 South, Genola, UT 84655. |
| Unincorporated Areas of Utah County | Community Development Department, 51 South University Avenue, Suite 117, Provo, UT 84601. |
| **City of Radford, Virginia (Independent City) Docket No.: FEMA–B–1905** | |
| City of Radford | City Office, 10 Robertson Street, Radford, VA 24141. |
| **Snohomish County, Washington and Incorporated Areas Docket No.: FEMA–B–1773** | |
| City of Arlington | City Hall, 238 North Olympic Avenue, Arlington, WA 98223. |
| City of Bothell | City Hall, 18415 101st Avenue Northeast, Bothell, WA 98011. |
| City of Brier | City Hall, 2901 228th Street Southwest, Brier, WA 98036. |
| City of Edmonds | City Hall, 121 5th Avenue North, Edmonds, WA 98020. |
| City of Everett | City Hall, 2930 Wetmore Avenue, Suite 10–A, Everett, WA 98201. |
| City of Gold Bar | City Hall, 107 5th Street, Gold Bar, WA 98251. |
| City of Granite Falls | City Hall, 206 South Granite Avenue, Granite Falls, WA 98252. |
| City of Lake Stevens | City Hall, Permit Center, 1812 Main Street, Lake Stevens, WA 98258. |
| City of Lynnwood | City Hall, 19100 44th Avenue West, Lynnwood, WA 98036. |
| City of Marysville | City Hall, 1049 State Avenue, Marysville, WA 98270. |
| City of Mill Creek | City Hall, 15728 Main Street, Mill Creek, WA 98012. |
| City of Monroe | City Hall, Engineering Department, 806 West Main Street, Monroe, WA 98272. |
| City of Mountlake Terrace | City Hall, 6100 219th Street Southwest, Suite 200, Mountlake Terrace, WA 98043. |
| City of Mukilteo | City Hall, 11930 Cyrus Way, Mukilteo, WA 98275. |
| City of Snohomish | City Hall, 116 Union Avenue, Snohomish, WA 98290. |
| City of Stanwood | City Hall, 10220 270th Street Northwest, Stanwood, WA 98292. |
| City of Sultan | City Hall, 319 Main Street, Suite 200, Sultan, WA 98294. |
| Stillaguamish Tribe | Stillaguamish Tribe, Natural Resources Department, 3322 236th Street Northeast, Arlington, WA 98223. |
| Town of Darrington | Town Hall, 1005 Cascade Street, Darrington, WA 98241. |
| Town of Index | Town Hall, 511 Avenue A, Index, WA 98256. |
| Town of Woodway | Town Hall, 23920 113th Place West, Woodway, WA 98020. |
| Tulalip Tribe | Natural Resources Department, 6406 Marine Drive, Tulalip, WA 98271. |
| Unincorporated Areas of Snohomish County | Snohomish County Planning and Development Services, 3000 Rockefeller Avenue, Everett, WA 98201. |
| **Thurston County, Washington and Incorporated Areas Docket No.: FEMA–B–1910** | |
| City of Tenino | City Hall, 149 Hodgden Street South, Tenino, WA 98589. |
| Town of Bucoda | Bucoda Community Center, 101A East 7th Street, Bucoda, WA 98530. |
| Unincorporated Areas of Thurston County | Thurston County Courthouse, 2000 Lakeridge Drive Southwest, Building One, Olympia, WA 98502. |

[FR Doc. 2020–05520 Filed 3–16–20; 8:45 am]
BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2020]**

### 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 Mapping and Insurance 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: | | | | | | |
| Maricopa ..... | City of Buckeye (19–09–2206P) | The Honorable Jackie A. Meck, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326. | Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 12, 2020 ..... | 040039 |
| Maricopa ..... | City of Goodyear (19–09–2077P) | The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338 | Engineering and Development Services, 14455 West Van Buren Street, Suite D101, Goodyear, AZ 85338 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 26, 2020 ..... | 040046 |
| Maricopa ..... | City of Phoenix (20–09–0214P) | The Honorable Kate Gallego, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, AZ 85003 | Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 26, 2020 ..... | 040051 |
| Maricopa ..... | Unincorporated Areas of Maricopa County (19–09–0546P) | The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003 | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 12, 2020 ..... | 040037 |
| Maricopa ..... | Unincorporated Areas of Maricopa County (19–09–1186P) | The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003 | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 26, 2020 ..... | 040037 |
| Maricopa ..... | Unincorporated Areas of Maricopa County (19–09–2206P) | The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003 | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009 | *https://msc.fema.gov/portl/advanceSearch* | Jun. 12, 2020 ..... | 040037 |
| California: | | | | | | |

| 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. |
|---|---|---|---|---|---|---|
| San Diego ..... | City of San Diego (19–09–1533P) | The Honorable Kevin L. Faulconer, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101 | Development Services Department, 1222 1st Avenue, MS 301, San Diego, CA 92101 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 22, 2020 ..... | 060295 |
| San Diego ..... | City of Vista (19–09–1368P) | The Honorable Judy Ritter, Mayor, City of Vista, 200 Civic Center Drive, Vista, CA 92084 | City Hall, 200 Civic Center Drive, Vista, CA 92084 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 17, 2020 ..... | 060297 |
| Sonoma ..... | City of Healdsburg (19–09–2240P) | The Honorable Leah Gold, Mayor, City of Healdsburg, 401 Grove Street, Healdsburg, CA 95448. | Public Works Department, 401 Grove Street, Healdsburg, CA 95448 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 19, 2020 ..... | 060378 |
| Florida: St. Johns .. | Unincorporated Areas of St. Johns County (19–04–4794P) | Mr. Jeb S. Smith, St. Johns County Chairman, 500 San Sebastian View, St. Augustine, FL 32084 | St. Johns County, Building Department, 4040 Lewis Speedway, St. Augustine, FL 32084 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 25, 2020 ..... | 125147 |
| Hawaii: Maui ..... | Maui County (19–09–1600P) | The Honorable Michael P. Victorino, Mayor, County of Maui, 200 South High Street, Kalana O Maui Building 9th Floor, Wailuku, HI 96793 | County of Maui Planning Department, 2200 Main Street, Suite 315, Wailuku, HI 96793 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 22, 2020 ..... | 150003 |
| Idaho: Ada ..... | Unincorporated Areas of Ada County (20–10–0034P) | The Honorable Kendra Kenyon, Chair of the Board, District 3 Commissioner, Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702 | Ada County Courthouse, 200 West Front Street, Boise, ID 83702 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 19, 2020 ..... | 160001 |
| Minnesota: | | | | | | |
| Olmsted ..... | City of Rochester (19–05–2402P) | The Honorable Kim Norton, Mayor, City of Rochester, City Hall, 201 4th Street Southeast Room 281, Rochester, MN 55904 | City Hall, 201 4th Street Southeast, Rochester, MN 55904 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 18, 2020 ..... | 275246 |
| Olmsted ..... | Unincorporated Areas of Olmsted County (19–05–2402P) | Mr. Jim Bier, County Board Chair, Olmsted County Board of Commissioners, 151 4th Street Southeast, Rochester, MN 55904 | Olmsted County Government Center, 151 4th Street Southeast, Rochester, MN 55904 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 18, 2020 ..... | 270626 |
| New Jersey: | | | | | | |
| Essex ..... | Township of Belleville (20–02–0232P) | The Honorable Michael Melham, Mayor, Township of Belleville, 152 Washington Avenue, Belleville, NJ 07109 | Engineering Office, 152 Washington Avenue, Belleville, NJ 07109 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 1, 2020 ..... | 340177 |
| Essex ..... | Township of Nutley (20–02–0232P) | The Honorable Dr. Joseph Scarpelli, Mayor, Township of Nutley, 1 Kennedy Drive, Nutley, NJ 07110 | Township Hall, 1 Kennedy Drive, Nutley, NJ 07110 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 1, 2020 ..... | 340191 |
| Texas: | | | | | | |
| Dallas ..... | City of Grand Prairie (19–06–1737P) | The Honorable Ron Jensen, Mayor, City of Grand Prairie, 317 West College Street, Grand Prairie, TX 75050 | City Development Center, 206 West Church Street, Grand Prairie, TX 75050 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 1, 2020 ..... | 485472 |
| Dallas ..... | City of Irving (19–06–1737P) | The Honorable Rick Stopfer, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060 | Capital Improvement Program Department, 825 West Irving Boulevard, Irving, TX 75060 | *https://msc.fema.gov/portal/advanceSearch* | Jun. 1, 2020 ..... | 480180 |

[FR Doc. 2020–05519 Filed 3–16–20; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0095]**

### Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Appeal or Motion

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments will be accepted until April 16, 2020.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0095 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**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:**

#### I. Proposed Changes to the Form Instructions for Form I–290B

On December 6, 2019, USCIS published a notice in the **Federal Register** requesting public comments for 60-days on its proposed update to the Form I–290B, Notice of Appeal or Motion, and its form instructions. 84 FR 66924 (Dec. 6, 2019) (60-day notice). In the 60-day notice, USCIS explained that it was proposing to clarify the AAO's procedural requirements as provided in the Form I–290B in a number of ways. USCIS received six comments and we have responded to the comments in the addendum attached to the supporting statement that has been submitted to OMB with the request for approval of this information collection. A summary of the changes that were proposed and the outcome of each proposal in the final form and instructions submitted to OMB for review and clearance in accordance with the Paperwork Reduction Act are as follows:

*(1) Appeals Must Address All Grounds of Ineligibility Identified in the Unfavorable Decision*

For the reasons provided in the 60-day notice and in the responses to the public comments, this change is maintained in the update to the Form I–290B Instructions.

*(2) Affected Parties May Waive the ''Initial Field Review'' Process*

After considering public comments, USCIS has removed this change from the form and instructions.

*(3) Clarify the ''Initial Field Review'' Process When Evidence Is Not Submitted Concurrently With the Appeal*

This change is maintained in the update to the Form I–290B Instructions.

*(4) Treatment of Newly Submitted Evidence on Appeal*

After considering public comments, USCIS has removed this proposed change.

*(5) Abuse of Discretion Standard of Review for Discretionary Decisions*

USCIS has removed this proposed change from the revised form instructions submitted to OMB for review.

*(6) Clarify That the AAO Does Not Have Appellate Jurisdiction Over ''No Risk'' Determinations Under the Adam Walsh Act*

The proposed Form I–290B Instructions clarify that the AAO does not have jurisdiction over appeals of ''no risk'' determinations under the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248, 120 Stat. 587 (AWA). Section 402(a)(2) of the AWA bars approval of family-based visa petitions filed by U.S. citizens who have been convicted of a ''specified offense against a minor'' unless the DHS Secretary, in his or her ''sole and unreviewable discretion,'' determines that the U.S. citizen poses ''no risk'' to the beneficiary of the petition. For the reasons provided in the 60-day notice and in the responses to the public comments, this change is maintained in the update to the Form I–290B Instructions.

*(7) Define the Term ''New Facts'' for Motions To Reopen*

After considering public comments, USCIS has removed this change from the form instructions.

*(8) Certain Beneficiaries of Employment-Based Immigrant Petitions Are Considered Affected Parties for Revocation Proceedings*

This change is maintained in the update to the Form I–290B Instructions.

*(9) Define the Term ''Record of Proceeding''*

This change is maintained in the update to the Form I–290B Instructions.

*(10) Administrative Appellate Review of a Dismissed Motion Is Limited to Whether the Motion Was Properly Dismissed*

This change is maintained in the update to the Form I–290B Instructions.

*(11) Safe Address*

In response to public comments and stakeholder input, USCIS added a space to collect the safe address from affected parties who are subject to 8 U.S.C. 1367. This change is maintained in the update to the Form I–290B and instructions.

*(12) Space on the Form To State the Basis of the Appeal or Motion*

This change is maintained in the update to the Form I–290B and instructions.

#### Comments

The information collection notice was previously published in the **Federal Register** on December 6, 2019, at 84 FR 66924, allowing for a 60-day public

comment period. USCIS did receive six comment(s) in connection with the 60-day notice.

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–2008–0027 in the search box. 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 Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–290B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–290B standardizes requests for appeals and motions and ensures that the basic information required to adjudicate appeals and motions is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I–290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. Form I–290B can also be filed with ICE by schools appealing decisions on Form I–17 filings for certification to ICE's Student and Exchange Visitor Program (SEVP).

(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–290B is 28,000 and the estimated hour burden per response is 1.5 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 42,000 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 $8,652,000.

Dated: March 11, 2020.

**Samantha L. Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2020–05384 Filed 3–16–20; 8:45 am]

**BILLING CODE 9111–97–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1130]**

## Certain Beverage Dispensing Systems and Components Thereof; Commission Decision Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Order; 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 found a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a limited exclusion order and a cease and desist order prohibiting importation of infringing beverage dispensing systems and components thereof.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov,* and 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 September 5, 2018, based on a complaint filed by Heineken International B.V. and Heineken Supply Chain B.V., both of Amsterdam, The Netherlands; and Heineken USA Inc. of White Plains, New York (collectively, ''Heineken''). 83 FR 45141, 45141–42 (Sept. 5, 2019). The complaint alleges a violation section 337 of the Tariff Act 1930, as amended, 19 U.S.C. 1337 (''section 337'') in the importation into the United States, sale for importation, or sale in the United States after importation of certain beverage dispensing systems and components thereof that allegedly infringe claims 1–11 of the '751 patent. *Id.* The notice of investigation names as respondents Anheuser-Busch InBev SA, and InBev Belgium NV, both of Leuven, Belgium; and Anheuser-Busch, LLC of St. Louis, Missouri (collectively, ''ABI''). *Id.* The Office of Unfair Import Investigations was not named as a party to this investigation. *Id.*

On February 6, 2019, the presiding administrative law judge (''ALJ'') granted Heineken's motion to partially terminate the investigation as to claims 2, 4–6, 8–9, and 11 of the '751 patent. Order No. 6 (Feb. 6, 2019), *not reviewed,* Notice (Mar. 7, 2019). Remaining within the investigation are claims 1, 3, 7, and 10 of the '751 patent. On March 26, 2019, the ALJ issued Order No. 14, the *Markman* Order, construing certain claim terms. The ALJ conducted the evidentiary hearing from April 16–18 and 23, 2019.

On September 5, 2019, the ALJ issued a final initial determination (''ID''), finding claims 1, 3, 7, and 10 infringed and not invalid, and thereby finding a violation of section 337 with respect to those claims. On September 19, 2019, the ALJ issued a Recommended Determination on Remedy and Bond (''RD''). The RD recommends that should the Commission find a violation of section 337, that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond rate

during the period of Presidential review in the amount of five percent of the entered value of infringing articles.

On September 18, 2019, ABI filed a petition for Commission review of aspects of the ID. That same day, Heineken filed a contingent petition for review. On September 26, 2019, the parties responded to each other's petitions.

On November 4, 2019, the Commission determined to review the ID in its entirety. Notice at 2 (Nov. 4, 2019) (''Notice of Review''), *published at* 84 FR 60452 (Nov. 8, 2019). The Commission solicited briefing on remedy, the public interest, and bonding, as well on specific issues concerning claim construction, infringement, invalidity, and the domestic industry requirement.

On November 18, 2019, the parties filed opening briefs in response to the Notice of Review. On November 26, 2019, the parties filed replies to each other's brief.

Having reviewed the record of the investigation, including the *Markman* Order, the final ID, and the parties' submissions to the ALJ and to the Commission, the Commission has found a violation of section 337. Specifically, the Commission finds that Heineken has demonstrated the existence of a domestic industry and that asserted claims 1, 3, 7, and 10 of the '751 patent are infringed and are not invalid.

The Commission has further determined that the appropriate remedy is: (1) A limited exclusion order prohibiting the entry of infringing beverage dispensing systems and components thereof; and (2) a cease and desist order directed to respondent Anheuser-Busch LLC. The Commission has determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d), (f), do not preclude the issuance of the limited exclusion order or the cease and desist order. The Commission has determined that a bond in the amount of five (5) percent of the entered value of the imported beverage containers is required during the period of Presidential review. 19 U.S.C. 1337(j)(3). Notwithstanding the foregoing, the exclusion order and the cease and desist order permit ABI to import beverage containers that are used as part of ABI's PureDraught system.

The investigation is terminated. The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

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: March 11, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–05396 Filed 3–16–20; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–20–011]**

### Sunshine Act Meetings; Cancellation of Sunshine Act Meeting

*Agency Holding the Meeting:* United States International Trade Commission.

**ORIGINAL TIME AND DATE:** March 17, 2020 at 11:00 a.m.

**CONTACT PERSON FOR MORE INFORMATION:** William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

**ACTION:** In accordance with 19 CFR 201.37(a), the Commission has unanimously determined to cancel the meeting of March 17, 2020 at 11:00 a.m. which was scheduled under the Government in the Sunshine Act, 5 U.S.C. 552(b). Earlier notification of this cancellation was not possible.

By order of the Commission.

Issued: March 12, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–05591 Filed 3–13–20; 11:15 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–513 and 731–TA–1249 (Review)]**

### Sugar From Mexico; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether termination of the suspension investigation on sugar from Mexico would be likely to lead to continuation or recurrence of material injury.

**DATES:** March 3, 2020.

**FOR FURTHER INFORMATION CONTACT:** Charles Cummings ((202) 708–1666)), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On March 3, 2020, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 65841, November 29, 2019) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

*Staff report.*—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on March 17, 2020, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted by American Sugar Coalition and its members (the members of the American Sugar Coalition are as follows: American Sugar Cane

other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before March 24, 2020 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by March 24, 2020. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014). The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 11, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–05395 Filed 3–16–20; 8:45 am]

**BILLING CODE 7020–02–P**

League; American Sugarbeet Growers Association; American Sugar Refining, Inc.; Florida Sugar Cane League; Rio Grande Valley Sugar Growers, Inc.; Sugar Cane Growers Cooperative of Florida; and the United States Beet Sugar Association) and Imperial Sugar Company to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–20–012]**

### Sunshine Act Meetings; Cancellation of Sunshine Act Meeting

*Agency Holding the Meeting:* United States International Trade Commission.

**ORIGINAL TIME AND DATE:** March 19, 2020 at 9:30 a.m.

**CONTACT PERSON FOR MORE INFORMATION:** William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

**ACTION:** In accordance with 19 CFR 201.37(a), the Commission has unanimously determined to cancel the meeting of March 19, 2020 at 9:30 a.m. which was scheduled under the Government in the Sunshine Act, 5 U.S.C. 552(b). Earlier notification of this cancellation was not possible.

By order of the Commission.

Issued: March 12, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–05572 Filed 3–13–20; 11:15 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1154]**

### Certain Child Carriers and Components Thereof; Notice of Request for Statements on the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the presiding administrative law judge has issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

**FOR FURTHER INFORMATION CONTACT:** Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. 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 Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** Section 337 of the Tariff Act of 1930 (''section 337'') provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless the public interest factors listed in 19 U.S.C. 1337(d)(1) prevent such action. A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically whether the Commission should issue:

(1) A limited exclusion order (''LEO'') against certain child carriers and components thereof that are imported, sold for importation, and/or sold after importation by respondents: The Ergo Baby Carrier Inc. of Los Angeles, CA, Baby Tula LLC a/k/a New Baby Tula LLC of San Diego, CA, and Blue Box OpCo LLC d/b/a Infantino LLC of San Diego, CA; and/or

(2) cease and desist orders (''CDOs'') against respondents: The Ergo Baby Carrier Inc. and Blue Box OpCo LLC d/b/a Infantino LLC.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on March 10, 2020. Comments should address whether issuance of the LEOs and/or CDOs in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States

economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO and CDO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on April 14, 2020.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day 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–1154'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The 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: March 11, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–05397 Filed 3–16–20; 8:45 am]

**BILLING CODE 7020–02–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Advisory Committee on Bankruptcy Rules; Meeting of the Judicial Conference

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Bankruptcy Rules.

**ACTION:** Revised notice of open meeting.

**SUMMARY:** The Advisory Committee on Bankruptcy Rules will hold a remote meeting on April 2 and April 3, 2020. The meeting will be open to public via telephonic conference for listening but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in 85 FR 3421.

**DATES:** April 2–3, 2020.

*Time:* 9 a.m.—5 p.m.

**ADDRESSES:** N/A.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

**Authority:** 28 U.S.C. 2073.

Dated: March 12, 2020.

**Rebecca A. Womeldorf,**

*Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.*

[FR Doc. 2020–05481 Filed 3–16–20; 8:45 am]

**BILLING CODE 2210–55–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Advisory Committee on Appellate Rules; Meeting of the Judicial Conference

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Appellate Rules.

**ACTION:** Revised notice of open meeting.

**SUMMARY:** The Advisory Committee on Appellate Rules will hold a remote meeting on April 3, 2020. The meeting will be open to public via telephonic conference for listening but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in 85 FR 3421.

**DATES:** April 3, 2020.

*Time:* 8:30 a.m.–1 p.m.

**ADDRESSES:** N/A.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

**Authority:** 28 U.S.C. 2073.

Dated: March 12, 2020.

**Rebecca A. Womeldorf,**

*Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.*

[FR Doc. 2020–05483 Filed 3–16–20; 8:45 am]

**BILLING CODE 2210–55–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Advisory Committee on Civil Rules; Meeting of the Judicial Conference

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Civil Rules.

**ACTION:** Revised notice of open meeting.

**SUMMARY:** The Advisory Committee on Civil Rules will hold a remote meeting

on April 1, 2020. The meeting will be open to public via telephonic conference for listening but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books*. The announcement for this meeting was previously published in 85 FR 3076.

**DATES:** April 1, 2020.

*Time:* 9 a.m.–5 p.m.

**ADDRESSES:** N/A.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

**Authority:** 28 U.S.C. 2073.

Dated: March 12, 2020.

**Rebecca A. Womeldorf,**

*Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.*

[FR Doc. 2020–05482 Filed 3–16–20; 8:45 am]

**BILLING CODE 2210–55–P**

## DEPARTMENT OF JUSTICE

**[CPCLO Order No. 002–2020]**

## Privacy Act of 1974; Systems of Records

**AGENCY:** United States Department of Justice.

**ACTION:** Notice of a Modified System of Records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the U.S. Department of Justice (DOJ or Department), proposes to modify a system of records titled, ''Justice Federal Docket Management System (Justice FDMS),'' JUSTICE/DOJ–013. The DOJ proposes to modify Justice FDMS to incorporate the changes resulting from the transfer by the Environmental Protection Agency (EPA) to the General Services Administration (GSA) of the *Regulations.gov* internet portal and accompanying centralized docket system. Changes to the system include adding an additional routine use pertaining to GSA's access to agency records in its role as manager of the e-Rulemaking Program platform, supplementing and clarifying the administrative, technical and physical safeguards applied to the platform, and noting the changes to the location of the system itself.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records modification will go into effect upon publication, subject to a 30-day period in which to comment on the proposed changes to the routine uses, described in more detail below. Please submit any comments by April 16, 2020.

**ADDRESSES:** The public, the OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St. NE, Suite 8W.300, Washington, DC 20530; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Andria Robinson-Smith, 202–514–0208, U.S. Department of Justice, Office of Privacy and Civil Liberties, 145 N St. NE, Suite 8W.300, Washington, DC 20530.

**SUPPLEMENTARY INFORMATION:** Effective September 30, 2019, the EPA transferred to the GSA control of the *Regulations.gov* internet portal and accompanying centralized docket system. The GSA has now assumed operational control of the *Regulations.gov* internet portal and centralized docket system, operating it for federal agencies e-rulemaking processes. As these records are governed by the Justice FDMS SORN, the DOJ proposes to modify its existing SORN to reflect the resulting from the transfer of certain DOJ records to the GSA's portal and centralized docket system.

To the extent the DOJ routinely retrieves comments using the personally identifying information of the commenters, the Justice FDMS is covered under the Privacy Act of 1974, as amended, 5 U.S.C. 552a (2018) (''Privacy Act''). Accordingly, individuals accessing the GSA's on-line platform to submit a comment or supporting materials in connection with a DOJ rulemaking routinely provide their names and contact information on the GSA electronic platform; and the DOJ routinely reviews these comments. Accordingly, the Department is publishing this modified SORN to satisfy the applicable requirements of the Privacy Act, to the extent they apply.

This modification includes the following changes: (1) DOJ has reformatted this SORN to conform to current OMB guidelines; (2) DOJ has made administrative edits and renumbered the existing routine uses in the Justice FDMS SORN; (3) DOJ has updated the existing routine uses for this system to reflect current DOJ model routine uses; (4) DOJ added an additional routine use authorizing disclosure of the records in this system of records to the GSA when needed for purposes of the GSA's management of the GSA's Federal Rulemaking Management Program; (5) DOJ has added the Administrative Procedures Act, 5 U.S.C. 553, and 5 U.S.C. 301 to the list of authorities for maintenance of the Justice FDMS; (6) DOJ has updated the administrative, technical, and physical safeguards applied to the system of records, consistent with guidance from the GSA; (7) DOJ has updated the access, contesting records, and notification procedures to conform to existing DOJ practices; and (8) the system location has been changed to reflect the move to the GSA. The entire notice is being republished in full for ease of reference.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this notice of a modified system of records.

Dated: March 10, 2020.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

**JUSTICE/DOJ–013**

**SYSTEM NAME AND NUMBER:**

Justice Federal Docket Management System (Justice FDMS), JUSTICE/DOJ–013.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION(S):**

General Services Administration, 1800 F St. NW, Washington, DC 20006, and other GSA offices throughout the United States.

U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530 and other Department of Justice offices.

**SYSTEM MANAGER(S):**

*Technical Issues:* Justice Department, Deputy Chief Information Officer for E-Government, Office of the Chief Information Officer, United States Department of Justice, 950 Pennsylvania Avenue NW, RFK Main Building, Washington, DC 20530.

*Policy Issues:* Justice Department FDMS Policies System Administrator, Office of Legal Policy, United States Department of Justice, 950 Pennsylvania Avenue NW, RFK Main Building, Washington, DC 20530.

*Component Managers* can be contacted through the Department's System Managers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 206(d) of the E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. Chapter 36); Administrative Procedures Act, 5 U.S.C. 553; and 5 U.S.C. 301.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any person—including private individuals, representatives of Federal, State or local governments, businesses, and industries, that provides personally identifiable information pertaining to DOJ and persons mentioned or identified in the body of a comment.

**PURPOSE(S) OF THE SYSTEM:**

To assist the Federal Government in allowing the public to search, view, download, and comment on Federal agency rulemaking documents in one central on-line location and to contact commenters if necessary.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any person—including private individuals, representatives of Federal, State or local governments, businesses, and industries, that provides personally identifiable information pertaining to DOJ and persons mentioned or identified in the body of a comment.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Agency rulemaking material includes, but is not limited to public comments received through FDMS pertaining to DOJ rulemaking where such comments contain personally identifiable information, and any other supporting rulemaking documentation.

**RECORD SOURCE CATEGORIES:**

Any person, including public citizens and representatives of Federal, state, or local governments; businesses; and industries.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

1. To the GSA, when needed for purposes of the GSA's management of the GSA's Federal Rulemaking Management Program.

2. Information may be disclosed to OMB at any stage in the legislative coordination and clearance process in connection with private relief legislation, and when reporting a new or significantly modified system of records notice as set forth in OMB Circular No. A–19, Legislative Coordination and Clearance, and OMB Circular No. A–130, Appendix I, Responsibilities for Protecting and Managing Information Resources.

3. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

4. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

5. To any person or entity that the DOJ has reason to believe possesses information regarding a matter within the jurisdiction of the DOJ to the extent deemed to be necessary by the DOJ in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

6. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the DOJ determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

7. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

8. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

9. To a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

10. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

11. To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

12. To appropriate officials and employees of a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

13. To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

14. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

15. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

16. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to

individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

17. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

18. To the White House (the President, Vice-President, their staffs, and other entities of the Executive Office of the President), and, during Presidential transitions, to the President Elect and Vice-President Elect and their designated transition team staff, for coordination of activities that relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President Elect, Vice President or Vice-President Elect.

19. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the DOJ and meeting related reporting requirements.

20. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records in this system are stored in paper or electronic form within the GSA's Federal rulemaking system. Components of the Department of Justice will maintain paper or electronic information in accordance with applicable records retention schedules pursuant to the Federal Records Act 44 U.S.C. 3301, *et seq.*

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Justice FDMS will have the ability to retrieve records by various data elements and key word searches, including: Name, Agency, Component, Docket Type, Docket Sub-Type, Agency Docket ID, Docket Title, Docket Category, Document Type, CFR Part, Date Comment Received, and **Federal Register** Published Date.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Each Department component will handle its records in accordance with its records retention schedule as approved by the National Archives and Records Administration. Electronic data will be retained and disposed of in accordance with the component's applicable records retention schedules. The majority of documents residing on this system will be public comments and other documentation in support of Federal rulemakings. All DOJ **Federal Register** rulemakings are part of the Justice FDMS and are identified as official records and retained by the National Archives and Records Administration.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

The GSA information technology system that hosts *Regulations.gov* and the Justice FDMS is in a facility or facilities protected by physical walls, security guards, and requires identification badges to access the facility. The rooms housing the information technology infrastructure and the individual server racks are locked. Furthermore, the information technology system itself contains security controls, which are reviewed on a periodic basis by external assessors. These controls include measures for access controls, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance. Records in the electronic system, are maintained in a secure, password protected environment that utilizes security hardware and software, including multiple firewalls, active intrusion detection, encryption, identification and authentication of users. The DOJ account manager has access to GSA's FDMS and establishes, manages and terminates DOJ user accounts.

Furthermore, Justice FDMS security protocols will meet multiple National Institute of Standards and Technology (NIST) Security Standards from Authentication to Certification and Accreditation. Records in the Justice FDMS will be maintained in a secure, password protected electronic system that will utilize security hardware and software to include: Multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component.

**RECORD ACCESS PROCEDURES:**

Records concerning comments received through FDMS pertaining to DOJ rulemaking are maintained by the individual DOJ component to which the comment was directed. All requests for access to records must be in writing and should be addressed to the to the particular DOJ component maintaining the records at Department of Justice, 950 Pennsylvania Avenue NW, RFK Main Building, Washington, DC 20530. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website at *https://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16 Subpart D, ''Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.''

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

**NOTIFICATION PROCEDURES:**

Persons submitting comments do not typically receive individualized notice. Generalized notice is provided by the publication of this SORN.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

82 FR 24151, 153 (May 25, 2017); 72 FR 12196 (March 15, 2007).

[FR Doc. 2020–05456 Filed 3–16–20; 8:45 am]

**BILLING CODE 4410–NW–P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Agency Information Collection Activities; Comment Request; Application for Continuation of Death Benefit for Student

**AGENCY:** Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Application for Continuation of Death Benefit for Student.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by May 18, 2020.

**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 for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.* Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure 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 can be properly assessed.

The Office of Workers' Compensation Programs, (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act was amended on October 27, 1972, to provide for continuation of death benefits for a child or certain other surviving dependents after the age of 18 years (to age 23) if the dependent qualifies as a student as defined in section 2 (18) of the Act. The benefit would also be terminated if the dependent completes four years of education beyond high school. Form LS–266 is to be submitted by the parent or guardian for whom continuation of benefits is sought. The statements contained on the form must be verified by an official of the education institution. The information is used by the DOL to determine whether a continuation of the benefits is justified.

Legal authority for this information collection is found at 33 U.S.C. 902(18) and 33 U.S.C. 939(a). Regulatory authority is found at 20 CFR 702.121. This 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 that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0026.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL 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—Office of Workers' Compensation Programs, DLHWC.

*Type of Review:* Extension without changes.

*Title of Collection:* Application for Continuation of Benefits for Student.

*Form:* LS–266, Application for Continuation of Benefits for Student.

*OMB Control Number:* 1240–0026.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 20.

*Frequency:* On occasion.

*Total Estimated Annual Responses:* 20.

*Estimated Average Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 10 hours.

*Total Estimated Annual Other Cost Burden:* $10.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**Anjanette Suggs,**

*Agency Clearance Officer.*

[FR Doc. 2020–05388 Filed 3–16–20; 8:45 am]

**BILLING CODE P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (20–030)]**

### Notice of Intent To Grant an Exclusive Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant an exclusive patent license.

**SUMMARY:** NASA hereby gives notice of its intent to grant an exclusive patent

license in the United States to practice the invention described and claimed in U.S. Patent Application entitled, ''Composite Powder Particles'', NASA Case Number KSC–12631, to Gafco Inc. having its principal place of business in Lakewood Ranch, Florida. The patent rights in this invention, a new type of corrosion prevention, have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

**DATES:** The prospective partially exclusive license may be granted unless NASA receives written objections, including evidence and argument no later than April 1, 2020 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than April 1, 2020 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Mark Homer, Patent Counsel, Office of the Chief Counsel, NASA Kennedy Space Center, Mail Code CC, Kennedy Space Center, FL 32899. Email: *ksc-patent-counsel@mail.ksc.nasa.gov.* Telephone: 321–867–2076; Facsimile: 321–867–1817.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Leahy, Patent Attorney, Office of the Chief Counsel, NASA John F. Kennedy Space Center, Mail Code CC, Kennedy Space Center, FL 32899. Telephone: 321–867–6553; Facsimile: 321–867–1817.

**SUPPLEMENTARY INFORMATION:** This notice of intent to grant an exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive patent license will comply with the requirements of 35 U.S.C. 209 and 37 CFR. 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

**Helen M. Galus,**

*Agency Counsel for Intellectual Property.*

[FR Doc. 2020–05383 Filed 3–16–20; 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 thirty-one meetings of the Humanities Panel, a federal advisory committee, during April 2020. 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. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

**ADDRESSES:** The meetings will be held in person or via videoconference originating at Constitution Center, 400 7th Street SW, Washington, DC 20506, as indicated below.

**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: April 1, 2020

This video meeting will discuss applications on the topic of Archaeology, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

2. DATE: April 1, 2020

This meeting will discuss applications on the topic of Local History, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

3. DATE: April 1, 2020

This video meeting will discuss applications for Landmarks of American History and Culture Workshops, submitted to the Division of Education Programs.

4. DATE: April 1, 2020

This video meeting will discuss applications on the topics of Philosophy, Social Sciences, and Religion, for the Collaborative Research grant program, submitted to the Division of Research Programs.

5. DATE: April 2, 2020

This video meeting will discuss applications for Landmarks of American History and Culture Workshops, submitted to the Division of Education Programs.

6. DATE: April 2, 2020

This video meeting will discuss applications on the topics of Anthropology and Archaeology, for the Collaborative Research grant program, submitted to the Division of Research Programs.

7. DATE: April 2, 2020

This video meeting will discuss applications on the topics of Libraries, Archives, and Special Collections, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

8. DATE: April 3, 2020

This video meeting will discuss applications on the topics of Philosophy, Religion, and Social Sciences, for the Collaborative Research grant program, submitted to the Division of Research Programs.

9. DATE: April 3, 2020

This video meeting will discuss applications on the topics of Philosophy and Religion, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

10. DATE: April 3, 2020

This video meeting will discuss applications submitted to the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

11. DATE: April 6, 2020

This video meeting will discuss applications on the topics of History and Literature, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

12. DATE: April 7, 2020

This video meeting will discuss applications on the topics of U.S. and World History, for the Collaborative Research grant program, submitted to the Division of Research Programs.

13. DATE: April 7, 2020

This video meeting will discuss applications on the topic of Digital Collections, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

14. DATE: April 8, 2020

This video meeting will discuss applications on the topics of Pedagogy and Community Engagement, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

15. DATE: April 8, 2020

This video meeting will discuss applications on the topics of History and Studies of Asia and Europe, for the Collaborative Research grant program, submitted to the Division of Research Programs.

16. DATE: April 9, 2020

This video meeting will discuss applications on the topics of Languages and Linguistics, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

17. DATE: April 10, 2020

This video meeting will discuss applications on the topics of Asia, Africa, and the Middle East, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

18. DATE: April 16, 2020

This meeting will discuss applications for Summer Seminars and Institutes for Higher Education Faculty, submitted to the Division of Education Programs.

19. DATE: April 17, 2020

This meeting will discuss applications for Summer Seminars and Institutes for K–12 Educators, submitted to the Division of Education Programs.

20. DATE: April 20, 2020

This video meeting will discuss applications for Summer Seminars and Institutes for K–12 Educators, submitted to the Division of Education Programs.

21. DATE: April 20, 2020

This video meeting will discuss applications on the topic of History, for Media Projects: Production Grants, submitted to the Division of Public Programs.

22. DATE: April 21, 2020

This video meeting will discuss applications for Summer Seminars and Institutes for K–12 Educators, submitted to the Division of Education Programs.

23. DATE: April 21, 2020

This video meeting will discuss applications on the topic of Cultural History, for Media Projects: Production Grants, submitted to the Division of Public Programs.

24. DATE: April 22, 2020

This meeting will discuss applications for Summer Seminars and Institutes for Higher Education Faculty, submitted to the Division of Education Programs.

25. DATE: April 23, 2020

This meeting will discuss applications for Summer Seminars and Institutes for Higher Education Faculty, submitted to the Division of Education Programs.

26. DATE: April 23, 2020

This video meeting will discuss the topic of Podcasts, for Media Projects: Production Grants, submitted to the Division of Public Programs.

27. DATE: April 23, 2020

This video meeting will discuss the topic of Scholarly Communications, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

28. DATE: April 24, 2020

This video meeting will discuss applications for the Public Humanities Projects: Humanities Discussions Grants, submitted to the Division of Public Programs.

29. DATE: April 24, 2020

This meeting will discuss applications for Summer Seminars and Institutes for Higher Education Faculty, submitted to the Division of Education Programs.

30. DATE: April 27, 2020

This video meeting will discuss applications on the topic of Machine Learning, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

31. DATE: April 28, 2020

This video meeting will discuss applications on the topic Art History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public 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: March 11, 2020.

**Elizabeth Voyatzis,**

*Committee Management Officer, National Endowment for the Humanities.*

[FR Doc. 2020–05378 Filed 3–16–20; 8:45 am]

**BILLING CODE 7536–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–025 and 52–026; NRC–2008–0252]**

## Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4, PCS Wetted Perimeter Test Modification

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 175 and 174 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**DATES:** The exemption and amendment were issued on March 6, 2020.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0252 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–2008–0252. 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. The request for the amendment and exemption was designated License Amendment Request (LAR) 19–018 and submitted by letter dated October 31, 2019 (ADAMS Accession No. ML19304C381).

• *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:** Jennivine Rankin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1530; email: *Jennivine.Rankin@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The NRC is issuing License Amendment Nos. 175 and 174 to COLs NPF–91 and NPF–92, respectively, and is granting an exemption from Tier 1 information in the plant-specific DCD for the AP1000. The AP1000 DCD is incorporated by reference in Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). The exemption, granted pursuant to paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' of 10 CFR part 52, appendix D, allows the licensee to depart from the Tier 1 information. With the requested amendment, SNC sought proposed changes to modify Inspections, Tests, Analyses, and Acceptance Criteria No. 2.2.02.07b.i to allow the containment vessel wetted perimeter measurement to be taken at any elevation between the 266 ft. and the spring line, instead of the current requirement of taking the measurement directly at the spring line (approximately at elevation of 244 ft.).

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in sections 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML20044D036.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML20044C927 and ML20044C972, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML20044C979 and ML20044D002, respectively. A summary of the amendment documents is provided in Section III of this document.

## II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated October 31, 2019, Souther Nuclear Company (SNC) requested from the Nuclear Regluatory Commission (NRC or Commission) an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in Title 10 of the *Code of Federal Regulations* (10 CFR) part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 19–018, ''PCS Wetted Perimeter Test Modification.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found at Agencywide Documents Access and Management System (ADAMS) Accession Number ML20044D036, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding information in COL Appendix C of the facility Combined License as described in the licensee's request dated October 31, 2019. This exemption is related to, and necessary for, the granting of License Amendment No. 175 [for Unit 3, 174 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession Number ML20044D036), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

## III. License Amendment Request

By letter dated October 31, 2019 (ADAMS Accession No. ML19304C381), SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 17, 2019 (84 FR 68953). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

**IV. Conclusion**

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that SNC requested on October 31, 2019. The exemptions and amendments were issued on March 6, 2020, as part of a combined package to SNC (ADAMS Accession No. ML20044C903).

Dated at Rockville, Maryland, this 11th day of March, 2020.

For the Nuclear Regulatory Commission.

**Victor E. Hall,**

*Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.*

[FR Doc. 2020–05386 Filed 3–16–20; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2020–0001]**

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of March 16, 23, 30, April 6, 13, 20, 2020.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

**Week of March 16, 2020**

There are no meetings scheduled for the week of March 16, 2020.

**Week of March 23, 2020—Tentative**

There are no meetings scheduled for the week of March 23, 2020.

**Week of March 30, 2020—Tentative**

There are no meetings scheduled for the week of March 30, 2020.

*Thursday, April 2, 2020*

10:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/*.

**Week of April 6, 2020—Tentative**

There are no meetings scheduled for the week of April 6, 2020.

**Week of April 13, 2020—Tentative**

There are no meetings scheduled for the week of April 13, 2020.

**Week of April 20, 2020—Tentative**

There are no meetings scheduled for the week of April 20, 2020.

**ADDITIONAL INFORMATION:** The Meeting with the Advisory Committee on the Medical Uses of Isotopes scheduled for March 31, 2020, has been postponed.

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 13th day of March 2020.

For the Nuclear Regulatory Commission.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2020–05602 Filed 3–13–20; 11:15 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88359; File No. SR–CboeBYX–2020–008]**

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Fee Schedule

March 11, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2020, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule in connection with its Remove Volume Tiers, effective March 2, 2020.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0005 per share for orders that remove liquidity and assesses a fee of $0.0019 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria.

Pursuant to footnote 1 of the Fees Schedule, the Exchange currently offers Remove Volume Tiers (tiers 6 through 9) that provide Members an opportunity to receive an enhanced rebate from the standard fee assessment for liquidity removing orders that yield fee codes ''BB'',[4] ''N'' [5] and ''W''.[6] The Remove Volume Tiers currently offer four different tiers that vary in levels of criteria difficulty and incentive opportunities in which Members may qualify for enhanced rebates for such orders. For example, Tier 6 currently provides an enhanced rebate of $0.0015 for Members who have an ADV [7] of greater than or equal to 0.08% of the TCV,[8] and an ADAV [9] of greater than or equal to 500,000 shares. The Exchange notes that these tiers are designed to encourage Members to increase their order flow, adding and/or removing orders, in order to receive an enhanced rebate on their liquidity removing orders.

Specifically, the Exchange proposes to amend Remove Volume Tier 8. Pursuant to current Tier 8, a Member may receive an enhanced rebate of $0.0017 for qualifying, liquidity removing orders (*i.e.* yielding fee code BB, N, or W) if that Member has a Step-Up Remove TCV [10] from December 2017 ≥ 0.10%, and has an ADAV ≥ 0.30% of the TCV. The Exchange proposes to amend Tier 8 so that a Member may receive an enhanced rebate of $0.0018 for qualifying, liquidity removing orders if that Member has a Step-Up Remove TCV from February 2020 that is greater than or equal to 0.05%. The proposed criteria change is designed to incentivize Members to increase their relative liquidity taking order flow each month over a predetermined baseline (as proposed, from February 2020) in order to receive an enhanced rebate on their liquidity removing orders, by making Tier 8 criteria easier to achieve and increasing the enhanced rebate provided under such tier. Instead of meeting two unique criteria to receive the enhanced rebate, the proposed change narrows Tier 8 to just one criterion with a lower Step-Up Remove TCV threshold (as well as updates the month from which this criterion is measured). As a result of the proposed ease in criteria coupled with the increased enhanced rebate, Members will have an additional opportunity to receive an enhanced rebate by submitting liquidity removing order and will be further incentivized to submit liquidity removing order flow. An increase in liquidity executing orders would, in turn, incentivize liquidity adding order flow to take advantage of the increase in execution opportunities, thereby contributing to deeper, more liquid markets and price discovery. The Exchange believes that this would overall benefit all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes that Tier 8, as amended, will continue to be available to all Members and is competitively achievable for all Members that submit liquidity removing order flow, in that, all firms that submit the requisite order flow could compete to meet the tier.

The Exchange also proposes to eliminate Remove Volume Tier 9, which currently provides that a Member may receive an enhanced rebate of $0.0017 for qualifying, liquidity removing orders if that Member has a Step-Up Remove TCV from January 2018 ≥ 0.30%, and has a remove ADV ≥ 0.70% of the TCV. The Exchange proposes to eliminate Tier 9 because no Members have achieved this tier in some months.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 25, 2020), available at *https://markets.cboe.com/us/equities/market_statistics/*.

[4] Appended to displayed orders that removes liquidity from BYX (Tape B), and offered a rebate of $0.00050.

[5] Appended to displayed orders that remove liquidity from BYX (Tape C), and offered a rebate of $0.00050.

[6] Appended to displayed orders that remove liquidity from BYX (Tape A), and assessed a fee of $0.00050.

[7] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

[8] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[9] ''ADAV'' means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[10] ''Step-Up Remove TCV'' means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it restructures an opportunity for Members to receive an enhanced rebate by making it easier to reach the proposed threshold by means of liquidity removing orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[14] including the Exchange,[15] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[16]

Moreover, the Exchange believes the proposed modification to increase the enhanced rebate and ease the criteria under Remove Volume Tier 8, by removing the ADAV as a percentage of TCV threshold component and decreasing the Step-Up Remove TCV threshold (the proposed change also updates the month by which the Step-Up component is measured), is a reasonable means to further incentivize Members to increase their remove volume order flow to the Exchange by encouraging those Members who could not achieve the tier previously to increase their remove volume by a modest amount since February 2020 to receive the tier's increased rebate. As such, adopting criteria based on a Member's removing orders will encourage Members executing on the Exchange to increase transactions and provide increased execution opportunities, in turn, incentivizing liquidity providing Members to take such increase execution opportunities and provide increased liquidity and price transparency on the Exchange. The Exchange believes that these increases benefit all Members by enhancing market quality and contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed increased enhanced rebate amount also does not represent a significant departure from the enhanced rebates currently offered under the Exchange's existing Remove Volume Tiers (tier 6 offers an enhanced rebate of $0.0015 and tier 7 an enhanced rebate of $0.0018). The proposed amended tier merely provides and additional opportunity for Members submitting liquidity taking orders to achieve an enhanced rebate. In addition to this, the Exchange believes it is reasonable to remove Tier 9 from the Fee Schedule as no Members have achieved such tier in recent months. If the Exchange wishes to implement additional opportunities to meet different tier criteria within the Remove Volume Tiers it may seek to do so by submitting a rule filing at a later date.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for Remove Volume Tier 8 as amended, and will have the opportunity to meet the tier's criteria and would receive the proposed increased enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for this tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least four Members will be able to compete for and reach the proposed tier. Accordingly, the Exchange believes the proposed criteria modification is reasonably designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional displayed order flow to achieve the proposed discount. The Exchange anticipates that these will include multiple Member types, including wholesale firms (*i.e.,* broker-dealers that function to primarily make markets for retail orders) as well as proprietary firms, each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, increased wholesale firm order flow provides more trading opportunities for retail customers, which in turn attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants.

Further, the proposed elimination of Tier 9 represents an equitable allocation of fees and is not unfairly discriminatory because it will equally remove the enhanced rebate opportunity in Tier 9 for all Members. The Exchange also notes that the proposed elimination of Tier 9 will not adversely impact any Member's pricing or their ability to

[13] 15 U.S.C. 78f.(b)(5).

[14] *See e.g.,* The Nasdaq BX, Inc. Rules, Equity 7 Pricing Schedule, Sec. 118(a), which generally provides credits to members for adding and/or removing liquidity that reaches certain thresholds of Consolidated Volume; *and* Cboe EDGA U.S. Equities Exchange Fee Schedule, Footnote 7, Add/Remove Volume Tiers, which provides similar incentives for liquidity removing orders.

[15] *See generally,* Cboe BYX U.S. Equities Exchange Fee Schedule, Footnotes 1 and 2, Add/Remove Volume and Step-Up tiers provide incentives for volume adding and/or removing orders and for criteria based on Step-Up Add TCV, respectively.

[16] *See supra* note 14. BX offers credits between $0.0029 and $0.0014 per share for liquidity removing orders (substantially similar to those rebates which the Exchange proposes) depending on different criteria levels achieved.

qualify for existing enhanced rebates (note that, the proposed enhanced rebate in Tier 8 will be higher than the rebate offered by Tier 9) or reduced fee tiers. Likewise, should a Member not meet the proposed criteria in Tier 8, the Member will merely not receive the enhanced rebate proposed in Tier 8 and still would have the opportunity to meet other criteria for enhanced rebates and reduced fees. Furthermore, the proposed rate in Tier 8 would uniformly apply to all Members that meet the required criteria under the modified tier.

*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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed fee rate if such criteria is met. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to direct liquidity removing order flow to the Exchange and, as a result, increase execution opportunities, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[18] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, 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. Moreover, 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.'' [19] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. [20] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments From Members or other interested parties.

**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 [21] and paragraph (f) of Rule 19b–4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–CboeBYX–2020–008 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–CboeBYX–*2020–008.* This file number should be included on the subject line if email is used. To help the Commission process and review your

[17] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[18] *See supra* note 3.

[19] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[20] NetCoalition v. SEC, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

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. All submissions should refer to File Number SR–CboeBYX–*2020–008* and should be submitted on or before April 7, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–05377 Filed 3–16–20; 8:45 am]

**BILLING CODE 8011–01–P**

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88366; File No. 4–618]**

## Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving and Declaring Effective a Proposed Amendment to the Plan for the Allocation of Regulatory Responsibilities Between Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and Long-Term Stock Exchange, Inc. Concerning Covered Regulation NMS and Consolidated Audit Trail Rules

March 12, 2020.

On February 3, 2020, Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BATS Y''), BOX Exchange LLC (''BOX''), Cboe Exchange, Inc. (''Cboe''), Cboe C2 Exchange, Inc. (''C2''), NYSE Chicago, Inc. (''CHX''), Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX''), Investors Exchange LLC (''IEX''), Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX Emerald, LLC (''MIAX Emerald''), The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq BX, Inc. (''BX''), Nasdaq PHLX LLC (''PHLX''), NYSE National, Inc. (''NYSE National''), New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and Long-Term Stock Exchange, Inc. (''LTSE'') (each, a ''Participating Organization,'' and, together, the ''Participating Organizations'' or the ''Parties''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') an amended plan for the allocation of regulatory responsibilities (''17d-2 Plan'' or the ''Plan''). The Plan was published for comment on February 25, 2020.[1] The Commission received no comments on the Plan. This order approves and declares effective the Plan.

### I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (''Act''),[2] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[3] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''Common Members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[4] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[5] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[6] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[7] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial

[1] *See* Securities Exchange Act Release No. 88246 (February 20, 2020), 85 FR 10746.

[2] 15 U.S.C. 78s(g)(1).

[3] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[4] 15 U.S.C. 78q(d)(1).

[5] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[6] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[7] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[8] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. Proposed Amendment to the Plan

On February 3, 2020, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to: (i) Add Rule 613 under the Act and the rules of each Participating Organization related to Rule 613 listed on Exhibit A to the Plan (''SRO Covered CAT Rules''); and (ii) to reflect the name change of Nasdaq PHLX, Inc. to Nasdaq PHLX LLC.

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Participating Organization.[9] The Plan provides for the allocation of regulatory responsibility according to whether the covered rule pertains to NMS stocks or NMS securities. For covered rules that pertain to NMS stocks (*i.e.,* Rules 607, 611, and 612), FINRA serves as the ''Designated Regulation NMS Examining Authority'' (''DREA'') for common members that are members of FINRA, and assumes certain examination and enforcement responsibilities for those members with respect to specified Regulation NMS rules. For common members that are not members of FINRA, the member's DEA serves as the DREA and ''Designated CAT Surveillance Authority (''DCSA''), provided that the DEA exchange operates a national securities exchange or facility that trades NMS stocks and the common member is a member of such exchange or facility. Section 2(c) of the Plan contains a list of principles that are applicable to the allocation of common members in cases not specifically addressed in the Plan. An exchange that does not trade NMS stocks would have no regulatory authority for covered Regulation NMS rules pertaining to NMS stocks. For covered rules that pertain to NMS securities, and thus include options (*i.e.,* Rule 606, Rule 613 and the SRO Covered CAT Rules), the Plan provides that the DREA will be the same as the DREA for the rules pertaining to NMS stocks and will serve as the DCSA. For common members that are not members of an exchange that trades NMS stocks, the common member would be allocated according to the principles set forth in Section 2(c) of the Plan.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''Covered Rules'') that lists the federal securities laws, rules, and regulations, for which the applicable DREA would bear examination and enforcement responsibility, and for which the applicable DCSA would bear surveillance, investigation, and enforcement responsibility, under the Plan for common members of the Participating Organization and their associated persons.

Specifically, the applicable DREA assumes examination and enforcement responsibility, and the applicable DCSA assumes surveillance, investigation, and enforcement responsibility, relating to compliance by common members with the Covered Rules. Covered Rules do not include the application of any rule of a Participating Organization, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.[10] Under the Plan, Participating Organizations retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving their own marketplace.[11]

## III. Discussion

The Commission finds that the Plan, as amended, is consistent with the factors set forth in Section 17(d) of the Act[12] and Rule 17d–2(c) thereunder[13] in that the proposed amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed amended Plan should reduce unnecessary regulatory duplication by allocating to the applicable DREA certain examination and enforcement responsibilities, and to the applicable DCSA certain surveillance, investigation, and enforcement responsibilities, for Common Members that would otherwise be performed by multiple Parties. Accordingly, the proposed amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Parties will coordinate their regulatory functions in accordance with the proposed amended Plan, the amended Plan should promote investor protection.

The Commission is hereby declaring effective a plan that allocates regulatory responsibility for certain provisions of the federal securities laws, rules, and regulations as set forth in Exhibit A to the Plan. The Commission notes that any amendment to the Plan must be approved by the relevant Parties as set forth in Paragraph 24 of the Plan and must be filed with and approved by the Commission before it may become effective.[14]

## IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–618. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

*It is therefore ordered,* pursuant to Section 17(d) of the Act, that the Plan in File No. 4–618 is hereby approved and declared effective.

*It is further ordered* that the Parties who are not the DREA or DCSA as to a particular Common Member are relieved of those regulatory responsibilities allocated to the Common Member's

[8] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[9] The proposed 17d–2 Plan refers to these members as ''Common Members.''

[10] *See* Securities Exchange Act Release No. 86542 (August 1, 2019), 84 FR 38679 (August 7, 2019) (File No. 4–566) (notice of filing and order approving and declaring effective an amendment to the insider trading 17d–2 plan).

[11] *See* paragraph 3 of the Plan.

[12] 15 U.S.C. 78q(d).

[13] 17 CFR 240.17d–2(c).

[14] *See* Paragraph 24 of the Plan. The Commission notes, however, that changes to Exhibit B to the Plan (the allocation of Common Members to DREAs) are not required to be filed with, and approved by, the Commission before they become effective.

DREA or DCSA under the Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–05479 Filed 3–16–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88360; File No. SR–NASDAQ–2020–003]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 4121(b)

March 11, 2020.

On January 14, 2020, 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 amend Rule 4121(b) concerning the resumption of trading following a Level 3 trading halt due to extraordinary market volatility. The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[3] On March 6, 2020, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

### I. Description of the Proposal

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (''market-wide circuit breakers'' or ''MWCB''). The Exchange proposes to amend Rule 4121(b) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt.

Pursuant to Rule 4121, 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.

Currently, in the event that a Level 3 market decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day. Thus, if the primary listing market is Nasdaq, the Exchange would resume trading in its listed securities at 4:00 a.m. ET on the next trading day, which is the beginning of the Exchange's Pre-Market Session.[5] Effectively, Nasdaq would open its listed securities for trading following a Level 3 halt the same as a regular trading day under its current MWCB Level 3 re-opening procedures.[6] For non-Nasdaq listed securities, however, Nasdaq would resume trading once the primary listing market has re-opened the security for trading, which time may currently vary depending on the primary listing market.[7]

The Exchange now proposes that a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day.[8] To effect this change, the Exchange proposes to delete the language in Rule 4121(b)(ii) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 market decline, and specify that the Exchange will halt trading for the remainder of the trading day.[9] The proposed rule change would allow the Exchange to resume trading in all securities the next trading day following a Level 3 halt no differently than any other trading day, which for Nasdaq would be at the beginning of the Pre-Market Session at 4:00 a.m. ET under its current rules.[10] The Exchange also expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable securities information processor (''SIP'') to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

The Exchange believes, based on industry feedback, that opening in the normal course in all equity securities as opposed to, for instance, having a normal opening for Nasdaq-listed securities only or conducting a halt auction prior to resuming trading, would be more beneficial to the marketplace. The Exchange states that by allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. The Exchange states that while it recognizes that the impact of this proposal is to permit all securities to be traded in the Pre-Market Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, it nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Pre-Market Session in a manner that is more familiar to the marketplace. The Exchange further states that allowing the resumption of

[15] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 88004 (January 17, 2020), 85 FR 3992 (''Notice'').

[4] *See* Securities Exchange Act Release No. 88342 (**Federal Register** publication pending).

[5] Pre-Market Session means the trading session that begins at 4:00 a.m. and continues until 9:30 a.m. *See* Rule 4120(b)(4).

[6] The Nasdaq system begins accepting and processing eligible orders in time priority at 4:00 a.m. ET. *See* Nasdaq Rule 4752(b) for further description of trading in the Pre-Market Session.

[7] There may be cross-market differences in how each exchange currently opens the next day after a Level 3 MWCB halt. While Nasdaq currently resumes trading in its listed securities no differently from a regular trading day, other exchanges may, for instance, conduct a halt auction process instead of opening in the normal course under their respective rules.

[8] The Exchange anticipates that the other national securities exchanges and FINRA will also file similar proposals to amend their MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally.

[9] Presently, the Exchange's equities trading day ends at 8:00 p.m. ET.

[10] The Commission notes that the Exchange has coordinated this proposal with the other national securities exchanges and FINRA and expects that they will file proposals with the Commission to harmonize the MWCB rules and facilitate appropriately a cross-market resumption of trading following a Level 3 halt that is no different from any normal trading day.

trading to occur on the Exchange at the beginning of the Pre-Market Session in all NMS Stocks would allow for price formation to occur earlier in the trading day, which in turn would allow market participants to react to news that has developed, and that, as such, trading at the beginning of regular hours may be more orderly.

## II. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal protects investors and the public interest because it is designed to promote fair and orderly markets following a MWCB Level 3 halt in all securities. The Exchange's proposal is designed to promote fair and orderly markets in two ways. First, by permitting the resumption of trading no differently from any normal trading day, market participants are not forced to trade in manner differently from normal trading days following a Level 3 market event.[13] This is particularly important as the market seeks to resume trading after being required to halt trading for the remainder of the prior trading day. Secondly, the Exchange's proposal is designed to enable price formation to occur for all securities earlier in the trading day, which in turn could allow market participants to react to news that has developed and may result in more orderly trading at the beginning of regular hours.[14] For these reasons, the Commission finds that the Exchange's proposal is consistent with the Act.

## III. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASDAQ–2020–003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–05371 Filed 3–16–20; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78f(b)(5).

[13] The Exchange states that it has been working with other national securities exchanges and FINRA to establish a standardized approach for resuming trading in all NMS Stocks following a Level 3 halt, and that the proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants. *See* Notice, *supra* note 3, at 3993. As noted above, the Commission recognizes that the Exchange has filed this proposal in consultation and coordination with the other national securities exchanges and FINRA and expects that these SROs will file proposals with the Commission to harmonize the MWCB rules and facilitate appropriately a cross-market resumption of trading following a Level 3 halt that is no different from any normal trading day.

[14] The Commission recognizes that while the proposal will permit all securities to be traded in the Exchange's Pre-Market Session, during which certain price protections for volatility such as LULD Price Bands or MWCB protections are not in effect, it believes that this is justified by the benefits noted above.

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88357; File No. SR–NYSE–2020–03]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Add New Rule 46B To Permit the Appointment of Regulatory Trading Officials and Amend Rules 47 and 75

March 11, 2020.

On January 14, 2020, New York Stock Exchange LLC (''NYSE'') 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 add new Rule 46B to permit the appointment of Regulatory Trading Officials and amend Rules 47 and 75 to review whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction. The proposed rule change was published for comment in the **Federal Register** on January 30, 2020.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] 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 March 15, 2020. The Commission is extending this 45-day time period.

The Commission finds that it is 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, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates April 29, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change (File No. SR–NYSE–2020–03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–05372 Filed 3–16–20; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88033 (Jan. 24, 2020), 85 FR 5511 (Jan. 30, 2020).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88361; SR–NYSE–2019–68]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Its Rules To Add New Rule 7.19 (Pre-Trade Risk Controls)

March 11, 2020.

On November 27, 2019, New York Stock Exchange LLC (''NYSE'' 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 NYSE Rule 7.19 to provide for optional pre-trade risk controls. The proposed rule change was published for comment in the **Federal Register** on December 17, 2019.[3] The Commission has received two comment letters.[4] On January 29, 2020, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5]

On March 10, 2020, the Exchange withdrew the proposed rule change (SR–NYSE–2019–68).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–05373 Filed 3–16–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16253 and #16254; PUERTO RICO Disaster Number PR–00034]**

### Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Puerto Rico

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated 01/16/2020.

*Incident:* Earthquakes.

*Incident Period:* 12/28/2019 through 02/04/2020.

**DATES:** Issued on 03/10/2020.

*Physical Loan Application Deadline Date:* 03/16/2020.

*Economic Injury (EIDL) Loan Application Deadline Date:* 10/16/2020.

**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:** The notice of the President's major disaster declaration for the Commonwealth of Puerto Rico, dated 01/16/2020, is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Municipalities (Physical Damage and Economic Injury Loans):* Aguada, Anasco, Barceloneta, Coamo, Moca, Naranjito, Salinas, Santa Isabel.

*Contiguous Municipalities (Economic Injury Loans Only):*

Puerto Rico: Aguadilla, Aibonito, Bayamon, Cayey, Comerio, Guayama, Rincon.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2020–05467 Filed 3–16–20; 8:45 am]

**BILLING CODE 8026–03–P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Small Business Administration (SBA) intends to request approval from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice.

**DATES:** Submit comments on or before May 18, 2020.

**ADDRESSES:** Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Mary Frias, Loan Specialist, Office of Financial Assistance, 202–401–8234, *mary.frias@sba.gov,* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** SBA Loan Program Requirements, including 13 CFR Section 120.830, require Certified Development Companies participating in the SBA 504 Loan Program to complete and submit an annual report that contains financial statements, and operational and management information. This reporting requirement is currently approved under OMB Control Number 3245–0074 and consists of SBA Form 1253, *Certified Development Company (CDC) Annual Report Guide* and an exhibit. The Annual Report Guide outlines the standards for meeting a CDC's annual reporting requirements, while the exhibit serves as a template for the preferred method for a CDC to report data on job creation and retention. The information collected is used by SBA District Offices, the Office of Credit Risk Management, and the Office of Financial Assistance, 504 Program Branch, to determine a CDC's financial condition, its compliance with SBA Loan Program Requirements, and the impact of its assistance to small businesses.

SBA is revising the information collection to among other things, address recent rule changes and technological improvements, and to clarify and streamline the information to be submitted.

**Summary of Changes to OMB Control Number 3245–0074**

1. In lieu of outlining the reporting requirements in SBA Form 1253, SBA is proposing to eliminate the form and incorporate the requirements into SBA Standard Operating Procedures (SOP) 50 10, Lender and Development Company Loan Programs, as an Appendix. This change will allow CDCs to locate the information collection in the same document that they refer to for guidance on SBA Loan Program Requirements, which will facilitate their preparation of the annual report.

2. The information collection will also be revised to conform to the changes made by the *Streamlining and Modernizing Certified Development Company Program (504 Loan Program) Corporate Governance Requirements* final rule published at 84 FR 66287 on December 4, 2019. These changes include:

(a) Incorporating the option that allows a Multi-State CDC to add two additional members to its Board or Loan Committee (if established in the CDC's State of incorporation) as an alternative to creating a separate Loan Committee in the State into which it has expanded.

(b) Revising the instruction to make it clear that CDCs are no longer required

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87715 (Dec. 11, 2019), 84 FR 68995 (Dec. 17, 2019).

[4] *See* Letter, dated January 7, 2020, to Vanessa Countryman, Secretary, Commission, from Murray Pozmanter, Managing Director, Head of Clearing Agency Services and GOCS, DTCC. *See also* Letter, dated January 7, 2020, to Vanessa Countryman, Secretary, Commission, from Tom Barrett, Managing Director, Goldman Sachs & Co. LLC.

[5] *See* Securities Exchange Act Release No. 88080, 85 FR 6254 (February 4, 2020).

[6] 17 CFR 200.30–3(a)(12).

to submit a copy of their contracts with the Annual Report if a copy of the current and executed contract was previously submitted to SBA and the CDC so certifies. In addition, the information collection will be changed to no longer require the CDC to provide a copy of any other contract-related documents that SBA already has in its possession.

(c) Revising the collection to reflect that a CDC may contract with another CDC to perform the independent loan review (with SBA's prior written approval);

(d) Revising the collection to reflect the increase in the threshold for requiring a CDC to submit an audited financial statement from $20 million in outstanding 504 loans to $30 million. CDCs with a 504-loan portfolio balance of less than $30 million will be able to submit a reviewed financial statement.

3. The information collection will also be revised to state that CDCs can submit certain documents to SBA by uploading them into the new Corporate Governance Repository, and CDCs will not need to include those documents with their Annual Report if they previously uploaded the documents to the Repository. In addition, starting with the submission of the FY 2019 Annual Report, CDCs can file their entire Annual Report with SBA using the Repository.

4. Finally the collection will be amended to remove certain definitions; they will instead be cross referenced to the definitions section of the SOP 50 10.

**Solicitation of Public Comments**

SBA is requesting comments on (i) whether the collection of information is necessary for the agency to properly perform its functions; (ii) whether the burden estimates are accurate; (iii) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (iv) whether there are ways to enhance the quality, utility and clarity of the information.

**Summary of Information Collection**

*Title:* Certified Development Company (CDC) Annual Report Guide.

*Form Number:* None (formerly SBA Form 1253).

*OMB Control Number:* 3245–0074.

*Description of Respondents:* Certified Development Companies.

*Total Estimated Number of Respondents Annually:* 208.

*Frequency of Response Annually:* 1 per each CDC.

*Total Estimated Annual Hour Burden:* 5,824.

**Curtis Rich,**

*Management Analyst.*

[FR Doc. 2020–05448 Filed 3–16–20; 8:45 am]

**BILLING CODE 8025–03–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16328 and #16329; Puerto Rico Disaster Number PR–00035]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of Puerto Rico

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated 03/11/2020.

*Incident:* Earthquakes.

*Incident Period:* 12/28/2019 through 02/04/2020.

**DATES:** Issued on 03/11/2020.

*Physical Loan Application Deadline Date:* 05/11/2020.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/11/2020.

**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 President's major disaster declaration on 03/11/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Municipalities:* Adjuntas, Guanica, Guayanilla, Jayuya, Juana Diaz, Lajas, Las Marias, Mayaguez, Penuelas, Ponce, Sabana Grande, San German, Utuado, Yauco.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 163282 and for economic injury is 163290.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2020–05515 Filed 3–16–20; 8:45 am]

**BILLING CODE 8026–03–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 16328 and # 16329; Puerto Rico Disaster Number PR–00035]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of Puerto Rico

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated 03/11/2020.

Incident: Earthquakes.

Incident Period: 12/28/2019 through 02/04/2020.

**DATES:** Issued on 03/11/2020.

Physical Loan Application Deadline Date: 05/11/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 12/11/2020.

**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 President's major disaster declaration on 03/11/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities: Adjuntas, Guanica, Guayanilla, Jayuya, Juana Diaz, Lajas, Las Marias, Mayaguez, Penuelas, Ponce, Sabana Grande, San German, Utuado, Yauco.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ... | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.750 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.750 |

The number assigned to this disaster for physical damage is 163282 and for economic injury is 163290.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2020–05460 Filed 3–16–20; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF STATE

**[Public Notice: 11074]**

### Commission on Unalienable Rights: Notice of Cancellation of Open Meeting

Due to concerns surrounding the spread of coronavirus, the Commission on Unalienable Rights (''Commission'') is cancelling its open meeting previously scheduled on Thursday, March 26. If another meeting is scheduled, the Department of State will issue a **Federal Register** Notice with details.

For additional information, contact Duncan Walker, Policy Planning Staff, at (202) 647–2236, or *walkerdh3@state.gov.*

**Duncan H. Walker,**

*Designated Federal Officer, U.S. Department of State.*

[FR Doc. 2020–05471 Filed 3–16–20; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice 11071]**

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Asia Society Triennial: We Do Not Dream Alone'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Asia Society Triennial: We Do Not Dream Alone,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Asia Society Museum, New York, New York, from on or about June 5, 2020, until on or about August 9, 2020; at Governors Island, New York, New York, from on or about June 5, 2020, until on or about August 9, 2020; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

**Marie Therese Porter Royce,**

*Assistant Secretary, Educational and Cultural Affairs, Department of State.*

[FR Doc. 2020–05493 Filed 3–16–20; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 11075]**

### Notice of Determinations: Culturally Significant Objects Imported for Exhibition—Determinations: ''Claude & François-Xavier Lalanne: Nature Transformed'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Claude & François-Xavier Lalanne: Nature Transformed,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Sterling and Fracine Clark Art Institute, Williamstown, Massachusetts, from on or about May 9, 2020, until on or about November 1, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

**Marie Therese Porter Royce,**

*Assistant Secretary, Educational and Cultural Affairs, Department of State.*

[FR Doc. 2020–05492 Filed 3–16–20; 8:45 am]

**BILLING CODE 4710–05–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of product exclusions.

**SUMMARY:** On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the

additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 percent to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 percent to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The U.S. Trade Representative will continue to issue decisions on pending requests on a periodic basis.

**DATES:** The product exclusions announced in this notice will apply as of September 1, 2019, the effective date of the $300 billion action, and will extend to September 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. Background

For background on the proceedings in this investigation, please see the prior notices, including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), and 85 FR 13970 (March 10, 2020).

In a notice published August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately $300 billion. 84 FR 43304 (August 20, 2019) (August 20 notice). The August 20 notice contains two separate lists of tariff subheadings with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A and Annex C of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the $300 billion action from the additional duties. *See* 84 FR 57144 (October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice from 15 percent to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

Under the October 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $300 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years, among other information. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the $300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 85 FR 13970. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017.*

## B. Determination To Grant Certain Exclusions

Based on evaluation of the factors set out in the October 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in 19 specially prepared product descriptions, which cover 39 separate exclusion requests.

In accordance with the October 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the 10-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

As stated in the October 24 notice, the exclusions will apply from September 1, 2019, the effective date of the $300 billion action, and will extend for one year to September 1, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

**Joseph Barloon,**

*General Counsel, Office of the U.S. Trade Representative.*

**BILLING CODE 3290–F0–P**

## ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.42 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

| Heading/ Subheading | Article Description | Rates of Duty | | |
|---|---|---|---|---|
| | | 1 | | 2 |
| | | General | Special | |
| "9903.88.42 | Articles the product of China, as provided for in U.S. note 20(uu) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative . . . . . | The duty provided in the applicable subheading" | | |

2. by inserting the following new U.S. note 20(uu) to subchapter III of chapter 99 in numerical sequence:

"(uu) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 Fed. Reg. 43304 (August 20, 2019), 84 Fed. Reg. 45821 (August 30, 2019), 84 Fed. Reg. 57144 (October 24, 2019) and 85 Fed. Reg. 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

1) Bowls of molded plastics, with clips for retaining guide wires during surgical procedures (described in statistical reporting number 3926.90.9990)
2) Disposable graduated medicine dispensing cups of plastics (described in statistical reporting number 3926.90.9990)
3) Pads of foam plastics, with hook and loop fastener straps, integrated arm protectors, and accessory headrest, body straps, lift sheets, hand grips and face masks, of a kind

used for positioning patients during medical procedures (described in statistical reporting number 3926.90.9990)

4) Single-use sterile drapes and covers of plastics, of a kind used to protect the sterile field in surgical operating rooms (described in statistical reporting number 3926.90.9990)
5) Sterile decanters of polystyrene plastics, each of a kind used to transfer aseptic fluids or medication to and from sterile bags, vials or glass containers (described in statistical reporting number 3926.90.9990)
6) Cold packs consisting of a single-use, instant, endothermic chemical reaction cold pack combined with a textile exterior lining (described in statistical reporting number 6307.90.9889)
7) Disposable shoe and boot covers of man-made fiber fabrics (described in statistical reporting number 6307.90.9889)
8) Eye compresses, each consisting of a fabric cover filled with silica or gel beads, with or without a hook-and-loop fastener strap (described in statistical reporting number 6307.90.9889)
9) Face masks, single-use, of textile fabrics (described in statistical reporting number 6307.90.9889)
10) Gel pads of textile materials, each with removable fabric sleeves, in the shape of hearts, circles or quadrants (described in statistical reporting number 6307.90.9889)
11) Hot packs of textile material, single-use (exothermic chemical reaction) (described in statistical reporting number 6307.90.9889)
12) Laparotomy sponges of cotton (described in statistical reporting number 6307.90.9889)
13) Patient restraint or safety straps of textile materials, with hook-and-loop or ladder lock fasteners (described in statistical reporting number 6307.90.9889)
14) Single-use blood pressure cuff sleeves of textile materials (described in statistical reporting number 6307.90.9889)
15) Single-use medical masks of textile material (described in statistical reporting number 6307.90.9889)
16) Single-use stethoscope covers (described in statistical reporting number 6307.90.9889)
17) Woven gauze sponges of cotton in square or rectangular sizes (described in statistical reporting number 6307.90.9889)
18) Electromechanical shoe cover dispenser, of steel (described in statistical reporting number 8479.89.6500)
19) Protective articles (described in statistical reporting number 9004.90.0000)"

3. by amending the last sentence of the first paragraph of U.S. note 20(r) to insert ", except as provided in heading 9903.88.42 and U.S. note 20(uu) to subchapter III of chapter 99" after "heading 9903.88.15".
4. by amending the article description of heading 9903.88.15 by deleting the word "Articles" and inserting "Except as provided in heading 9903.88.42, articles" in lieu thereof.

[FR Doc. 2020–05451 Filed 3–16–20; 8:45 am]
BILLING CODE 3290–F0–C

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2020–02]**

### Petition for Exemption; Summary of Petition Received; Pitman Air LLC

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 6, 2020.

**ADDRESSES:** Send comments identified by docket number FAA–2020–0001 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Megan Blatchford (202) 267–3896, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 11, 2020.

**Brandon Roberts,**

*Acting Executive Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2020–0001.

*Petitioner:* Pitman Air LLC.

*Section(s) of 14 CFR Affected:* §§ 91.309(a)(1), 61.69(a)(1), and 61.315(c)(18).

*Description of Relief Sought:* The Petitioner seeks relief from the aforementioned sections of the Code of Federal Regulations to allow pilots-in-command who possess a sport pilot certificate, private pilot certificate or higher, with a valid Driver's License in lieu of a Medical Certificate, to operate aircraft certificated as Special Light Sport Aircraft (SLSA) or Experimental Light Sport Aircraft (ELSA), such as ''Dragonfly'' and ''Dragonfly Rancher,'' to tow Unpowered Ultralights (*i.e.* hang-gliders), Light Sport Gliders and other Light Gliders.

[FR Doc. 2020–05537 Filed 3–16–20; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2020–12]**

### Petition for Exemption; Summary of Petition Received; Kenneth Thomas

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 6, 2020.

**ADDRESSES:** Send comments identified by docket number FAA–2019–0951 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Hanan Romodan (202) 267–2778, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 11, 2020.

**Brandon Roberts,**

*Acting Executive Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2019–0951.

*Petitioner:* Kenneth Thomas.

*Section(s) of 14 CFR Affected:* § 61.159(d).

*Description of Relief Sought:* If granted, this exemption would allow the petitioner to use flight time acquired as a U.S. Armed Forces Navigator to be equivalent to that of a U.S. Armed Forces Flight Engineer crew member, as outlined in § 61.159 (d)(1)(i) of Title 14, Code of Federal Regulations. More specifically, the petitioner requests this flight time as a navigator be logged in the same manner as flight engineer time towards meeting the aeronautical experience requirements of an airline transport pilot certificate.

[FR Doc. 2020–05532 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0362]**

### Medical Review Board (MRB); Notice of Partially Closed Meeting

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice announces a meeting of the Medical Review Board Advisory Committee (MRB).

**DATES:** The meeting will be held on Monday and Tuesday, April 27–28, 2020, from 9:15 a.m. to 4:30 p.m. The meeting will be closed to the public on Monday, April 27 and will be open to the public on Tuesday, April 28. For the public meeting, no advance registration is required. Requests for accommodations for a disability must be received by Friday, April 17. Requests to submit written materials for consideration during the meeting must be received no later than Monday, April 20.

**ADDRESSES:** The meeting will be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE. Copies of the task statement and an agenda for the entire meeting will be made available at *www.fmcsa.dot.gov/mrb* at least one week in advance of the meeting. Copies of the meeting minutes will be available at the website following the meeting. You may visit the MRB website at *www.fmcsa.dot.gov/mrb* for further information on the committee and its activities.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–5221, *mrb@dot.gov.* Any committee-related request should be sent to the person listed in this section.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The MRB was created under the Federal Advisory Committee Act (FACA) in accordance with section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, SAFETEA–LU, Public Law 109–59 (2005) (codified as amended at 49 U.S.C. 31149) to establish, review, and revise ''medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.'' The MRB operates in accordance with FACA under the terms of the MRB charter, filed November 25, 2019.

#### II. Agenda

At the meeting, the agenda will cover the following topics:

- Monday, April 27 (Closed Session): Review test questions used to determine eligibility of healthcare professionals for inclusion in the National Registry of Certified Medical Examiners (CMEs).
- Tuesday, April 28 (Public Session):

1. Finalize recommendations from the MRB's June 2019 meeting on updates to the Medical Examiner's Handbook;

2. Consider changes to the seizure standard for CMV drivers.

#### III. Public Participation

The first day of the meeting will be closed to the public due to the discussion of specific test questions, which are not available for release to the public. Premature disclosure of secure test information would compromise the integrity of the examination and therefore exemption 9(B) of section 552b(c) of Title 5 of the United States Code justifies closing this portion of the meeting pursuant to 41 CFR 102–3.155(a). The second day of the meeting will be open to the public on a first-come, first served basis as space is limited. There is no need for advance registration.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Friday, April 17, 2020.

Oral comments from the public will be heard throughout the meeting at the discretion of the MRB Chairman. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to the MRB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Issued on: March 11, 2020.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2020–05457 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2009–0072]**

### Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 25, 2020, the Tri-County Metropolitan Transportation District of Oregon (TriMet) petitioned the Federal Railroad Administration (FRA) to renew a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings. FRA assigned the petition Docket Number FRA–2009–0072.

TriMet seeks to renew its waiver to not be required to routinely sound its locomotive horn when approaching three public highway-rail grade crossings on the Lombard segment of TriMet's Westside Express Service (WES), and to be permitted to use a 60 dB(A) locomotive bell in lieu of the locomotive horn at these three crossings. Specifically, TriMet seeks a waiver from the provisions of 49 CFR 222.21(a) and 222.21(b)(2), which require locomotive horns to be sounded when approaching public highway-rail grade crossings, using the ''long-long-short-long'' pattern that begins 15 to 20 seconds before the locomotive reaches the crossing, but no further than ¼ mile from the crossing.

TriMet states that, at these three crossings, their use of a 60 dB(A) bell provides a level of safety equivalent to that of the required locomotive horn.

TriMet contends because WES trains will be sounding the bell, the ''long-long-short-long'' requirement of § 222.21 would be redundant, and should not be required at these three crossings.

In November 2014, TriMet sought, and in August 2015, FRA granted, five years of regulatory relief from the requirements of § 222.21 as described above. The current petition seeks permanent relief from these same requirements.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 1, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2020–05516 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2008–0133]**

### Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 14, 2020, Burlington Junction Railway (BJRY) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from the glazing requirements in 49 CFR 223.11, *Requirements for existing locomotives,* for locomotive BJRY 8711. BJRY indicates that installing FRA-required glazing remains cost-prohibitive and notes one incident from the City of Rochelle, Illinois, with no criminal damage to the property. FRA assigned the petition Docket Number FRA–2008–0133.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 1, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2020–05517 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2020–0023]**

### Petition for Waiver of Compliance and Special Approval

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 10, 2020, Railtown 1897 State Historical Park (Railtown) petitioned the Federal Railroad Administration (FRA) for a special approval and waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215. FRA assigned the

petition Docket Number FRA 2020–0023.

Specifically, Railtown, an historic tourist operation located in Jamestown, California, seeks FRA approval per 49 CFR 215.203(c) to allow two cars owned by the State of California (reporting marks SRR 323 and WP 17005) that are over 50 years old to be used in photo and film work, and to operate on track privately owned by the Sierra Northern Railway. Because the cars would be used for historic interpretation and demonstration, Railtown also requests to waive the stenciling requirements outlined in 49 CFR 215.303. Railtown explains the cars will be limited to 10 miles per hour and will not be used in interchange.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 1, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety Chief Safety Officer.*

[FR Doc. 2020–05521 Filed 3–16–20; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Employer's Annual Federal Unemployment (FUTA) Forms

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning employer's annual federal unemployment (FUTA) tax returns.

**DATES:** Written comments should be received on or before May 18, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 940–PR, Planilla para la Declaracion Federal Anual del Patrono de la Contribucion Federal para el Desempleo (FUTA).

*OMB Number:* 1545–0028.

*Form Number(s):* 940; 940–PR.

*Abstract:* Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable wages paid to each employee. The tax is computed and reported on Forms 940 and 940–PR (Puerto Rico employers only). IRS uses the information on Forms 940 and 940–PR to ensure that employers have reported and figured the correct FUTA wages and tax.

*Type of Review:* Revision of a currently approved collection. There have been no changes to the forms that would affect burden at this time. However, the agency has updated the estimated number of respondents/responses based on it's most recent filing data.

*Affected Public:* Businesses or other for-profit organizations, individuals, or households, and farms.

*Estimated Number of Respondents:* 6,150,000.

*Estimated Time per Respondent:* 15 hours and 24 minutes.

*Estimated Total Annual Burden Hours:* 94,706,427 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: March 10, 2020.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2020–05472 Filed 3–16–20; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request Concerning Treatment of Gain From Disposition of Certain Natural Resource Recapture Property

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning treatment of gain from disposition of certain natural resource recapture property.

**DATES:** Written comments should be received on or before May 18, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Treatment of Gain from Disposition of Certain Natural Resource Recapture Property.

*OMB Number:* 1545–1352.

*Regulation Project Number:* TD 8586.

*Abstract:* This regulation prescribes rules for determining the tax treatment of gain from the disposition of natural resource recapture property in accordance with Internal Revenue Code section 1254. Gain is treated as ordinary income in an amount equal to the intangible drilling and development costs and depletion deductions taken with respect to the property. The information that taxpayers are required to retain will be used by the IRS to determine whether a taxpayer has properly characterized gain on the disposition of section 1254 property.

*Current Actions:* There are no changes being made to the regulations at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and business, or other for-profit organizations.

*Estimated Number of Respondents:* 400.

*Estimated Time per Respondent:* 5 hours.

*Estimated Total Annual Burden Hours:* 2,000 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*REQUEST FOR COMMENTS:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2020.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2020–05473 Filed 3–16–20; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Reinstatement of Information Collection Request Submitted for Public Comment; Comment Request Relating to the Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the requirements relating to the information collection, *2020 Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey.*

**DATES:** Written comments should be received on or before May 18, 2020 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Rachel Martinen, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Rachel.Martinen@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey

*OMB Number:* 1545–2288.

*Document Number(s):* None.

*Abstract:* The Internal Revenue Service (IRS) conducts the Comprehensive Taxpayer Attitude Survey as part of the Service-wide effort to maintain a system of balanced organizational performance measures mandated by the IRS Restructuring and Reform Act (RRA) of 1998. This is also a result of Executive Order 12862 that requires all government agencies to survey their customers.

The IRS' office of Research Applied Analytics & Statistics (RAAS) is sponsoring this annual survey (formerly conducted by the IRS Oversight Board) with the objective of better understanding what influences

taxpayers' tax compliance, their opinions of the IRS, and their customer service preferences, as well as how these taxpayer views change over time.

*Current Actions:* To request a reinstatement of OMB approval.

*Type of Review:* Reinstatement of a previously approved information collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 39,273.

*Estimated Time per Respondent:* .05 min. (screened), 23 min. (participants)

*Estimated Total Annual Burden Hours:* 1,111.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: March 11, 2020.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2020–05474 Filed 3–16–20; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Solicitation of Nominations for Appointment to the Advisory Committee on Minority Veterans

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA), Center for Minority Veterans (CMV), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Veterans (''the Committee'').

**DATES:** Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on July 15, 2020.

**ADDRESSES:** All nominations should be mailed to the Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave. NW (00M), Washington, DC 20420 or faxed to (202) 273–7092.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Sagudan and Mr. Dwayne Campbell, Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave. NW (00M), Washington, DC 20420, Telephone (202) 461–6191. A copy of the Committee charter, application and list of the current membership can be obtained by contacting Mr. Sagudan or Mr. Campbell or by accessing the website managed by CMV at *https://www.va.gov/centerforminorityveterans/acmv/index.asp.*

**SUPPLEMENTARY INFORMATION:** In carrying out the duties set forth, the Committee responsibilities include, but are not limited to:

(1) Advising the Secretary and Congress on VA's administration of benefits and provisions of healthcare, benefits, and services to minority Veterans.

(2) Providing a biennial report to congress outlining recommendations, concerns and observations on VA's delivery of services to minority Veterans.

(3) Meeting with VA officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing benefits and outreach to minorityVeterans.

(4) Making periodic site visits and holding town hall meetings with Veterans to address their concerns.

Management and support services for the Committee are provided by the Center for Minority Veterans (CMV).

**Authority:** The Committee was established in accordance with 38 U.S.C. 544 (Pub. L. 103–446, Sec 510). In accordance with 38 U.S.C. 544, the Committee advises the Secretary on the administration of VA benefits and services to minority Veterans; assesses the needs of minority Veterans with respect to such benefits; and evaluates whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

*Membership Criteria:* CMV is requesting nominations for upcoming vacancies on the Committee. The Committee is currently composed of 12 members, in addition to ex-officio members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including:

(1) Representatives of Veterans who are minority group members;

(2) Individuals who are recognized authorities in fields pertinent to the needs of Veterans who are minority group members;

(3) Veterans who are minority group members and who have experience in a military theater of operations;

(4) Veterans who are minority group members and who do not have such experience and;

(5) Women Veterans who are minority group members recently separated from active military service.

Section 544 defines ''minority group member'' as an individual who is Asian American, Black, Hispanic, Native American (including American Indian, Alaska Native, and Native Hawaiian); or Pacific-Islander American.

In accordance with § 544, the Secretary determines the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed three years. The Secretary may reappoint any member for additional terms of service.

*Professional Qualifications:* In addition to the criteria above, VA seeks –

(1) Diversity in professional and personal qualifications;

(2) Experience in military service and military deployments (please identify Branch of Service and Rank);

(3) Current work with Veterans;

(4) Committee subject matter expertise;

(5) Experience working in large and complex organizations;

*Requirements for Nomination Submission:* Nominations should be type written (one nomination per nominator). Nomination package should include: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone numbers, and email address; (3) the nominee's curriculum vitae, and (4) a summary of the nominee's experience and qualification relative to the *professional qualifications* criteria listed above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, males & females, racial and ethnic minority groups, and Veterans with disabilities are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: March 11, 2020.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2020–05369 Filed 3–16–20; 8:45 am]

BILLING CODE P


# FEDERAL REGISTER

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Part II

## Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production and Import, 2020–2029; and Other Updates; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[EPA–HQ–OAR–2016–0271; FRL–10003–80–OAR]**

**RIN 2060–AU26**

## Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production and Import, 2020–2029; and Other Updates

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency is allocating production and consumption allowances for specific hydrochlorofluorocarbons, a type of ozone-depleting substance, for the years 2020 through 2029. These hydrochlorofluorocarbons may be used to service certain equipment manufactured before 2020. The EPA is also updating other requirements under the program for controlling production and consumption of ozone-depleting substances, as well as making edits to the regulatory text for improved readability and clarity. These updates include revising the labeling requirements for containers of specific hydrochlorofluorocarbons; prohibiting the transfer of hydrochlorofluorocarbon allowances allocated through this rulemaking into allowances for hydrochlorofluorocarbons that have already been phased out; requiring the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of controlled ozone-depleting substances; revising and removing recordkeeping and reporting requirements; improving the process for petitioning to import used ozone-depleting substances for reuse, including by creating more flexibility for imports of used halon from certain halon banks and exempting imports of aircraft bottles containing halon 1211 for hydrostatic testing from the petition process; creating a certification process for importing both used and virgin ozone-depleting substances for destruction; and restricting the sale of known illegally imported substances. This rule includes clarifications to the certification requirements for methyl bromide quarantine and preshipment uses. The EPA is also adding polyurethane foam systems containing ozone-depleting chlorofluorocarbons to the list of nonessential products. Lastly, the Agency is updating the definition of ''destruction'' as used in the context of the production and consumption phaseout and removing obsolete provisions.

**DATES:**

*Effective Dates:* Amendatory instructions 9 and 11 are effective on March 17, 2020. Amendatory instructions 2 through 8, 10 and 12 through 20 are effective April 16, 2020.

*Operational Dates:* For operational purposes under the Clean Air Act, the amendments to 40 CFR 82.15(g)(5) through (7) and 82.16 are effective as of December 19, 2019 and the amendments to 40 CFR 82.3, 82.4, 82.9, 82.10, 82.12, 82.13, 82.14, 82.15(b), 82.15(g)(8), 82.23, 82.24, appendix K to subpart A of part 82, 82.62, 82.64, 82.66, 82.104, 82.106, and 82.270 are effective as of April 16, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0271. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. All other publicly available docket materials are available electronically through *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Katherine Sleasman, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number (202) 564–7716; email address *sleasman.katherine@epa.gov.* You may also visit the Ozone Protection website of the EPA's Stratospheric Protection Division at *https://www.epa.gov/ods-phaseout* for further information about reporting and recordkeeping, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:**

*Effective Dates.* Portions of this rule are effective less than 30 days from publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. This rule constitutes ''the promulgation or revision of regulations under subchapter VI of [the CAA] (relating to stratosphere and ozone protection)'' and as such it is covered by the rulemaking procedures in section 307(d) of the Clean Air Act (CAA). See CAA section 307(d)(1)(I). Section 307(d)(1) of the CAA states that: ''The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. The EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making a portion of the revisions finalized in this rule effective immediately, while the remainder of the rule will be effective 30 days after publication. APA section 553(d) allows an effective date less than 30 days after publication for any rule that ''grants or recognizes an exemption or relieves a restriction'' (see 5 U.S.C. 553(d)(1)). The purpose of the general rule in Section 553(d) of the CAA that 30 days must be provided between publication and the effective date is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the Agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse.

The EPA has determined that portions of this rule that are effective fewer than 30 days from publication in the **Federal Register** relieve a restriction because those revisions allocate allowances for the production and consumption of HCFC–123 and HCFC–124 for the years 2020 through 2029, giving affected entities greater flexibility to produce and consume these HCFCs, and, because the allowances being allocated include allowances for calendar year 2020, ensure the allowances will be available to producers and consumers of these HCFCs to allow for continued production and import of these HCFCs in 2020.

The EPA has also determined that certain other portions of this rule that are effective fewer than 30 days from publication in the **Federal Register** grant or recognize an exemption or relieve a restriction because these revisions would allow for the import and use of HCFC–123 for servicing fire suppression equipment manufactured before January 1, 2020, as well as allow the use of HCFC–123 as a refrigerant in equipment manufactured on or after January 1, 2020 but before January 1, 2021 under certain conditions. These revisions also remove an obsolete requirement and thus relieve the

restrictions associated with that requirement.

Accordingly, it is in keeping with the policy underlying the APA for the regulatory amendments to 40 CFR 82.15(g)(5) through (7) and 82.16 to take effect immediately. Finally, this CAA section 307(d) rule is promulgated upon signature and widespread dissemination. For operational purposes under the CAA, the EPA is making the amendments to 40 CFR 82.15(g)(5) through (7) and 82.16 and the corresponding portions of the preamble effective as of December 19, 2019 which is the date of signature.

*Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

ACE/ITDS—Automated Commercial Environment/International Trade Data System
ARFF—Aircraft Rescue and Fire Fighting
CAA—Clean Air Act
CBP—Customs and Border Protection
CDC—Centers for Disease Control and Prevention
CDX—Central Data Exchange
CFC—Chlorofluorocarbon
CFR—Code of Federal Regulations
CROMERR—Cross-Media Electronic Reporting Regulation
DOT—Department of Transportation
EIA—Environmental Investigation Agency
EPA—Environmental Protection Agency
FAA—Federal Aviation Administration
FR—Federal Register
GPEA—Government Paperwork Elimination Act
HARC—Halon Alternatives Research Corporation
HCFC—Hydrochlorofluorocarbon
HRC—Halon Recycling Corporation
HTSA—Harmonized Tariff Schedule of the United States Annotated
Montreal Protocol—Montreal Protocol on Substances that Deplete the Ozone Layer
MOP—Meeting of the Parties
MT—Metric Ton
NFPA—National Fire Protection Association
ODP—Ozone Depletion Potential
ODS—Ozone-Depleting Substance
Parties to the Montreal Protocol, or Party—Nations and regional economic integration organizations that have consented to be bound by the Montreal Protocol on Substances that Deplete the Ozone Layer
QPS—Quarantine and Preshipment
RACA—Request for Additional Consumption Allowances
SNAP—Significant New Alternatives Policy
TEAP—Technology and Economic Assessment Panel
UNEP—United Nations Environment Programme

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## I. General Information

### *A. Does this action apply to me?*

You may be potentially affected by this final action if you manufacture, process, import, or distribute into commerce certain ozone-depleting substances (ODS) and mixtures. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include but are not limited to:

- Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS 333415)
- Air-Conditioning Equipment and Supplies Merchant Wholesalers (NAICS 423620)
- Basic Chemical Manufacturing (NAICS 3251)
- Chlorofluorocarbon Gas Manufacturing and Import (NAICS 325120)
- Farm Product Warehousing and Storage (NAICS 493130)
- Farm Supplies and Merchant Wholesalers (NAICS 424910)
- Flour Milling (NAICS 311211)
- Fire Extinguisher Chemical Preparations Manufacturing (NAICS 325998)
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- Greenhouse, Nursery, and Floriculture Production (NAICS 1114)
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- Hazardous Waste Treatment and Disposal, Incinerator, Hazardous Waste (NAICS 562211)
- Industrial Gas Manufacturing (NAICS 325120)
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- Plumbing, Heating, and Air-Conditioning Contractors (NAICS 238220)
- Portable Fire Extinguishers Manufacturing (NAICS 339999)
- Postharvest Crop Activities (except Cotton Ginning) (NAICS 115114)
- Research and Development in Physical, Engineering, and Life Sciences (NAICS 541710)
- Rice Milling (NAICS 311212)
- Soil Preparation, Planting, and Cultivating (NAICS 115112)
- Vegetable and Melon Farming (NAICS 1112)

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What action is the Agency finalizing?*

The EPA is finalizing a number of revisions to the production and consumption control program for ODS [1]

[1] Generally speaking, when the EPA refers to ODS in this preamble, it is referring to class I and/or class II controlled substances. The terms ''controlled substance'' and ''ODS'' are used interchangeably, as are the terms ''HCFC'' and

Continued

in 40 CFR part 82, subpart A, which are divided into ''class I'' and ''class II'' substances. The EPA is finalizing, as proposed (see 84 FR 41510, August 14, 2019), the allocations of annual allowances for hydrochlorofluorocarbon (HCFC)–123 and HCFC–124 for the years 2020 through 2029 to be used for servicing certain equipment manufactured before January 1, 2020.

TABLE 1—FINAL HCFC–123 AND HCFC–124 ALLOWANCE ALLOCATION, 2020 THROUGH 2030

[MT]

| | | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| HCFC–123 .... | Consumption | 650 | 650 | 650 | 570 | 490 | 410 | 330 | 250 | 170 | 90 | 0 |
| | Production | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| HCFC–124 .... | Consumption | 200 | 200 | 200 | 175 | 150 | 125 | 100 | 75 | 50 | 25 | 0 |
| | Production | 200 | 200 | 200 | 175 | 150 | 125 | 100 | 75 | 50 | 25 | 0 |

For HCFC–123 and HCFC–124 allowances, the EPA identified a total number of allowances to be allocated and then determined calendar-year allowances equal to a percentage of each company's baseline.[2]

The EPA is revising subpart A, as proposed, to add servicing of existing ''fire suppression equipment'' to the authorized uses of newly produced or imported (*i.e.,* virgin) quantities of HCFC–123 and HCFC–124 during the years 2020 through 2029. To facilitate compliance, the EPA is finalizing, with minor modifications from the proposal, the labeling requirements for containers of fire suppression agent containing HCFC–123 in subpart E. To align with existing regulations [3] that prohibit the production and import of phased-out HCFCs, in particular HCFC–22, the Agency is finalizing its proposal to modify the inter-pollutant allowance transfer provisions authorized by section 607 of the CAA to prohibit transfers into ODS that are already phased out. The Agency is also finalizing as proposed the *de minimis* exemption from the use prohibition in section 605(a) of the CAA to allow virgin HCFC–123 to be used for the manufacture, through December 31, 2020, of chillers that meet specific criteria.

For changes to the import of ODS, the EPA is finalizing changes to the process for petitions to import used ODS for reuse that will meet the Agency's goals of reducing the burden on importers while ensuring the Agency has adequate information to verify that the material being imported is used, as well as making other modifications to this process as proposed. Such changes require collection of additional information when the EPA needs additional verification to make a determination whether the material has been previously used in considering petitions to import used ODS for reuse. Other changes remove data elements that are no longer necessary. Of particular note, the Agency is: (1) Reducing the information requirements when importing halon from a ''halon bank'' so long as the EPA receives an official letter from the appropriate government agency in the country where the material is stored that indicates that the halon is used and that the halon bank is authorized to collect used halon; (2) allowing submission of an application for an export license or an official government communication from the appropriate government agency in the country of export in lieu of the license itself; (3) clarifying that the Agency will request additional information when additional verification is needed before issuing a non-objection notice, and (4) providing flexibility for the timing of import.

The Agency is also finalizing changes, with limited modification from the proposal, to establish a new certification process for the import of ODS (used and virgin) for destruction in the United States. This new process requires importers of ODS to provide less information on the source of the material than when petitioning to import for reuse, but requires more information on the chain of custody and submission of verification that the imported material is destroyed after destruction has occurred.

The EPA is exempting imports of aircraft bottles containing halon 1211, a potent ODS used as a fire suppression streaming agent, for hydrostatic testing from the import petition process to make it easier for companies to service fire suppression equipment, which promotes proper maintenance of these bottles and prevents the emission of halon 1211.

The Agency is prohibiting the sale or offer for sale or distribution of any ODS that the seller knows, or has reason to know, has been imported into the United States without consumption allowances or is otherwise not subject to an exemption.

The EPA is also finalizing as proposed other updates to the production and consumption control program, including requiring the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of ODS in 40 CFR 82.3, 82.13, 82.14, 82.23, and 82.24 and clarifying the certification requirements for methyl bromide quarantine and Preshipment (QPS) uses in 40 CFR 82.4 and 82.13. The EPA is also finalizing the addition of polyurethane foam systems containing chlorofluorocarbons (CFCs) to the list of nonessential products. This rule also updates provisions in 40 CFR 82.3, 82.104, and 82.270 related to destruction technologies and the definition of ''destruction'' as used in the context of the production and consumption phaseout. Lastly, the EPA is removing outdated and obsolete provisions related to the allocation and transfer of class I ODS credits and allowances, and the associated recordkeeping and reporting requirements, that are no longer in use in subpart A.

''class II substance.'' Section 602 of the CAA contains initial lists of class I and class II substances and addresses additions to those lists. The current lists appear in appendices A and B in subpart A. The EPA did not propose, nor is it finalizing, any changes to these lists in this rulemaking. The list of class I substances includes chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide. The list of class II substances consists entirely of HCFCs.

[2] The percentage of baseline allowances to be allocated for each HCFC is determined as follows: All the company-specific consumption baselines (listed in the table at 40 CFR 82.19) are added to determine the aggregate amount of consumption baseline. The total number of consumption allowances to be allocated in a given year are then divided by the aggregate amount of baseline consumption allowances. The same process is followed to determine the percentage for production allowances using the company-specific baselines listed in the table at 40 CFR 82.17.

[3] The EPA is using the term ''existing regulations'' to describe those regulations that were in place prior to this final rule.

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

Several sections of the CAA [4] provide authority for the actions finalized by the EPA in this rulemaking. Section 603 provides authority to establish monitoring and reporting requirements for ODS. Sections 604 and 605 provide authority to phase out production and consumption of class I and class II substances, respectively, and to restrict the use of class II ODS. Section 606 provides the EPA authority to establish a more stringent phaseout schedule [5] than that set out in sections 604 and 605 based on (1) current scientific information that a more stringent schedule may be necessary to protect human health and the environment, (2) the availability of substitutes, or (3) to conform to any acceleration under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). Section 607 provides the EPA with authority to issue production and consumption allowances and to authorize allowance transfers, including inter-pollutant and inter-company transfers. Section 610 directs the EPA to issue regulations that identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such products for sale or distribution, in interstate commerce. Section 611 requires the EPA to establish and implement labeling requirements for containers of, and products containing or manufactured with, class I or class II ODS.

The EPA's authority for this rulemaking is supplemented by section 114, which authorizes the EPA Administrator to require recordkeeping and reporting in carrying out any provision of the CAA (with certain exceptions that do not apply here). Section 301 further provides authority for the EPA to ''prescribe such regulations as are necessary to carry out [the EPA Administrator's] functions'' under the CAA. Additional authority for electronic reporting comes from the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504), which provides: ''(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable.''

Additional information on the EPA's authority to establish and manage an allocation system for the phaseout of class I and class II substances is provided in prior EPA actions (see 58 FR 65018, December 10, 1993 and 68 FR 2820, January 21, 2003).

*D. What are the incremental costs and benefits of this action?*

The EPA considered the incremental costs and benefits associated with this rulemaking, which primarily stem from changes to reporting and recordkeeping requirements. This action requires electronic submissions through the Agency's Central Data Exchange (CDX), creates a streamlined Certification of Intent to Import ODS for Destruction, exempts halon 1211 in aircraft bottles from the import petitions process, and adds a recordkeeping requirement for certain distributors of methyl bromide for QPS applications. The EPA estimates the overall annual cost savings to reporters as a result of reductions in reporting elements, streamlining forms, and added efficiencies to be approximately $13,000 per year. The EPA also estimates a one-time cost of approximately $4,000 to redesign labels on containers of fire suppression agents. In addition, the EPA performed a screening analysis of the impact on small businesses and found that there will be no additional costs imposed on them. See the docket for the screening analysis on small business. A more detailed discussion is included in Section IV.

## II. Background

The United States was one of the original signatories to the Montreal Protocol and ratified it on April 12, 1988. After ratification, Congress enacted, and President George H.W. Bush signed into law, the CAA Amendments of 1990, which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Montreal Protocol, in addition to establishing complementary measures such as the national recycling and emission reduction programs under section 608 and the labeling requirements under section 611, among others.

The 1992 Copenhagen Amendment [6] to the Montreal Protocol created the stepwise reduction schedule, subsequently revised, and the eventual phaseout of HCFC consumption.[7] The next milestone is a commitment to reduce HCFC consumption by 99.5 percent below the baseline by January 1, 2020, with consumption for the years 2020 through 2029 restricted to the servicing of refrigeration, air-conditioning, and fire suppression equipment existing on January 1, 2020.[8] This is referred to as the ''servicing tail.'' In November 2018, the Parties to the Montreal Protocol agreed to add fire suppression equipment existing on January 1, 2020 to the list of permissible servicing tail uses.

The United States has chosen to implement the Montreal Protocol phaseout schedule of HCFCs on a chemical-by-chemical basis that employs a ''worst-first'' approach focusing on the earlier phaseout of certain chemicals with higher ozone depletion potential (ODP). In 1993, the EPA established a phaseout schedule to eliminate HCFC–141b first, to greatly restrict HCFC–142b and HCFC–22 next, and to subsequently place restrictions on all other HCFCs ultimately leading to a complete phaseout of all HCFCs by 2030 (see 58 FR 15014, March 18, 1993 and 58 FR 65018, December 10, 1993).

The EPA designed the allowance program to implement the production and consumption controls of the CAA and to facilitate an orderly phaseout. To control production, the EPA allocated production allowances to producers of specific ODS. To control consumption,[9] the EPA allocated consumption allowances to producers and importers of specific ODS. In the allowance program, the EPA allocates ''calendar-year'' or ''annual'' allowances to companies who expend them when they produce or import ODS. The allowances can be traded among companies both domestically and internationally (between countries that are Parties to the Protocol), with certain restrictions. Allocation of production and consumption allowances for most class

[4] The Clean Air Act provisions addressing stratospheric ozone protection are codified at 42 U.S.C. 7671–7671q.

[5] The following documents are available in the docket: ''EPA. 1999. The Benefits and Costs of the Clean Air Act: 1990 to 2010,'' and ''EPA. 2018. Overview of CFC and HCFC Phaseout.''

[6] Further information on the Copenhagen Amendment is available at *https://ozone.unep.org/treaties/montreal-protocol/amendments/copenhagen-amendment-1992-amendment-montreal-protocol-agreed.*

[7] Consumption is defined in 40 CFR 82.3 as production plus imports minus exports of a controlled substance (other than transshipments or used controlled substances). Production is defined in 40 CFR 82.3 as the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include: (1) The manufacture of a controlled substance that is subsequently transformed; (2) the reuse or recycling of a controlled substance; (3) amounts that are destroyed by the approved technologies; or (4) amounts that are spilled or vented unintentionally.

[8] See Montreal Protocol Article 2F, paragraph 6.

[9] See CAA section 601(6), 42 U.S.C. 7671(6); 40 CFR 82.3.

I substances (CFCs, methyl chloroform, carbon tetrachloride, and halons) ended by 1996, and in 2005 for methyl bromide. Production and consumption allowances for class II substances (HCFCs) will be reduced to zero in 2030.[10]

Since the EPA is implementing the HCFC phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. An allowance is the unit of measure that controls production and consumption of ODS. The EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (*i.e.,* calendar year). In previous rulemakings, the EPA has allocated calendar-year allowances equal to a percentage of the baseline for the controlled substance for a given control period. A calendar-year allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific controlled substance. The EPA allocates two types of calendar-year allowances—production allowances and consumption allowances. To produce an HCFC, an allowance holder must expend both production and consumption allowances. To import an HCFC, an allowance holder must expend only consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may obtain a refund of those consumption allowances upon submittal of proper documentation to the EPA. Production and import of virgin HCFCs without allowances are prohibited except for transformation, destruction, transshipments, or heels (40 CFR 82.15(a) and (b)).

Under the chemical-by-chemical phaseout schedule for HCFCs established by EPA regulations, as discussed above, the EPA stopped allocating production and consumption allowances for HCFC–141b as of 2003; for HCFC–225ca/cb as of 2015; and for HCFC–22 and HCFC–142b as of 2020. The Montreal Protocol, the CAA, and the EPA regulations under 40 CFR part 82, subpart A, limit the permissible uses of newly produced or imported quantities of the remaining HCFCs (HCFC–123 and HCFC–124). Section 605(a) of the CAA makes it unlawful, starting January 1, 2015 to introduce into interstate commerce or use any virgin HCFCs unless they are used as a refrigerant in appliances manufactured prior to January 1, 2020, or are listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612 of the CAA. In addition, prior to November 2018, Article 2F of the Montreal Protocol provided that the only permissible uses of HCFCs after January 1, 2020 were for the servicing of refrigeration and air-conditioning equipment existing on January 1, 2020. In a November 2018 adjustment to Article 2F, servicing of fire suppression and fire protection equipment existing on January 1, 2020 was added as an additional permissible use. Section 614(b) of the CAA also provides that in the case of a conflict between any provision of the CAA and any provision of the Montreal Protocol, the more stringent provision shall govern. In sum, the combination of the CAA and the Montreal Protocol establish that the permissible uses of HCFCs after January 1, 2020 will be limited to servicing refrigeration, air-conditioning, and fire suppression equipment existing on January 1, 2020.

The EPA notes that absent specific use restrictions, HCFCs can continue to be used after their production and import has ceased, for example, to service existing equipment such as refrigeration and air-conditioning systems. The EPA's intent has always been to facilitate a smooth transition to alternatives, which means avoiding stranding equipment that has not yet reached the end of its useful life. For example, used HCFC–22 that is recovered and reclaimed, or virgin material produced before the 2020 phaseout may continue to be used for as long as it is available to service existing HCFC–22 systems.

The Title VI phaseout regulations that reduce the number of allowances allocated over time is a central component of the United States' approach for protecting stratospheric ozone. The EPA limits how much ODS enters the market to meet the CAA and Montreal Protocol phaseout milestones. To smooth the phaseout steps, the EPA also takes complementary actions that reduce the demand for ODS, encourage recovery and recycling or reclamation of used ODS, allow for continued servicing to avoid stranding existing equipment, and encourage transition to alternatives that ''reduce overall risks to human health and the environment.'' [11]

The EPA's most recent action related to the phaseout of HCFCs was a 2014 rule that allocated production and consumption allowances for HCFC–22, HCFC–142b, HCFC–123, and HCFC–124 for 2015–2019 (see 79 FR 64254, October 28, 2014). In that action, the EPA further implemented the provisions in section 605(a) of the CAA that limit production and consumption to servicing refrigeration and air-conditioning appliances and for use in fire suppression applications. That document provides additional discussion of the history of the phaseout of HCFCs.

## III. Final Rule and Response to Comments

This section describes the rationale for the final actions taken in this rulemaking, summarizes and responds to the comments received on the proposal, and explains differences between the proposed rule and this final action.

### *A. Allocation of HCFC Allowances for the Years 2020 Through 2029*

This section describes the factors that the EPA considered in developing its approach for issuing HCFC allowances for the next regulatory period that extends from 2020 through 2029. Additional relevant discussion is included in other portions of section III. Specifically, section III.B. provides more information on allowance allocations for HCFC–123 and section III.C. provides more information on allowance allocations for HCFC–124. As explained below, the EPA's allocation methodologies are consistent with the CAA, EPA regulations, and the obligations of the United States under the Montreal Protocol, and were supported by most commenters.

HCFC–123 and HCFC–124 are the two HCFCs not already slated for phaseout in the United States by 2020 under the ''worst-first approach'' described in the previous section. These HCFCs are currently used in the refrigeration, air-conditioning, and fire suppression sectors. The use of newly produced or imported quantities of these HCFCs is limited under the Montreal Protocol, the CAA, and the EPA's regulations. The EPA is relying on its authority under section 605(c) of the CAA to promulgate regulations phasing out the production and restricting the use of class II substances, subject to previous accelerations under section 606 (see 58 FR 65018, December 19, 1993 and 74 FR 66411, December 15, 2009). The EPA is making limited changes to the provisions on production, consumption, and use of class II ODS to provide flexibility for the years 2020 through 2029 consistent with the requirements of section 605 of the CAA and

[10] See CAA section 605(b)(2), 42 U.S.C. 7671(d)(b)(2), and Montreal Protocol Article 2F, paragraph 6.

[11] CAA section 612, 42 U.S.C. 7671(k).

obligations of the United States under the Montreal Protocol.

As stated in the proposal, the EPA considered a number of factors when developing an approach to allocating allowances for HCFC–123 and HCFC–124 for the years 2020 through 2029 including existing company-specific production and consumption baselines listed in 40 CFR 82.17 and 82.19; the Agency's worst-first approach; the remaining permissible uses of HCFCs under section 605(a) of the CAA and the availability of alternatives for those uses; the quantity needed to meet the estimated servicing demand for each permissible use; the estimated quantity of HCFCs that will be available from recycling, reclamation, and potential stockpiling in advance of the 2020 phaseout step;[12] and the transition that must occur by 2030 when HCFC production and consumption will be phased out completely. Further, the Agency has considered public comments on prior drafts of the report in the docket titled *The U.S. Phaseout of HCFCs: Projected Servicing Demand in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sectors (2020–2030), December 2019,* hereafter referred to as the *2019 Final Servicing Tail Report,* and on the proposed allocation amounts and approaches, as discussed below and in other parts of section III.

For HCFC–123 and HCFC–124 allowances, the EPA identified a total number of allowances to be allocated. These amounts are presented in Table 1 in Section I.B. above and match the proposed allowance allocations. Each company's calendar-year allowances are then calculated as a percentage of each company's baseline. Tables identifying the percentage of baseline production and consumption allowances allocated appear in 40 CFR 82.16(a). As noted, the EPA considered several factors when developing an approach to allocating allowances for HCFC–123 and HCFC–124. The first factor the EPA considered was the existing limitation on permissible uses of HCFCs and the availability of alternatives for those uses. Section 605(a) of the CAA limited the use of HCFCs beginning January 1, 2015. The statute provides that starting on that date, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance: (1) Has been used, recovered, and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; (3) is used as a refrigerant in appliances manufactured before January 1, 2020; or (4) is listed as acceptable under the Significant New Alternatives Policy (SNAP) program for use as a fire suppression agent for nonresidential applications. As detailed in the *2019 Final Servicing Tail Report,* the EPA considered the estimated quantity of HCFC–123 and HCFC–124 that will be available from recycling, reclamation, and potential stockpiling in advance of the 2020 phaseout step. The EPA also considered the availability of alternatives with the understanding that it is typically best to service equipment with the same refrigerant or fire suppression agent it was designed to use.

The SNAP program continues to review and list alternatives for applications that use HCFCs, including refrigeration and air-conditioning and fire suppression applications that use HCFC–123. Substitutes are listed under that regulatory program as acceptable, unacceptable, or acceptable subject to use restrictions for specific uses. Any future use of substitutes listed as acceptable subject to use restrictions must comport with any conditions of the SNAP program, if applicable. Currently, the SNAP program lists a number of acceptable substitutes for HCFCs for use as a fire suppression agent for nonresidential applications as well as in the refrigeration and air-conditioning sector, making a variety of allocation options practicable for the years 2020 through 2029.

As noted previously, in addition to the statutory provisions in section 605 of the CAA, the EPA established a ''worst-first approach'' in 1993 which addressed which HCFCs may be produced and consumed and prioritized the phaseout of HCFCs based on their ODPs. These regulations can be found in 40 CFR 82.16. Consistent with that approach, the EPA is issuing allowances for production and consumption of only HCFC–123 and HCFC–124, as these are the remaining HCFCs that have not been phased out domestically.

In 2020, the consumption cap of the United States for all HCFCs is 0.5 percent of the U.S. baseline, which equates to 76.2 ODP-weighted metric tons that could be available for servicing.[13] Under section 605(c) of the CAA, the consumption of HCFCs by any person is also to be limited to the quantity consumed by that person during the baseline year. The EPA has implemented this requirement by limiting the number of annual allowances allocated for each chemical in 40 CFR 82.16. The consumption baseline is 2,014 MT (40 ODP-weighted MT) of HCFC–123 and 2,396 MT (53 ODP-weighted MT) of HCFC–124. Section 605(c) of the CAA thus prohibits the EPA from allocating allowances above that amount for each chemical. Consumption allowances are allocated to the entities listed in 40 CFR 82.19.

In finalizing this action, the EPA considered the quantities of HCFC–123 and HCFC–124 needed to service equipment manufactured before 2020. These estimates are discussed in the *2019 Final Servicing Tail Report,* which is available in the docket. The final report and allocations are based on demand projections contained in the EPA's Vintaging Model,[14] recent market research, discussions with industry on current HCFC uses and trends, the expected availability of recovered, recycled/reclaimed, and reused material, and consideration of comments offered on the report during the public comment period on this rulemaking, as described below. The Agency made the April 2018 draft report available on its website and in the docket along with a Notice of Data Availability (see 83 FR 19757, May 4, 2018) and requested comment on the data and assumptions in the report. The EPA did not receive any comments on the draft report. As a result of the adjustment to Article 2F of the Montreal Protocol, the EPA revised the *2018 Draft Servicing Tail Report* to reflect the demand for servicing fire suppression equipment manufactured before January 1, 2020 and disaggregated estimated demand for fire suppression to show estimated demand for servicing compared to demand for new equipment. The EPA consulted with industry on the estimate of future market demand for HCFC-123 fire suppression applications. At the time the *2019 Draft Servicing Tail Report* was published in August 2019, total demand (the manufacture of new equipment and the servicing of existing equipment)

[12] EPA. 2019. The U.S. Phaseout of HCFCs: Projected Servicing Demand in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sectors (2020–2030).

[13] 76.2 ODP-weighted metric tons is the equivalent of 3,810 MT of HCFC–123, if completely allocated to HCFC–123, and 3,464 MT of HCFC–124, if completely allocated to HCFC–124.

[14] The EPA's Vintaging Model estimates the annual chemical emissions from industry sectors that historically used ODS, including refrigeration and air-conditioning and fire suppression. The model uses information on the market size and growth for each end-use, as well as a history and projections of the market transition from ODS to alternatives. The model tracks emissions of annual ''vintages'' of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment.

over the past several years had varied, but the average was approximately 260 MT per year. The EPA expected the demand for fire suppression servicing to be 35 to 90 MT per year based on projections [15] from the Vintaging Model and feedback from industry.

In the notice of proposed rulemaking for this action, the EPA sought comment on all aspects of the *2019 Draft Servicing Tail Report,* including the projections for the fire suppression sector. The Agency received comments on the total demand for fire suppression during the comment period and has updated the report accordingly. The Agency also updated the reclamation and consumption values in the report to reflect the data reported for 2018.

The last factor the EPA considered is the statutory 2030 phaseout date for production and import of HCFCs, with limited exceptions, under section 605(b)(2) and (c) of the CAA. In 2030, HCFC–123 and HCFC–124 must be phased out completely. As in prior phaseout steps for other HCFCs, the Agency's intent is to accomplish the statutory 2030 phaseout in a manner that achieves a safe and smooth transition to alternatives without stranding equipment. The EPA's goal is to allow equipment owners to continue servicing their HCFC–123 and HCFC–124 equipment throughout its expected lifetime. Experience with the HCFC–22 phaseout indicates that gradually decreasing allocation levels is a better approach than an abrupt cessation of allowances at the phaseout date, as it provides time and the right market signals for equipment owners to plan investments and transition to alternatives while also fostering recovery, recycling, and reclamation of HCFCs.

*B. Allocation of HCFC–123 Consumption Allowances*

This section describes the EPA's proposal for annual HCFC–123 allocations, comments received on the proposal, the Agency's responses to those comments, and the final allocations for HCFC–123 in 2020 through 2029.

The Agency proposed to issue consumption allowances for HCFC–123 for years 2020 through 2022 equal to the estimated 2020 demand for servicing existing refrigeration and air-conditioning and fire suppression equipment. The EPA proposed to then decrease the number of allowances issued in each subsequent year by an equal amount such that there would be zero allowances in 2030. The EPA explained that this allocation approach would meet the full estimated servicing demand in 2020 with newly imported HCFC–123 and the full estimated servicing demand in 2030 with reclaimed HCFC–123. The EPA also explained that allocating at the full estimated level of servicing demand in 2020 (650 MT [16]) for the years 2020 through 2022 would allow time for the reclamation market to increase sales to the fire suppression sector. Currently, the reclamation market primarily services the refrigeration and air conditioning sector. Allocating above estimated demand for the years 2021 and 2022 (see the demand estimates in the *2019 Final Servicing Tail Report*) will ensure supply for servicing existing refrigeration and air-conditioning, and fire suppression equipment while that transition occurs.

The EPA also sought comment on two alternative approaches for determining how many HCFC–123 consumption allowances to issue. The first alternative approach would have issued allowances equal to the total modeled demand each year from 2020 through 2029 (which includes servicing of existing equipment and the manufacture of new equipment using reclaimed HCFC–123) minus the low end of the projection for reclamation each year from 2020 through 2029. This contrasts with the proposed allocation amounts which, as explained above, were not directly based on demand for the manufacture of new equipment using reclaimed HCFC–123 or the availability of reclaimed HCFC–123 and did not subtract allocations based on projections for reclamation as was proposed in Alternative 1. The Agency determined that reclaimed HCFC–123 could meet the demand for new fire suppression equipment, while also eventually providing HCFC–123 for servicing existing equipment. See Table 8 of the *2019 Draft Servicing Tail Report* for more discussion of estimated reclamation.

The EPA also sought comment on a second alternative approach under which the EPA would issue 2,014 MT of HCFC–123 consumption allowances for each of the years 2020 through 2029. This is equal to 100 percent of the aggregate consumption baseline for HCFC–123 and is the maximum allocation allowed under section 605(c) of the CAA. This approach would allocate approximately half of the annual U.S. consumption cap allowed under the Montreal Protocol for HCFC–123 (40.3 ODP-weighted MT per year compared to 76.2 ODP-weighted MT).

The EPA also proposed to issue zero production allowances for the years 2020 through 2029 because no companies produced HCFC–123 production in the baseline years of 2005 through 2007 (see 74 FR 66431, December 15, 2009). Under section 605(b)(1) of the CAA, it is unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year.

(1) Summary of and Response to Comments on the HCFC–123 Allocation

The EPA received supportive comments on the proposed allocation amount from Ingersoll Rand, a stationary air-conditioning manufacturer; National Refrigerants, a refrigerant distributor; Halon Alternatives Research Corporation (HARC), a non-profit trade association; and an anonymous commenter. Several commenters state that the proposal accurately reflects the amount of HCFC–123 needed for servicing refrigeration and air-conditioning and fire suppression equipment, the availability of reclaimed HCFC–123, and the amount of market demand. Hudson suggests that the Agency should reduce the allocation below the amounts in Alternative 1 and decrease each year as opposed to staying static in the first three years. The Environmental Investigation Agency (EIA), an environmental non-profit, also supports an allocation below Alternative 1, and another comment from a private citizen does not support an allocation for any HCFC production or consumption. American Pacific, the manufacturer of Halotron® I, a fire suppression agent blend containing HCFC–123, is supportive of allocating the maximum amount allowable under the CAA, consistent with Alternative 2 in the proposal. These comments and the Agency's responses are described in detail below.

(2) Comments in Support of a Lower Allocation

The EPA received comments that were supportive of a lower allocation. Hudson and EIA note that allocation levels could be lower considering the supply of reclaimed material. Hudson specifically notes that based on the *2019 Draft Servicing Tail Report,* total demand for HCFC–123 could be met with Alternative 1. These commenters suggest the EPA should adopt a schedule that is more aggressive than

[15] EPA. 2019. The U.S. Phaseout of HCFCs: Projected Servicing Demand in the U.S. Air Conditioning, Refrigeration, and Fire Suppression Sectors (2020–2030), Table 5.

[16] Equivalent to 13 ODP-weighted MT.

Alternative 1 because the reclamation industry can provide 300 MT of HCFC–123 annually. They note that the reclamation industry has supplied nearly 85 percent of the estimated 300 MT volume over the past two years. Furthermore, Hudson states that the reclamation industry does not need any transition time to enter the fire suppression market because the industry is already servicing that market, and an accelerated schedule will spur the growth of reclamation and ensure more than adequate supply of HCFC–123 for both the refrigeration and air-conditioning and fire suppression markets. EIA also supports a lower allocation, noting that the supply of reclaimed HCFC–123 ranging from 180 to 270 MT annually over the past several years could allow the EPA to reduce allocations by 200 MT below expected demand to 450 MT, and then reduce by 45 MT annually until reaching zero in 2030. Both commenters note an allocation at or below Alternative 1 would be beneficial to the reclamation industry and the environment.

The EPA disagrees with commenters that the Agency should finalize a lower allocation than proposed. Starting the allocation levels below the estimated level of demand for servicing both fire suppression and refrigeration and air-conditioning equipment could strand serviceable fire suppression equipment or hinder the manufacture of new fire suppression equipment in the near term. Even though reclaimed and stockpiled HCFC–123 will be available in 2020, the primary concern is whether there is enough HCFC–123 for both near and longer term fire suppression and refrigeration and air-conditioning needs. Historically, the refrigeration and air-conditioning sector utilized the majority of that material as the historic practice of reclaimers and importers is to sell the ODS to refrigerant distributors. Based on their comment, we understand that Hudson may sell some reclaimed material to the fire suppression sector. However, that does not appear to be the norm among reclaimers. The Agency is concerned that decreasing the allocation too soon might not provide time for a broader fire suppression sector transition to reclaimed material for new systems as well as servicing. This could lead to shortages of HCFC–123 for fire suppression uses because, as discussed above, after January 1, 2020, recovered and recycled or reclaimed HCFC–123, as well as material stockpiled prior to 2020, is the only material that can be used to meet demand for new fire suppression equipment. Starting with allocation levels at the estimated level of demand for servicing both fire suppression and refrigeration and air-conditioning equipment means that imported HCFC–123 can be used to satisfy the servicing needs for existing equipment, making it more likely that reclaimed and stockpiled HCFC–123 will be available for the manufacture of new fire suppression equipment.

The EPA anticipates that the market for reclaimers and others involved in recovering used ODS for fire suppression purposes will change in the near future and may resemble the market for used halons to some extent given both halons and the blend of HCFC–123 are used in the fire suppression sector. While halon production and consumption were phased out in the United States in 1994 and globally in 2010, halon is still available for new equipment (*e.g.,* for new aircraft and Aircraft Rescue and Fire Fighting (ARFF) vehicles). Eventually, domestic recovery and reclamation of HCFC–123 combined with imports of used and/or recycled HCFC–123 should meet demand potentially similar to how the demand for halon in the United States is met through transition to alternatives, successful management of halon banks, and imports under the petition process for used ODS (see 40 CFR 82.13(g)(2) and 82.24(c)(3)). Ultimately, the EPA anticipates that like other ODS sectors, alternatives will be available for all applications that currently use halons and HCFCs. However, the fire suppression sector will benefit from the proposed level of allocation which recognizes the near-term changes to the market will be underway in 2020–2022. Therefore, it would not be prudent to base the allocation on the maximum amount of estimated reclamation in the early years or to decrease the allocation to zero too quickly. The fact the 2018 reclaim amount (240 MT) was lower than the 2017 reclaim amount (270 MT) further supports the Agency's determination that it is appropriate to provide the proposed level of allocation which is higher than Alternative 1 for the years 2020 through 2022. The EPA recognizes the necessity of reclaimed HCFCs to meet demand entirely after 2030 and therefore the final allocation level for HCFC–123 is less than the estimated level of servicing demand starting in 2023. In the longer term, this allocation sends appropriate market signals for a smooth and orderly transition by reducing the allocation after 2022 and completely phasing out the import of virgin HCFC–123 in 2030.

(3) Comments in Support of a Higher Allocation and Other Comments on the Proposed Allocation

American Pacific supports a higher initial allocation of allowances and no decrease in allocation level. The commenter asks that the Agency consider the total demand for Halotron® I and notes their concern that the proposed allocation is too low and could strand existing equipment. American Pacific suggests that the EPA allocate the maximum allowable number of consumption allowances for HCFC–123—an approach presented as Alternative 2 in the proposal. American Pacific asserts that the allocation of 2,014 MT per year during the period 2020 through 2029 is warranted because Halotron® I has gained more acceptance as a lower ODP replacement to halon 1211 in fire suppression equipment, particularly in wheeled units. American Pacific states that it will continue to manufacture new fire suppression equipment with reclaimed and stockpiled material, and asserts that the estimated total demand for fire suppression as represented in the *2019 Draft Servicing Tail Report,* at 260 MT is an underestimate. The commenter states that the total demand was over 300 MT in 2018 and that they expect demand in 2019 to be an additional 10 percent higher. American Pacific also asserts that the EPA's estimate of 90 MT of fire suppression servicing demand is low. For these reasons, they argue that annual allocation levels should start at 2,014 MT and be kept constant from 2020 through 2029.

The EPA disagrees with the comment that an allocation higher than what the Agency proposed is warranted. First, the EPA responds that the increase in demand in 2018 and 2019 does not merit allocating at the level the commenter requests. Read together, CAA sections 605 and 614 and Article 2F of the Montreal Protocol limit the permissible uses of newly-produced and newly-imported HCFCs to servicing of refrigeration and air-conditioning equipment existing on January 1, 2020, and to servicing of fire suppression and fire protection equipment existing on January 1, 2020, and listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612 of the CAA. Thus, when determining allocations for HCFC–123 and HCFC–124, the EPA focused on the amount of demand for these specific uses. Since virgin material cannot be used to manufacture new fire suppression equipment, it would not be reasonable for the EPA to base allocation amounts

on demand for new equipment even if, as the commenter asserts, demand for their product is higher than historic levels. Nonetheless, based on the new information provided for 2018 sales, the EPA is revising the total demand estimate in the *2019 Final Servicing Tail Report* issued with this rule. With 2018 demand being 300 MT, the five-year average reflected in the *2019 Final Servicing Tail Report* increases to about 270 MT. A further 10 percent increase in demand in 2019 would result in a five-year average of approximately 280 MT. Furthermore, even if the EPA did consider demand for manufacturing new fire suppression equipment in addition to servicing demand, these figures, when added to servicing demand for refrigeration and air-conditioning equipment (560 MT in 2020), would remain below an allocation of 2,014 MT per year. Moreover, and as noted elsewhere in this section, consistently allocating allowances above total servicing demand would not support a smooth and orderly transition to alternatives, nor would it foster recovery, recycling and reclamation, which is needed as of January 1, 2020 for manufacturing new fire suppression equipment and in the longer term as HCFC–123 is phased out.

The EPA also disagrees with the commenter's assertion that the Agency's servicing demand estimates are too low. As part of the development of the *Servicing Tail Report,* the Agency sought and received input from a variety of key industry stakeholders. The EPA has estimated total demand for HCFC–123 for fire suppression at 260 MT per year in the two previous drafts of the *Servicing Tail Report* based on average reported consumption of HCFC–123 for this use over the last several years. In the last version of the report issued in August 2019, the Agency included a servicing demand of 35 to 90 MT per year for fire suppression. These estimates were based on the best available information and during public review of those drafts, interested stakeholders did not provide any evidence to contradict the Agency's estimates of servicing demand. Recognizing the needs for fire suppression servicing and American Pacific's comment, the Agency's allocation for HCFC–123 is based on the high end of the range for servicing demand for Halotron® I fire extinguishers manufactured prior to 2020. The Agency's review of the data supported a number within the 35 to 90 MT range, but generally closer to the bottom half of that range. The commenter, however, provided no additional data to support increasing the estimate for servicing demand. For all of these reasons, the Agency concludes that it is appropriate to base the final allocation on the servicing demand estimate from the *Servicing Tail Report* as proposed.

The commenter states that, based on their observations of the fire suppression industry, if EPA issues allowances at 2,014 MT, it is not likely that fire suppression equipment manufacturers and distributors would wait until 2029 to transition or be unprepared for the 2030 phaseout. Similarly, the commenter states that it is not necessary to provide a gradual decrease over time to guard against consumption levels that are higher than demand. They assert that consumption will always closely track demand given the sourcing of this material outside of the United States and that there is no reason to create excess inventory. American Pacific also comments that while there are multiple unknowns, in discussion with the industry, the use of newly-imported HCFC–123 should be less expensive than reclaimed HCFC–123. The EPA responds that one of the Agency's goals when setting the allocation level is to reach the 2030 phaseout step in a manner that achieves a safe and smooth transition to alternatives while allowing equipment owners to continue servicing their equipment within its expected lifetime. Issuing allowances significantly above demand would likely suppress the reclamation market and thus increase the likelihood of stranding equipment in 2030 and beyond. In the near term, this would adversely affect the availability of reclaimed HCFC–123 for the fire suppression sector because reclamation will be the only source of HCFC–123 for the manufacture of new fire suppression equipment once stockpiles of material imported prior to 2020 are exhausted. In the longer term, if the reclaim market is suppressed through 2029, there will be less ability to respond to the 2030 phaseout when the primary supply of HCFC–123 will be from the reclaim market. Ultimately this could result in stranded equipment after 2029. Experience with prior HCFC phaseout steps indicates that gradually decreasing allocation levels is better than an abrupt increase or decrease to foster recovery, recycling, and reclamation of HCFCs and an orderly transition to alternatives. Gradually reducing HCFC allowances fosters a safe and smooth transition and recycling/reclamation and is consistent with the EPA's approach in previous HCFC allocation rules (see 74 FR 66412, December 15, 2009; 76 FR 47451, August 5, 2011; 78 FR 20004, April 3, 2013; and 79 FR 64254, October 28, 2014).

Additionally, the commenter focuses on the fire suppression market exclusively and does not take into account the broader market for HCFC–123, including needs for servicing refrigeration and air-conditioning equipment, which will have servicing needs well beyond 2029. While the commenter asserts that it is not likely that the fire suppression industry would be unprepared for the 2030 phaseout if the EPA issues allowances at 2,014 MT, the commenter does not address the broader servicing market for HCFC–123, where refrigeration and air-conditioning account for significantly more demand. Based on other comments, the refrigeration and air-conditioning industry is supportive of a gradual reduction in allowances starting from 2020 estimated servicing demand for all allowed uses.

In response to the comment about costs, the Agency has found that the price of HCFCs is not directly correlated to the amount of allowances allocated. For example, experience with the phaseout of HCFC–22 indicates that there can be temporary price changes but the wholesale price has fallen as the allocation gradually decreased over the past five years. The phaseout of HCFC–22 may not be identical to the remaining phaseout step for HCFC–123 given the addition of the fire suppression sector. The price to import and/or produce material does not necessarily match the wholesale price for various HCFCs, so there is no guarantee of a lower price from imported product versus reclaimed product. Supporting this point, the EPA understands from its interactions with reclaimers that they tend to sell their reclaimed product at or near the market price for virgin HCFCs. The Agency cannot conclude, based on the comments received, whether there is a difference in the price of HCFC–123 when sold for fire suppression compared to when it is sold as a refrigerant. The EPA agrees with the commenter that if the Agency allocated allowances well below estimated servicing demand, it is possible that prices would increase in the near term. However, that is not what the Agency is finalizing in this rule. Instead, this rule issues allowances above estimated demand for three years specifically to allow reclaimers time to shift their market to the fire suppression sector before reducing the number of allowances.

The commenter further states that the proposed allocation would strand existing fire extinguishers including

wheeled units costing between $125 to $4,000 for the telecommunications industry and for military applications. The EPA responds that the proposed allocation being finalized in this action accounts for the servicing of existing fire extinguishers. As discussed earlier in this section, the Agency estimated the demand for servicing Halotron® I fire extinguishers manufactured prior to 2020 to be between 35 to 90 MT per year. This estimate is based on industry feedback on the two draft Servicing Tail Reports that the Agency made available for public comment. The final allocation includes 90 MT based on the servicing demand for servicing fire suppression equipment and the commenter provided no data to support increasing the Agency's estimate for servicing demand or that the proposed allocation amount would strand existing inventory. As described in the *2019 Final Servicing Tail Report* accompanying this action, the Agency estimates that the allocation finalized in this rule combined with reclaimed and recycled HCFC–123 will provide sufficient HCFC–123 to allow for servicing of refrigeration, air-conditioning, and fire suppression equipment, as well as the manufacture of new fire suppression equipment. The EPA finds no support for the assertion that the proposed allocation would strand any existing fire extinguishers.

The EPA further notes that the fire suppression sector has a long history of using recovered and recycled/reclaimed ODS for both servicing and new equipment. There has been continuing demand for halons in newly-manufactured fire suppression equipment since halons were phased out in the United States in 1994. This demand for halons has been satisfied with recycled/reclaimed halons, ensuring equipment can be serviced and investments are not stranded.

Lastly, American Pacific asks the EPA to consider an updated ODP of 0.0098 for the purposes of analysis of environmental impact and comparison with alternatives to HCFC–123 in the fire suppression sector such as halon 1211, hydrofluorocarbons (HFCs), and fluoroketone based agents. The EPA responds that the Agency did not propose and is not finalizing any changes to the listed ODP for HCFC–123. The ODP for HCFC–123 as listed in Annex C to the Montreal Protocol and in appendix A to 40 CFR part 82, subpart A is 0.02.

### *C. De Minimis Exemption for the Use of HCFC–123 in Chillers*

The EPA proposed to create a *de minimis* exemption from the use prohibition in section 605(a) of the CAA to allow virgin HCFC–123 to be used for the manufacture of chillers that meet specific criteria through December 31, 2020. The EPA received two comments on this proposal, from Ingersoll Rand and The Alliance, an industry coalition of fluorocarbon producers and users, both in support of the *de minimis* exemption. For the reasons cited in the proposal and reiterated in this document, the Agency is finalizing the *de minimis* exemption from the use prohibition in section 605(a). This exemption aims to address a unique situation that has arisen because certain construction projects that ordered HCFC–123 chillers for installation in 2019 are behind schedule and the chillers may not be installed by the end of 2019. The EPA understands that many of the chillers and the virgin HCFC–123 to charge them are already on site at these construction projects and that companies purchased virgin HCFC–123 for charging these chillers with the expectation that they would be installed in 2019. Due to construction delays, the final steps in the manufacture of these chillers (including charging with refrigerant) may not occur until after January 1, 2020. Section 605(a) prohibits the introduction into interstate commerce or use of any class II substance with limited exemptions. Use of a virgin class II substance ''as a refrigerant'' is allowed only ''in appliances manufactured prior to January 1, 2020.'' The EPA is creating a *de minimis* exemption from this prohibition to allow virgin HCFC–123 to be used for the manufacture of chillers that meet specific criteria through December 31, 2020. This exemption will only apply if the HCFC–123 chiller unit and other components were ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule (July 24, 2019), the HCFC–123 was imported prior to 2020 and is in the possession of the entity that will complete the manufacture of the appliance, and all refrigerant added to that appliance after December 31, 2020 is used, recovered, or recycled/reclaimed.

#### (1) Background

As described in Section II of this document, the CAA restricts introduction into interstate commerce and use of HCFCs over time with limited exceptions. The CAA prohibits the use of HCFCs to manufacture new appliances effective January 1, 2020, unless the HCFCs are used, recovered, and recycled. The CAA also phases out production and consumption of HCFCs, with an interim milestone in 2015 and the full phaseout in 2030. Additionally, the Montreal Protocol phases out the production and consumption of HCFCs as of January 1, 2020, while allowing a limited amount of new production and consumption for servicing existing refrigeration and air-conditioning appliances, servicing existing fire suppression and fire protection equipment, and other uses not relevant for the U.S. market. The EPA codified the CAA use and interstate commerce restrictions related to refrigeration and air-conditioning appliances at 40 CFR part 82, subpart A, in prior rulemakings.

As defined in the regulations, the term manufactured [17] ''for an appliance, means the date upon which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes[.]'' Appliances used in commercial refrigeration, such as large chillers, and industrial process refrigeration typically involve more complex installation processes, which may require custom-built parts, and typically are manufactured on-site. Appliances, such as these, that are field charged or have the refrigerant circuit completed on-site, regardless of whether additional refrigerant is added or not, are manufactured at the point when installation of all the components and other parts are completed, and the appliance is fully charged with refrigerant and able to operate.

The EPA learned that a limited number of HCFC–123 chillers specified for installation in 2019 may not be fully manufactured prior to January 1, 2020. The key uncharged components, in particular the chiller units themselves, were ready for shipment to the construction location in the first half of 2019. However, for some delayed projects, even though the units and refrigerant may already be on-site, the final steps to manufacture the appliance, in particular charging the chiller with refrigerant, may not occur until 2020. Thus, if no regulatory relief is provided, the virgin HCFC–123 could not be used to charge these chillers even if it has already been purchased and is on site.

#### (2) De Minimis Exemption

To provide flexibility to complete the manufacture of HCFC–123 chillers from components that are ready for shipment to a construction location, the EPA is creating a limited *de minimis* exemption

[17] The definition of ''manufactured'' can be found at 40 CFR 82.3. See also 74 FR 66439.

to the use prohibition in 605(a). This exemption allows HCFC–123 to be used for the initial charging of certain chillers manufactured between January 1, 2020 and December 31, 2020 provided they meet specific conditions. The exemption will only apply if the HCFC–123 chiller unit and components are ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before the date of signature of the proposed rule (July 24, 2019), the HCFC–123 was imported prior to 2020 and is in the possession of an entity involved in the manufacture of the appliance, and all refrigerant added to that appliance after December 31, 2020 is used, recovered, or recycled/reclaimed.

The EPA has implied authority to establish a *de minimis* exemption from the section 605(a) use restriction. The United States Court of Appeals for the District of Columbia Circuit has recognized that ''[u]nless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.'' *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1980). Further discussion of this authority can be found in the preamble to the proposed rule.

The EPA concludes that it has authority to provide flexibility by creating a *de minimis* exemption to the 605(a) use prohibition. Section 605(a) is not extraordinarily rigid and is ambiguous as it does not speak directly to the circumstance presented here. In addition, providing flexibility is consistent with the statutory intent.

The EPA does not view section 605(a) as ''extraordinarily rigid.'' Title VI of the CAA can generally be summarized into three principal areas: the phaseout of the production and import of ODS (sections 602–607); the reduction of emissions of ODS via various means such as required servicing practices, restrictions on sale and distribution of products, and consumer education (sections 608–611); and the transition to alternatives that reduce overall risk to human health and the environment (section 612). Section 605 specifically addresses the phase-out of production and consumption of class II substances. For class II substances, section 605 established specific restrictions beginning in 2015 on use, introduction into interstate commerce and production, while establishing a complete phaseout of HCFCs in 2030. Congress' overall approach to the class II phaseout was generally less rigid than its approach to the class I phaseout, given the longer timeframes and the presence of only one intermediate reduction step (see section 605(b)). Given this context, the EPA does not view section 605(a) as ''extraordinarily rigid.''

The EPA finds that section 605(a) is ambiguous as it does not speak directly to the circumstance presented for the situation described above. Section 605(a) does not explicitly address whether virgin HCFC–123 may be used in a chiller where all the chiller components were ready for shipment to a construction site before January 1, 2020 but where the initial charge is not completed until after January 1, 2020. Because the statute does not specify when manufacture is complete, it does not unambiguously prohibit the use of virgin HCFC–123 for the initial charge of chillers where all the chiller components were ready for shipment before January 1. 2020. Thus, the EPA has authority to resolve the ambiguity through regulation and determine whether the use prohibition should apply in this circumstance.

The EPA views the *de minimis* exemption as consistent with statutory intent. The flexibility from the exemption will ensure the orderly phaseout of ODS and will be consistent with the past practice of preventing the stranding of existing appliances without being counter to the three principal areas of Title VI described previously. First, it will not contribute to additional production and consumption of HCFCs and thus will not inhibit the United States from reaching the CAA phaseout date of 2030 or complying with the Montreal Protocol. Second, these chillers will continue to be subject to the servicing practices and labeling requirements applicable to all ODS appliances. Third, it will not slow the transition to alternatives. As discussed below, the components to assemble these chillers have already been made ready for shipment and they have been purchased for installation. While these chillers may one day be retrofitted to an alternative, such as R–514A, Title VI does not require the retrofitting of existing equipment.

In addition, rigid application of section 605(a) of the CAA in the unique circumstances presented here would ''yield a gain of trivial or no value.'' *Envtl. Def. Fund Inc.* v. *EPA,* 82 F.3d 451, 455 (D.C. Cir. 1996) (internal quotation marks omitted). The EPA concludes that there will be no environmental benefit associated with rigidly applying 605(a). First, because the HCFC–123 used to initially charge these chillers must have been imported prior to 2020, existing allowances will not be expended. There will therefore not be any increase in U.S. consumption compared with the current allowed level of consumption for 2019. Second, this exemption will not encourage the manufacture of additional HCFC–123 chiller units because factory operations for making them have already ceased and the exemption will not permit such operations for additional units.

The number of chillers eligible for this exemption is also anticipated to be small. Based on consultations with industry, the EPA understands that the manufacture of up to five percent of the chillers expected to be installed in 2019 could be delayed beyond January 1, 2020. The EPA expects the number of HCFC–123 chillers to be affected is 33. As detailed in the *2019 Final Servicing Tail Report,* the EPA assumes an average charge size for an HCFC–123 commercial chiller is approximately 445 kg. Thus, the EPA estimates about 15 MT of HCFC–123 could be needed to complete the manufacture of chillers in 2020. This will equate to about 0.4 percent of all HCFCs allocated in 2019.

Beyond the HCFC–123 needed for the initial charge, the EPA has analyzed whether the exemption could increase the servicing demand for HCFC–123 in the years 2020 through 2029 compared with not providing this flexibility. As an initial matter, the modeled servicing demand described in the *2019 Final Servicing Tail Report* includes the demand from the appliances affected by this exemption. The report assumes that chillers expected to be manufactured in 2019 are manufactured in that year. Because the chillers that will be affected by this exemption were anticipated to be manufactured in 2019, they will not increase expected demand. This exemption will not alter the requirement that used, recovered, or recycled/reclaimed HCFC–123 be used for all subsequent servicing events on these chillers. Further, HCFC–123 chillers have very low leak rates, and thus the amount of replacement refrigerant will be low. Therefore, the EPA does not anticipate that future servicing demand will affect the market for reclaimed HCFC–123 in a manner that the EPA has not already considered when issuing allowance allocation amounts for 2020 through 2029.

The exemption also contains numerous constraints that limit its potential impact. The exemption from the prohibition in section 605(a) of the CAA on use in appliances manufactured before January 1, 2020 will apply only for one year and only in a limited set of circumstances. It will apply only if the refrigerant used to manufacture the

appliance was in the possession of an entity involved in the manufacture of the appliance and imported prior to January 1, 2020. In addition, any servicing of the equipment after December 31, 2020 will need to be done with HCFC–123 that is used, recovered, or recycled/reclaimed. Further, the exemption will not allow for the manufacture of additional chillers beyond those for which the components had already been made ready for shipment to a construction location and the components were specified for installation under a building permit or contract dated on or before July 24, 2019, the date of signature of the proposed rule.

The *de minimis* exemption is consistent with past EPA practice in this program. The EPA, on past occasions, has provided limited flexibility in applying use restrictions and phaseout dates. The Agency has typically aimed to prevent the stranding of appliances and past investments while phasing out controlled substances. For example, a concern similar to the one at issue here came to the EPA's attention in 2009 when commenters requested a limited waiver from a regulatory prohibition on manufacturing HCFC–22 appliances that was to begin in 2010 (see 74 FR 66412, 66440–41, December 15, 2009). Commenters identified scenarios in which HCFC–22 appliances had been scheduled for use in projects, such as construction projects, prior to January 1, 2010, but in which, for a variety of reasons, their manufacture could not be completed prior to January 1, 2010. The EPA agreed to grant flexibility by providing an exemption from the regulatory deadline to allow HCFC–22 to be used as refrigerant in appliances manufactured between January 1, 2010 and December 31, 2011, if their components were manufactured prior to January 1, 2010, and were specified in a building permit or contract dated before January 1, 2010, for use on a project. The EPA explained that providing flexibility would not result in additional consumption of HCFCs because companies had previously produced or imported the HCFCs for use in the manufacture of appliances, and that providing flexibility did not affect long-term projections of servicing needs because this equipment was already planned to be installed in the previous year (see 74 FR 66441, December 15, 2009).

The EPA also previously created a *de minimis* exemption from the statutory prohibition on the use of previously-imported virgin HCFCs. In a 2014 rule, the EPA created an exemption from the use prohibition in section 605(a) of the CAA to provide limited flexibility regarding the use of HCFCs for sectors other than refrigeration and air-conditioning and fire suppression. For example, the EPA allowed continued use of a small amount of material that was previously produced and/or imported using the appropriate allowances and in inventory prior to the CAA's 2015 use restriction for solvents. The EPA determined that the continued use of previously produced/imported material was consistent with past practices, that production and consumption would not be higher than that already allowed for, and that the environmental effect would be limited (see 79 FR 64254, October 28, 2014).

The EPA also recognizes that for these specific circumstances, there could be negative impacts if the Agency does not provide flexibility. Without the flexibility, chiller manufacturers would not be able to use virgin HCFC–123 to initially charge and install new equipment even though that virgin HCFC–123 is already on-site. Granting flexibility allows the installation to continue using the HCFC–123 available and prevents further delay of the installation.

For the reasons described above, the EPA is finalizing the proposal to establish a *de minimis* exemption to the use restriction in section 605(a) of the CAA and to revise 40 CFR 82.15(g)(5)(iii) to allow virgin HCFC–123 to be used for the initial charging of certain chillers manufactured between January 1, 2020 and December 31, 2020 provided they meet the conditions specified previously.

### *D. Addition of Fire Suppression Servicing Uses to the HCFC Phaseout Schedule*

The EPA is finalizing the proposal to allow for the continued production, consumption, introduction into interstate commerce, and use of HCFCs for servicing fire suppression equipment manufactured before January 1, 2020 consistent with section 605 of the CAA and the November 2018 adjustment to Article 2F of the Montreal Protocol. Specifically, the EPA is modifying 40 CFR 82.15(g) and 82.16(e) to allow for HCFC–123 to be produced and imported, as well as introduced into interstate commerce and used, during the years 2020 through 2029, to service fire suppression equipment existing on January 1, 2020,[18] so long as it is being used as a streaming agent listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications in accordance with the section 612 SNAP regulations. The EPA received four comments from American Pacific, HARC, Hudson, and The Alliance, which were all supportive of this proposal.

Under the Montreal Protocol, the United States has committed to phase out HCFC production and consumption by January 1, 2020, other than production and consumption for certain narrowly defined uses in an amount up to 0.5 percent of baseline annually.[19] Servicing refrigeration and air-conditioning equipment existing on January 1, 2020 had been the only recognized use under the Montreal Protocol. In 2018, the United States proposed adjusting the Montreal Protocol to add servicing of fire suppression equipment existing on January 1, 2020, as another allowed use. That proposal was based on extensive stakeholder consultation on HCFC needs during the years 2020 through 2029 and the EPA's analysis of available information, including the *2018 Draft Servicing Tail Report.* In November 2018, the Parties to the Montreal Protocol decided to adopt an adjustment that, among other things,[20] added to Article 2F ''the servicing of fire suppression and fire protection equipment'' existing on January 1, 2020, as a permissible use for newly produced or imported HCFCs.[21] While the term ''fire protection'' can be understood in some contexts to refer broadly to all measures taken to protect persons or property from harm, the terms ''fire protection'' and ''fire suppression'' have been used interchangeably in the Montreal Protocol context to refer to suppressing or putting out fires through the use of chemical substances. Section 605(a) of the CAA uses the term ''fire suppression.'' In addition, the EPA views ''fire suppression'' as the more precise term in the context of regulating ODS. The adjustment adopted in

[18] This will expand the permitted uses under 40 CFR 82.15 and 82.16, which also allow for use and introduction into interstate commerce, as well as production and consumption, of HCFCs for use as a refrigerant in equipment manufactured before January 1, 2020.

[19] As noted previously, the term production does not include the manufacture of a controlled substance that is subsequently transformed (*i.e.,* feedstock material) and as such the production phaseout is not applicable to ODS manufactured for that purpose.

[20] The adjustment adopted at the Meeting of the Parties in November 2018 included an essential use provision as well as the addition of two niche applications under the 0.5 percent cap. In this action, the EPA is making revisions to its regulations to address the addition of fire suppression. This rule does not take any action with regard to the other elements of the adjustment.

[21] Decision XXX/2 and Annex I of the ''Compilation of decisions adopted by the parties,'' adjust Article 2F of the Montreal Protocol.

November 2018 entered into force on June 21, 2019.[22]

The EPA is modifying 40 CFR 82.16(e)(2) to permit the import of HCFC–123 for servicing fire suppression equipment manufactured before January 1, 2020. While the modified 40 CFR 82.16(e)(2) identifies the permissible uses for which HCFC–123 may be imported, this regulatory provision does not govern the allocation of production allowances for HCFC–123. Section 82.16(e), which establishes limits on the production and import of HCFC–123 starting on January 1, 2020, provides that HCFC–123 may not be produced or imported for any purposes other than the listed permissible uses. The revision adds ''use as a fire suppression streaming agent in equipment manufactured before January 1, 2020 and listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications'' to the list of permissible uses. This revision allows for this additional use in the years 2020 through 2029.

The EPA is also adding a new paragraph after 40 CFR 82.15(g)(4) to ensure consistency with the change to 40 CFR 82.16(e)(2). Section 82.15(g) establishes limits on the introduction into interstate commerce and use of certain HCFCs at certain dates in accordance with the worst-first approach discussed previously. Section 82.15(g)(4)(i) establishes limits that apply to many HCFCs including HCFC–123 and HCFC–124, effective January 1, 2015.[23] The EPA is adding a new paragraph after 40 CFR 82.15(g)(4) that repeats the limits in 40 CFR 82.15(g)(4)(i) to clarify the permissible uses of HCFC–123 and HCFC–124 produced or imported after January 1, 2020. Consistent with the restrictions on production and import in the Montreal Protocol (as modified through the adjustment adopted in 2018) and 40 CFR 82.16, with regard to fire suppression, HCFC–123 produced or imported after January 1, 2020, may only be used for servicing fire suppression equipment manufactured before January 1, 2020. Existing inventories of HCFC–123 produced or imported prior to January 1, 2020, may continue to be used to manufacture and service new fire suppression equipment after January 1, 2020. This change ensures that the regulations are clear and consistent between 40 CFR 82.15 and 82.16, and, as a practical matter, adds no additional limitations to those in 40 CFR 82.16.

For the reasons described above, the Agency is taking final action to allow HCFC–123 to be used during the years 2020 through 2029 for servicing existing fire suppression equipment.

*E. Revisions to Labeling Requirements*

To support compliance with the finalized regulations at 40 CFR 82.16(e)(2), the EPA is revising the existing labeling requirements in 40 CFR part 82, subpart E, to reflect the limited ability to use virgin HCFC–123 for fire suppression servicing. Labeling containers of fire suppression agent containing HCFC–123 should increase awareness among individuals servicing fire suppression equipment about the restriction on the use of virgin HCFC–123 use and support compliance. The EPA is finalizing two different labels—one for fire suppression agent composed of newly-imported HCFC–123, and one for fire suppression agent composed of reclaimed material or material imported prior to 2020. Together, these labels will ensure that users have enough information to determine which containers of fire suppression agent may be used in which equipment in order to comply with the revisions to the HCFC phaseout regulations. In response to comments from American Pacific, HARC, and The Alliance, the EPA is making minor modifications to the proposed labels.

(1) Background

As discussed previously in this section, starting January 1, 2020, virgin HCFCs may be used only for limited purposes. With respect to fire suppression equipment, HCFCs imported or produced on or after January 1, 2020, can be used only to service fire suppression equipment manufactured before January 1, 2020. HCFCs imported on or after January 1, 2020, cannot be used to manufacture new equipment or to service equipment manufactured after January 1, 2020. Only HCFCs that are reclaimed or were imported prior to 2020 may be used for those purposes.

The only HCFC used in a fire suppression agent is HCFC–123, sold as part of a blend under the name Halotron® I. Clean agents like Halotron® I do not leave a residue, and are used in applications such as data centers, clean rooms, and aircraft where it will not damage high-value or life-saving equipment, thereby minimizing economic damages from a fire (*e.g.,* shorter equipment downtime or lower costs to repair). There are three main fire suppression streaming end uses for which clean agents are used in the United States: (1) Hand-held portables; (2) 150-pound wheeled units; and (3) Aircraft Rescue and Fire Fighting (ARFF) vehicles.

As per the National Fire Protection Association (NFPA) and Department of Transportation (DOT) regulations at 49 CFR 180.250, all portable fire extinguishers must be maintained in a fully charged operable condition and undergo hydrostatic testing. NFPA is a codes and standards organization, accredited by the American National Standards Institute, that was established to minimize the risk and effects of fire by establishing criteria for building, processing, design, service, and installation around the world. According to NFPA criteria, fire extinguishers, which include portable hand-held devices and wheeled units, are recommended to undergo maintenance to ensure that an extinguisher will operate effectively and safely in the event of fire.[24] Equipment should be recharged after being used to extinguish a fire, so that it may be usable again. Technicians who conduct hydrostatic testing, perform inspections, or recharge fire suppression equipment after a discharge may need additional information to aid in distinguishing between the permissible uses of specific containers of Halotron® I.

Given that section 611 of the CAA already requires the labeling of containers of ODS, including Halotron® I, the Agency proposed modifying the label to support compliance with the section 605 requirement. Congress recognized that labeling requirements may be needed to effectively implement the phaseout of ODS. In 1993, the EPA established the labeling requirements for both class I and class II substances in 40 CFR part 82, subpart E (see 58 FR 8136, February 11, 1993). Containers in which ODS are stored or transported must bear a clearly legible and conspicuous warning label that can be read by consumers before they can be introduced into interstate commerce. Section 611 of the CAA provides specific language for the label: ''Warning: Contains [insert name of substance], a substance that harms public health and environment by destroying ozone in the upper atmosphere.'' This is reflected in the implementing regulations at 40 CFR 82.106. According to section 611, the label must be ''clearly legible and conspicuous.'' Labels generally should

[22] The final meeting report from the 30th Meeting of the Parties and Decision XXX/2 adopting the adjustment are included in the docket for this rulemaking.

[23] Section 82.15(g)(4)(i) applies to all HCFCs not governed by 40 CFR 82.15(g)(1) through (3).

[24] National Fire Protection Association. (2018) ''Standards for Portable Fire Extinguishers'' available at: *https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=10.*

be within the principal display panel, the warning statement should be in sharp contrast to any background upon which it appears, and if there is any outer package for the container (*e.g.,* cylinder, ISO tank, or other container), labels should be on the outside packaging. Specific requirements on the size, text, and location of the label are provided in 40 CFR 82.106 through 82.110. Labeling of products manufactured with or containing HCFCs has been required under section 611 since 2015, and the EPA has not seen a movement away from these fire suppression agents due to that labeling requirements. Based on this experience, the EPA does not expect additional text being added to the label to cause a movement away from HCFC–123 based fire suppression agents.

In revising the labeling requirements, the EPA is relying on authority under section 605(c) of the CAA to issue regulations phasing out the production and consumption and restricting the use of class II substances that may be needed for compliance. Since HCFC–123 may be used both to manufacture new fire suppression equipment, which can only be done with HCFC–123 imported prior to January 1, 2020 or reclaimed/recycled material, and to service existing equipment, the EPA identified modified labeling as the lowest cost option to ensure that newly-produced HCFC–123 only be used to service existing equipment.

Specifically, the EPA proposed to require the following text be added to the label for containers of fire suppression agent containing HCFC–123 imported on or after January 1, 2020: ''Do not use to service equipment manufactured on or after January 1, 2020.'' The Agency also took comment on whether to modify the label on material containing HCFC–123 imported prior to January 1, 2020, or that is recycled/reclaimed to clarify for individuals servicing fire suppression equipment that all uses are allowed. Specifically, the EPA proposed the following second sentence could be added to the existing label for containers of Halotron® I made with recycled/reclaimed HCFC–123 or HCFC–123 imported before 2020 that reads ''Not restricted to use in servicing pre-2020 equipment.''

In addition to knowing whether containers contain recycled/reclaimed HCFC–123 or HCFC–123 imported before 2020 versus virgin HCFC–123, users will need to be able to know the date of manufacture of fire suppression equipment. They will need to be able to distinguish fire suppression agents that may be used only for servicing equipment manufactured before January 1, 2020 from fire suppression agents that may be used for manufacturing new equipment or servicing equipment regardless of the date of manufacture. The Agency sought comment on these points and others.

(2) Summary of and Response to Comments

American Pacific, HARC, and The Alliance support labels on all containers of Halotron® I. Both American Pacific and HARC suggest the language on the label for virgin or newly imported HCFC–123 containers should be more positive than the proposed language. American Pacific suggests the label read ''Use only for recharge of equipment manufactured before January 1, 2020.'' American Pacific and HARC are also supportive of an additional label for reclaimed products and American Pacific suggests the additional label should read ''Can be used for all Halotron® I new production and all recharge activities.'' Commenters confirmed that users should be able to identify the date of equipment manufacture using existing methods as is the case with refrigeration and air-conditioning equipment. However, without additional labeling of containers of fire suppression agents that contain HCFC–123, it may not be possible for users to distinguish containers that may only be used to service fire suppression equipment manufactured before January 1, 2020, from other containers.

In response to the comments received, the EPA concludes that modifications to the existing label language are necessary to ensure that users have enough information to determine which containers of fire suppression agent may be used in which equipment, in order to comply with the regulatory revisions described in this rule. Therefore, the EPA is finalizing labeling requirements for containers of fire suppression agent containing HCFC–123 with modifications to the language proposed. For containers with virgin HCFC–123 imported on or after January 1, 2020, the Agency is requiring the following label: ''WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. Use only for recharge of equipment manufactured before January 1, 2020.''

For fire suppression agents that are recycled/reclaimed or imported prior to January 1, 2020, the Agency is finalizing the following label: ''WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. For use in any equipment.'' The statement, ''For use in any equipment'' conveys the same meaning as the text provided by American Pacific (''Can be used for all Halotron® I new production and all recharge activities'') but is simpler, avoids mentioning a patented product, and is analogous to the label for newly-imported material. It clarifies for the user that HCFC–123 that was imported prior to January 1, 2020, or that is recycled/reclaimed can be used for either the manufacture of new equipment or for servicing existing and new equipment. The Agency is modifying the required label at 40 CFR 82.106 accordingly.

The EPA also took comment on whether the manufacturer of Halotron® I can designate specific containers for servicing existing equipment, whether multiple containers would create a burden for industry, and whether technicians would be able to locate manufacture dates on fire suppression equipment. American Pacific states it will establish a second product identification for the Halotron® I that is manufactured with newly-imported HCFC–123 imported after January 1, 2020. The name of this product will be ''Halotron® I Recharge Only for Equipment Made Before 1–1–20.'' American Pacific states that the Halotron® I container will be labeled prominently with multiple distinctive large yellow or equivalent striping that is in contrast to the current standard Halotron® I container, which has two green stripes. American Pacific notes the standard bulk container will continue to be manufactured using newly-imported HCFC–123 imported before January 1, 2020, or with recycled/reclaimed HCFC–123. Both American Pacific and HARC assert that the maintenance of two differently labeled containers will not result in a burden on the industry. The EPA appreciates the steps American Pacific intends to take to ensure the proper use of HCFC–123.

American Pacific and HARC provided comments on the EPA's intended approach to assist technicians with identifying which container to use for servicing fire suppression equipment and outreach. For servicing ARFF vehicles, the EPA explained how to identify that information in the proposal for this rulemaking and recommends that technicians inspect the manufactured date on the vehicle. American Pacific states that the methods for identifying the year of manufacture of ARFF vehicles is accurate and notes that manufacturers report the year of manufacture as a ten-

digit VIN on the Information Data plates, which are typically located on the floor, dashboard, or door jamb on the driver's side in ARFF vehicles. American Pacific states that they plan to highlight the distinction between the two products in updated filling/maintenance guidance manuals that provide sales materials for ARFF Vehicle original equipment manufacturers and airports users.

For fire extinguishers, American Pacific states the EPA accurately described the method for identifying the date of manufacture in the proposal for this rulemaking. American Pacific notes that historically, however, some of the UL listed fire extinguishers were not approved by the DOT, which was referred to as ''309 exempt,'' but all extinguisher labels as per the UL follow-up listing requirements will show a year of manufacture. HARC also supports the EPA's intention to develop outreach material with the final rule and is interested in working with the EPA to help develop and distribute such material. The EPA is appreciative of the outreach efforts American Pacific intends to pursue and is appreciative of the clarification for ARFF vehicles and fire extinguisher date of manufacture. The EPA intends to work with stakeholders to develop educational materials and conduct outreach to technicians, distributors, and service providers.

*F. Allocation of HCFC–124 Production and Consumption Allowances*

The Agency received two supportive comments and one comment opposed to allocations for HCFCs generally. Based on comments received on the proposed allocation amount for HCFC–124 and the Agency's analysis, the EPA is finalizing HCFC–124 production and consumption allowances in the years 2020 through 2029 as proposed.

As noted in the *2019 Final Servicing Tail Report,* HCFC–124 consumption was approximately 250 MT per year between 2012 and 2017 and reclamation was minimal. More recent sales data from the California Air Resources Board, discussions with industry, and annual consumption and production data indicate that demand for HCFC–124 is between 100 and 200 MT. As explained in the previous discussion about HCFC–123 allowance allocations, providing HCFC–124 allowances significantly in excess of demand would not foster a smooth and orderly transition. Thus, the EPA proposed to allocate 200 MT for the first three years and then gradually decrease the allocation over the next seven years by an equal amount each year.

National Refrigerants and an anonymous commenter support the proposed allocation of HCFC–124. The anonymous commenter states that Alternative 2 in the proposal is inconsistent with the gradual decrease in volume over the phase out period and may prevent the establishment of sufficient volume of reclaimed material to serve remaining servicing needs post-2030, as described in the *2019 Draft Servicing Tail Report.*

The EPA responds that it agrees that reducing the allocation gradually is the appropriate choice so that equipment owners have time to transition to alternatives and/or develop relationships to rely on recycled and/or reclaimed HCFC–124.The EPA is finalizing the allocation for consumption and production of HCFC–124 at 40 CFR 82.16(a) as proposed. As stated previously, the Agency's goal is to ensure that servicing needs can be met, while also encouraging recovery and reuse and transition to alternatives. Providing consistent allocations for the first three years will assist in establishing an inventory of HCFC–124 to be used for servicing throughout the allocation period and past the phaseout date for the expected lifetimes of all existing equipment. The EPA does not want to strand existing equipment because of an inadequate supply of HCFC–124. This allocation supports this goal because it accounts for allowed end uses of HCFC–124 that may not be captured by the Vintaging Model (*e.g.* use of niche refrigerant blends containing HCFC–124 to service equipment manufactured before 2020). Regarding the comment that allowances are not needed, the Agency references the previous discussion in this section under the HCFC–123 allocation, as similar considerations apply for HCFC–124. In addition, an HCFC–124 allocation is necessary because there is minimal reclamation of HCFC–124. This allocation level is within the limit established by the CAA and Montreal Protocol and will decrease over time to foster transition to alternatives prior to the January 1, 2030 phaseout date.

*G. Changes to Transfers of Allowance Provisions in 40 CFR 82.23*

The EPA is explicitly prohibiting calendar-year inter-pollutant transfers of HCFC–123 and HCFC–124 to phased-out HCFCs. The Alliance comment is supportive of limiting inter-pollutant transfers, and the EPA is finalizing the provision as proposed.

Under section 607 of the CAA, the EPA has issued regulations at 40 CFR 82.23 which provide for both inter-pollutant and inter-company transfers of allowances for class II ODS under certain conditions. In an inter-pollutant transfer, an allowance holder converts allowances for one class II ODS into allowances for another class II ODS (40 CFR 82.23(b)). The EPA is finalizing changes in 40 CFR 82.23(b) to ensure clarity for the regulated community. The change is intended to minimize confusion and reduce the likelihood that an allowance holder will mistakenly seek an inter-pollutant transfer of HCFC–123 or HCFC–124 allowances to phased-out HCFCs such as HCFC–22. This change does not have a practical effect on the ability of allowance holders to legally produce or import phased-out ODS given the prohibition in 40 CFR 82.16. Inter-pollutant transfers between HCFC–123 and HCFC–124 also may continue so long as the newly produced or imported HCFC–123 and HCFC–124 are for an allowed use, such as for servicing refrigeration and air-conditioning appliances manufactured before January 1, 2020.

The Alliance commented that they support the EPA's proposal to explicitly prohibit transfers into ODS that are already phased out. Given the comment and the fact that the EPA received several inquiries prior to this rulemaking about whether inter-pollutant transfers from HCFC–123 or HCFC–124 to HCFC–22 will be allowed after the phaseout of HCFC–22, the EPA is finalizing the proposed change to make clear that calendar-year inter-pollutant transfers of HCFC–123 and HCFC–124 to phased-out HCFCs are prohibited.

*H. Changes to Import Requirements*

Under sections 604, 605, and 606 of the CAA, the EPA restricts the import of ODS consistent with both the CAA and the Montreal Protocol. As discussed previously in Section II of this document, importing virgin ODS requires the importer to expend consumption allowances. By controlling the number of allowances and knowing who holds those allowances, the EPA ensures that the United States meets its phaseout obligations. Used ODS [25] can be imported without consumption allowances, and generally without use restrictions, if certain conditions are satisfied. Imports of used ODS are regulated under 40 CFR 82.13(g)(2) and (3) (for imports of used class I substances) and 40 CFR 82.24(c)(3) and

[25] Used ODS have been recovered from their intended use systems (*e.g.,* refrigeration and AC equipment) and may include controlled substances that have been, or may be subsequently, recycled or reclaimed. See 40 CFR 82.3.

(4) (for imports of used class II substances).

The EPA proposed and is finalizing a number of changes to update the data collection requirements related to the import of ODS, as described in further detail below. Such changes require collection of additional information when the EPA considers petitions to import used ODS to verify whether the material has been previously used. Other changes remove data elements that the EPA no longer needs. The EPA is also finalizing a procedure for imports of both used and virgin ODS when they are imported for destruction, exempting aircraft bottles containing halon 1211 imported for hydrostatic testing from the petition process, and finalizing as proposed the prohibition on the sale of illegally imported ODS.

Because some of these regulatory revisions relate to the petitions process for imports of used ODS, some background on the petitions process under the regulations that were in place prior to this rulemaking may provide useful context. Under that process, anyone wanting to import used ODS must submit a petition to the Agency, and the EPA must provide a ''non-objection notice'' approving the import for it to proceed. The petition to import a used ODS must contain certain information, which the EPA uses to verify whether the ODS is used. Required information includes: A description of the previous use of the substance; the identity of source facilities from which the material was recovered; a contact person at each source facility; the name, make, and model number of the equipment from which the material was recovered at each source facility; a best estimate of when the material was removed; and an export license from the appropriate government agency from the country of export (see 40 CFR 82.13(g)(2) and 82.24(c)(3)). After review, the EPA responds to the petition by issuing either a ''non-objection notice,'' which allows the import to proceed, or an ''objection notice,'' which has the effect of prohibiting the import because a non-objection notice is required for the lawful import of such material.

The EPA established the petition process to import used class I ODS (under sections 603 and 604 of the CAA) in 1998 (see 63 FR 41626, August 4, 1998) and in 2003 (see 68 FR 2819, January 21, 2003) for class II ODS (under sections 603 and 605 of the CAA) given concern that some importers were circumventing the production and import controls by importing virgin class I and class II substances that had been intentionally mislabeled as used. Sections 604, 605, and 606 of the CAA provide statutory authority for controlling the import of ODS, including the petition process. Section 603 of the CAA requires reporting of the amount of ODS imported on a quarterly basis or on a basis determined by the Administrator. To the extent that these regulatory revisions finalized in this action involve recordkeeping and reporting of information, the EPA also relies upon its authority under section 114 of the CAA, which authorizes the EPA to require recordkeeping and reporting in carrying out any provision of the CAA (with certain exceptions that do not apply here).

The petition process has generally been effective at providing information that allows the EPA to verify that ODS are used before they are imported, and accordingly, for many aspects of the existing process, the Agency did not propose and is not finalizing any changes in this rulemaking. However, over years of implementation, the EPA has identified potential areas for improvement. These include the fact that the existing requirements for detailed source information are often difficult to satisfy if the imported material comes from a halon bank, *i.e.,* a physical facility where halon recovered from different sources is aggregated. Much of this halon was sent to the banks with limited or no records of its origins or use. Additionally, current regulations exempted only halon 1301 aircraft bottles from the petition process for hydrostatic testing, yet aircraft bottles containing halon 1211 are also imported for such testing and importers must petition the Agency and receive a non-objection notice for those bottles under the existing process. The petition process also did not distinguish imports of used ODS that are intended to be destroyed from imports that are intended to be reclaimed for continued use, even though the Agency recognizes that the verification requirements do not need to be as rigorous when the ODS are to be destroyed. Further, the existing regulations did not provide a specific mechanism to pre-approve the import of virgin material for destruction, resulting in delays at the port of entry while the EPA verified the shipment. In addition, the EPA remains concerned about the potential for illegal import of ODS and wanted to take steps to strengthen the Agency's ability to enforce the phaseout of ODS. To address these and other issues, the EPA proposed and is now finalizing revisions to the regulations for imports, as described in the following sections.

i. Changes to the Petition Process To Import Used ODS for Reuse in 40 CFR 82.13 and 82.24

The EPA proposed changes to the petition process that would generally reduce burden on importers while still allowing the Agency to verify that only used material is being imported. Of particular note, the Agency proposed to: (1) Reduce the information requirements when importing class I ODS [26] from a ''bank'' so long as an official letter is provided from the appropriate government agency in that country where the material is stored that attests that a class I substance is ''used''; (2) allow submission of an application for an export license in lieu of the license itself; (3) authorize the Agency to request additional information when additional verification is needed before issuing a non-objection notice, and (4) provide flexibility for the timing of import.

In soliciting comments on the proposal, the Agency was particularly interested in whether streamlining the petition process, including to facilitate imports of material from banks for class I ODS, in particular halon, would affect compliance with the prohibition on import of virgin ODS. The EPA welcomed suggestions from stakeholders on how the petition process could be streamlined while ensuring compliance. The Agency received comments on the definition of ''banks'' and whether the proposed flexibilities should be restricted to halon, the requirement to provide an export license, extending the reduced information requirements to class II substances, the possibility that the EPA might request purity information in considering a petition, the import of used HFCs containing trace quantities of ODS, and the timing of imports after a non-objection notice has been issued.

Taking into account the comments received, the EPA is finalizing changes to the petition process that will meet the Agency's goals of reducing the burden on importers while continuing to provide mechanisms to verify that the material being imported is used. As described in greater detail below and based on the comments received, the EPA is finalizing two changes to what it proposed. First, the Agency is narrowing the definition of ''bank'' which as proposed encompassed all ODS, though only used in reference to class I ODS, to ''halon bank.'' Second, the Agency is allowing not only an application for an export license in lieu

[26] The EPA did not propose similar changes for class II ODS given the production phaseout for these substances is still underway.

of the license itself, as was proposed, but also an official communication from the appropriate government agency in the country of export. For the following changes, the EPA received no adverse comments and is finalizing the proposed revisions because the Agency concludes that the revisions are warranted based on the rationale articulated in the proposal and in this document: (1) Requiring that petitions include email addresses in contact information (while removing the requirement to provide fax numbers) and commodity codes for the material, and (2) providing one year from the date stamped on a non-objection notice for import to occur. In general, the EPA anticipates these changes will increase the availability of used ODS in the United States and thus help to provide a greater supply of used material for servicing existing equipment, which might otherwise be retired before the end of its useful life.

With respect to the proposal to remove the requirement for some source information for class I substances stored in either a national government bank or a privately-operated bank authorized by a national government with the submission of an official letter from the appropriate government agency verifying that the class I substances are in fact used, the EPA received comments from Hudson and National Refrigerants in support of the proposal. In contrast, the Halon Recovery Corporation (HRC), a non-profit trade association for halon users, and an anonymous commenter suggest narrowing the exemption to only halon banks rather than all class I ODS. HRC notes that the import petition process has been structured around the refrigeration and air-conditioning sector, and as such, these requirements have been difficult for halon recyclers to meet. Banks do not typically have the complete information required by the EPA's petition process, especially since the material may have been recovered decades ago, when records of source and use were not kept. HRC states that, unlike CFCs, there is a large installed base of fire suppression equipment that requires future servicing and retrofitting that equipment to use alternatives may not always be feasible. HRC also notes that it is aware of only a few enforcement actions taken by the Agency for the illegal importation of halons. The anonymous commenter states their concern for reducing information requirements in a petition to import used class I substances is due to the potential for misuse, which would be contrary to the Agency's effort to prohibit sale of illegally imported controlled substances. The commenter suggests a change may be needed for halon, as there is a large installed base that may require future servicing, and since retrofitting that equipment for the use of alternative substances may not be feasible, but there is not the same need or demand for other class I substances. The commenter advises that changes should be specific to halon, and the Agency should maintain the existing requirements for other class I substances.

While a couple of commenters were supportive of finalizing the revisions as proposed, due to concerns other commenters raised about the potential for illegal imports of class I ODS, the EPA is finalizing provisions that are more limited than those proposed by finalizing the definition of ''halon bank'' in 40 CFR 82.3 (rather than ''bank'') and restricting the provisions in 40 CFR 82.13(g)(2)(iii) and (xv) to material from a ''halon bank.'' In light of the recently discovered unexpected emissions of CFC–11 measured in the atmosphere [27] and concern from commenters regarding potential for misuse of the petition process, the Agency is finalizing revisions that are narrower than the proposal and is only providing this flexibility for halon banks.

The EPA's decision is based in part on the need for used halons exceeding the need for other used class I ODS. The Montreal Protocol's Technology and Economic Assessment Panel (TEAP) issued a report in September 2018, available in the docket, noting continued demand for halons, in particular for servicing fire suppression equipment for civilian aviation.[28] Civil aircraft will continue to need halon to meet fire protection requirements for lavatory bottles, handheld extinguishers, engine nacelles, auxiliary power units, and cargo compartments [29] until there is a transition to alternatives for all applications on new aircraft as well as to service the civil aircraft fleet. The EPA agrees with the comment that there is a large installed base of fire suppression equipment that requires future servicing and retrofitting that equipment to use alternatives may not always be feasible, and this point supports its decision.

Since production and consumption of halons were phased out in the United States and other non-Article 5 countries in 1994, many countries, organizations, and private sector companies established halon banks, which are physical locations where previously-used and recovered halons are aggregated from different sources and stored.[30] The EPA agrees with the comment that banks do not typically have the complete information required by the EPA's petition process. When a used ODS is imported for reuse under the existing process, the import petition must contain information about the used ODS including contact information from each source facility from which the material was recovered and the name, make, and model number of the equipment from which the material was recovered. Petitioners sourcing used ODS from banks, therefore, rarely have enough records to provide all the information required in the petition process, and as a result the petitions are subject to denial. In considering these comments, the Agency recognizes that providing increased flexibility for halons, while still allowing the Agency to verify that only used material is being imported, allows for halon to be more easily sourced from overseas banks, increasing halon available to service aircraft, oil and gas facilities, and other fire suppression applications.

To provide further response to the comment expressing concern that reducing the requirements for import petitions for used ODS could lead to potential misuse of the petition process, the Agency notes that it will continue to be able to request additional information from petitioners sourcing halon from banks. For instance, the Agency may request additional information on whether the country where the halon bank is located has production of halon for feedstock use or stockpiles of virgin halon. If petitioners fail to respond to requests from the Agency for additional information, the EPA may issue an objection notice on that basis, as clarified in revisions to 40 CFR 82.13(g)(3)(i)(A) finalized in this rulemaking.

HRC also commented that restricting this relief to government banks or banks authorized by a national government unnecessarily limits its effectiveness. HRC states that national government ODS banks are not usually a source for

[27] For more information, see the discussion in section III.J.

[28] UNEP. (2018) Montreal Protocol on Substances on Substances that Deplete the Ozone Layer. Report of the Technology and Economic Assessment Panel. September 2018 Volume 2 Decision XXIX/8 on the Future Availability of Halons and their Alternatives; pg. 1–32. Available at: *https://ozone.unep.org/index.php*.

[29] FAA (2004). ''FAA Halon ARC Final Report Findings & Recommendations'' Halon Replacement Aviation Rulemaking Committee; pg. 1–49. Available at: *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/397*.

[30] Halons were phased out in Article 5 countries in 2010.

halons for civilian uses because they are designated for military use, and many national governments do not ''authorize'' privately-operated banks or reclamation facilities. HRC suggests the EPA define bank as ''a facility run by a national government or privately run that collects and stores previously-recovered ozone-depleting substances for reuse at a later date.''

The EPA disagrees with the comment that the Agency amend the definition of ''halon bank'' to include privately-run banks regardless of whether they are government authorized. While the EPA supports the notion of providing more flexibility for imports of used halon to meet ongoing demand for halon, the Agency does not have sufficient information about the nature of such banks to determine whether or not such an expansion is appropriate at this time. In particular, the Agency would need to further consider whether it is possible to provide such flexibility while ensuring that doing so does not create an avenue for illegal imports of virgin halon into the United States. This is particularly important given the existence of stockpiles of virgin halon, for example halon 1211,[31] and the ongoing production of halon for use as a feedstock.[32] The Agency may consider if there are ways to establish such flexibility while ensuring compliance with the CAA and Montreal Protocol and may decide that it is appropriate to propose additional changes in a future rulemaking.

The EPA is thus revising the regulations at 40 CFR 82.3 to add a definition for ''halon bank'' to mean a facility run by a national government or privately run and authorized by a national government that collects and stores previously-recovered halon for reuse at a later date. As described in 40 CFR 82.13(g)(2)(iii) and (xv), if used halon is stored in a halon bank, the petitioner need not provide certain source information, though the petitioner should provide it if available so as to better allow the EPA to verify that the halon is used. The petitioner must indicate that the halon is from a halon bank by providing an official letter from the appropriate government agency in the country where the material is stored indicating that the halon is used and that the halon bank is authorized to collect used halon. The letter may also provide any additional information available to help demonstrate that the halon is used. Providing this official letter, does not mean that the EPA will automatically approve the petition as the EPA retains the right to request additional information and/or issue an objection notice if the information is insufficient.

With regards to the petition process for used ODS more generally (including petitions for used halons from halon banks), the EPA is finalizing as proposed a provision stating that the Agency may request other information to verify substances are used before issuing a non-objection notice. This information could include, but is not limited to: Photos of each unit that contained the used ODS, with serial numbers visible; photos of a representative sample of the cylinders, with serial numbers visible; a description of the facility from which the used ODS originates, including information regarding what is produced at the facility, the location of the facility, and how long the facility has been in the location; a description of each unit from which the used ODS originates; links to websites showing brochures, photographs, and/or descriptions of each different unit from which the used ODS originates; copies of the original, signed work orders authorizing collecting of the used ODS; copies of the paperwork showing that the company completed the work; copies of payment to the company that collected the used ODS for their services, with redactions for confidential or sensitive information such as bank account numbers; copies of business licenses from the government authorizing collection companies to do this type of work; and information on how transport will occur within the exporting country and to the United States. For used ODS from Europe, the EPA could request a screenshot of the European Commission export license; the name and contact information for the European Commission official who signed the Export License; and copies of all paperwork required for movement within the European Union, such as the ''Notification document for transboundary movement/shipments of waste.''

The EPA is not collecting all such information for each petition and thus is not revising the regulatory text to require that it be provided in every petition. However, the Agency does wish to provide notice to petitioners that it may request additional information to confirm that the ODS is used and, as proposed, is amending the regulations in this rulemaking at 40 CFR 82.13(g)(3)(i)(A) to make clear that failure to provide such information when requested would be grounds for issuing an objection notice.

In response to a statement in the proposal that purity sampling might be among the information the Agency might request in considering a petition to import used ODS, the Agency received comments from HRC requesting that the EPA not request purity sampling of used ODS for import as a method of determining whether an ODS is new or used. The commenter states that requesting this information for halons would be ineffective and in the case of used system cylinders possibly dangerous. HRC describes how used halons are often imported in the original system cylinders (some of which can be 20 to 40 years old). These cylinders may have actuation methods that are explosive in nature as they are intended to release the contents of the cylinder in ten seconds or less. They also have pressures as high as 600 pounds per square inch and if actuated accidentally can be extremely dangerous. HRC states that there is no safe way to sample these cylinders for purity testing without completely emptying the contents of the cylinder. HRC acknowledges that halon stored in bulk tanks can be sampled and purity information could be provided but asserts that this would not be an effective method to distinguish between new and used halons because in some cases used halons are imported in bulk after being reclaimed to industry specifications, and purity sampling could result in these halons being deemed to be new when they are actually used.

The Agency has considered the comments from HRC and agrees that requiring halon purity testing in some cases could unintentionally cause the inadvertent release of halons. As a result of the comments, the Agency now understands that purity sampling of halon held in bulk containers is almost always available and could be useful in limited situations in combination with other information to help verify the material is used. Therefore, the EPA intends to limit any purity testing requests to halon that is in bulk containers or in other situations where the purity testing should not result in unintended releases of halons.

HRC also commented on the Agency's proposal to allow for an application for an export license in lieu of an actual

[31] UNEP (2014). TEAP Report of the Halons Technical Options Committee Vol. 3 2014 Supplementary Report #2 Global Halon 1211, 1301, and 2402 Banking. Available at *https://ozone.unep.org/sites/default/files/2019-05/HTOC%202014%20Supplementary%20Report2%20-%20Global%20Halon%201211%201301%20and%202402%20Banking.pdf.*

[32] UNEP (2018). TEAP 2018 Assessment Report. Available at *http://conf.montreal-protocol.org/meeting/oewg/oewg-41/presession/Background-Documents/TEAP_2018_Assessment_Report.pdf.*

export license. The commenter states that some national governments do not provide such licenses and requests that the EPA remove the provision in 40 CFR 82.13(g)(2)(xii). For example, as noted in the proposal Canada, the largest exporter of used ODS to the United States, requires the EPA to approve the export before they issue an export license. As such, petitioners are only able to provide the submitted application for an export license with their petition. Considering this, as noted in the proposal, the Agency has worked with Canada to accept the submitted application in lieu of the export license. However, as HRC notes, there may be other countries that also require approval prior to export from the importing country such as a non-objection notice.

The EPA recognizes that some countries, including the United States, do not require or provide export licenses. However, most governments do provide some form of acknowledgement, such as a letter from a national ozone unit noting the ability to export or even an email acknowledgement. The Agency does not find it appropriate to remove all forms of acknowledgement from the exporting government in the petition process and disagrees with the suggestion to remove 40 CFR 82.13(g)(2)(xii). An official communication from the government acknowledging the export helps ensure the petitioned amount is equal to or less than the amount that arrives at the United States port of entry. This process also allows for the government of the exporting country to evaluate the effects of the export on their own fire suppression sector and hold consultations ahead of concurring with the export. Therefore, the Agency is amending 40 CFR 82.13(g)(2) and 82.24(c)(3) to allow importers of used class I and class II substances, respectively, to provide in lieu of an export license, as is required under the existing regulations, either an application for an export license or an official communication from the appropriate government agency. The option of providing an official communication is a change from the proposal, resulting from the information provided by the commenter highlighting for the EPA that some governments do not require or provide export licenses. As proposed, the EPA is also finalizing a requirement for an English translation of the export license application, export license, or official communication to facilitate the Agency's review.

The Agency also received a comment from American Pacific, which states they could better meet the servicing demand for the HCFC–123-based fire suppression agent Halotron® I if the Agency establishes a streamlined petition process for importing recycled HCFC–123. American Pacific asserts that source requirements for class II substances in 40 CFR 82.24(c)(3)(iv) are disproportionally burdensome and hinder any recycled HCFC–123 import opportunity. Based on American Pacific's consultations with major recyclers and reclaimers of HCFC–123, the commenter states that many reclaimers find the source information requirements to be extremely burdensome. In response to comments supporting waiving source information for class II substances, the EPA notes that it did not propose to relax the import petition requirements for class II ODS. The Agency concludes that it would not be appropriate to extend this exemption to class II substances at this time because of continued global production of these substances and thus the greater likelihood that virgin material may be illegally imported into the United States under the guise of being used. Source information requirements help to ensure that the imported substance is used by documenting for example the name, make, and model numbers of refrigeration and air-conditioning equipment from which the class II substance was removed. The Agency has consistently taken measures to avoid illegal imports of virgin ODS and has typically only considered relaxing any import requirements for used material after production and consumption phaseouts. The EPA may consider proposing to extend exemptions for source requirements in 40 CFR 82.24(c)(3)(iii) through (vi) for class II substances or otherwise providing flexibility for these requirements to make the process less burdensome in a subsequent rulemaking potentially closer to the global production and consumption phaseout for HCFCs.

National Refrigerants suggests that the EPA include a provision to facilitate the import and reclamation of used HFCs that contain a trace amount of class I ODS. The EPA responds that establishing a process for importing used HFCs for reclamation is not necessary as no allowances are needed to import HFCs.[33] In this circumstance, the importer would need to petition for the used ODS portion of the mixture. The EPA did not propose to establish a separate process for importing mixed gases that contain ODS.

For other aspects of the proposed changes to the import petition process for used ODS, the EPA did not receive adverse comment. The EPA is finalizing those proposed changes to the petition process to ensure accuracy, speed review, and facilitate the import of used ODS, while maintaining requirements that help assure that the material being imported is used. In particular, the EPA is updating the requested contact information by requiring email addresses and removing fax numbers. The EPA is also requiring that petitioners provide the commodity code associated with the ODS to be imported. The commodity codes are classifications for goods and services traded among countries. This will match the Agency's other import and export requirements in 40 CFR 82.13(g) and (h) and 82.24(c) and (d) and help to ensure that the data are correctly entered in Customs and Border Protection's Automated Commercial Environment and International Trade Data System (ACE/ITDS).

As proposed, the EPA is also updating the commodity codes for HCFC–123 and HCFC–124 in appendix K. The U.S. International Trade Commission is responsible for periodically updating the Harmonized Tariff Schedule of the United States Annotated (HTSA). The HTSA provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international Harmonized System, the global system of nomenclature that is used to describe most world trade in goods. This action conforms the commodity codes for HCFC–123 and HCFC–124 in the appendix with those currently in effect and in use by the U.S. International Trade Commission.

The existing regulations for petitions for imports of used material also require that if the imported substance is intended to be sold as a refrigerant, the petition must include contact information for the U.S. reclaimer who will bring the material to the standard required under section 608 of the CAA and 40 CFR part 82, subpart F,[34] if it is not already reclaimed to those specifications. The EPA is finalizing its proposal to add ''EPA-certified'' to the description of reclamation facilities in the provisions containing this requirement, 40 CFR 82.13(g)(2)(xiii) and 82.24(c)(3)(xiii). This will highlight

[33] Reporting of HFC imports is required under other EPA regulatory requirements, see *https://www.epa.gov/ghgreporting.*

[34] Clarifications to subpart F are being finalized in 40 CFR 82.13(g)(2)(xiii) to match 40 CFR 82.24(b)(2)(xiii). This was not addressed in the proposal.

the existing expectation for petitions to import used material to be sold as a refrigerant that the reclamation facility that will receive the material in the United States must be EPA-certified.[35]

Finally, the Agency is allowing flexibility for the timing of the import, which is particularly useful when the Agency issues non-objection notices towards the end of the year. The EPA previously required the import to occur in the same control period (*i.e.,* calendar year) that the non-objection notice was issued. However, this can result in petitioners postponing their requests until the start of the next year. To avoid that unnecessary delay, the EPA proposed to provide importers one year from the date stamped on the non-objection notice to import that shipment. The EPA received one comment, from HRC, in support of providing flexibility on the timing of imports. The commenter states that the requirement that the import occur in the same calendar year can cause logistical challenges. To avoid such delays and logistical problems, the EPA is finalizing this change as proposed.

ii. Changes to the Exemption for the Import Petitions Process for Hydrostatic Testing

As noted above, the EPA proposed to exempt aircraft halon bottles containing halon 1211 from the import petitions process when being imported for hydrostatic testing. The proposal would allow the same exemption for aircraft halon bottles containing halon 1211 as already exists for halon 1301 aircraft halon bottles. The EPA received supportive comments on this proposal from The Alliance and HRC and no adverse comments; it also received comments suggesting that the exemption be extended to aircraft halon bottles imported for other purposes. For the reasons discussed below, the Agency is finalizing the changes as proposed.

The existing regulations at 40 CFR 82.3 defined ''aircraft halon bottle'' [36] as a vessel used as a component of an aircraft fire suppression system containing halon 1301. To facilitate the import and testing of more types of aircraft halon bottles for hydrostatic testing, the EPA is extending the definition of ''aircraft halon bottle'' in 40 CFR 82.3 to also include vessels containing halon 1211, as proposed. Because the existing regulations in 40 CFR 82.13(g)(2) exempt aircraft halon bottles that are imported for hydrostatic testing from the import petition process, revising this definition would extend this exemption to such vessels containing halon 1211. This exemption facilitates proper maintenance of bottles containing halon 1211 and allows transit and testing to occur more quickly for such bottles. Promoting proper maintenance of these additional fire suppression devices helps ensure the bottles operate correctly to extinguish fires on aircraft. Proper maintenance of the storage vessels also prevents the accidental emission of this high-ODP compound. The EPA notes that the exemption of imports of aircraft halon bottles containing halon 1211 for hydrostatic testing only exempts them from the petition process. Recordkeeping and reporting are currently required, and will continue to be required, for the import and export of aircraft halon bottles. Importers of such bottles also still need to maintain import records, as set forth in 40 CFR 82.13(g)(1) and submit quarterly reports within 30 days of the end of the applicable quarter in accordance with 40 CFR 82.13(g)(4).

HRC comments that halon bottles supplied by aerospace original equipment manufacturers (OEMs) to service global aircraft fleets are sometimes imported into the United States for purposes other than hydrostatic testing (*e.g.,* spares restocking, customer returns, etc.). HRC states that such additional purposes tend to be intermittent, involve limited quantities, and in most cases involve equipment that was originally exported from the United States by the aerospace OEM. As such, HRC states they should not be subject to the same level of scrutiny as other used ODS imports.

The EPA is not making the revisions suggested in this comment as it is beyond the scope of this rulemaking and the EPA does not have enough information about restocking or customer returns of aircraft halon bottles to support such a change. For example, the EPA currently lacks information on what type of containers would be imported for restocking or customer returns. Controlled products as defined in 40 CFR 82.3, which include fire extinguishers, are exempt from the petitions process because they are not controlled substances, as defined in 40 CFR 82.3. Aircraft halon bottles are not considered controlled products because they do not function unless connected to the onboard fire suppression system. Rather they are components of larger fire suppression systems used on aircraft (see 74 FR 10185, March 10, 2009). The EPA also lacks information on how these vessels are currently being imported, such as whether the imports have historically been approved through the import petition process, what the quantity of aircraft halon bottles imported for this purpose might be, and the frequency of petitions by the aviation industry to determine the burden reduction opportunity. The EPA also lacks a description of restocking and customer returns and how this contributes to safety and maintenance of these aircraft halon bottles. All of this information would be useful in considering whether to consider proposing a change to the exemption for aircraft halon bottles in a future rulemaking.

iii. Imports for Destruction

This portion of the document discusses two sets of changes to the import process for ODS specifically imported for destruction, which were proposed and are being finalized.[37] First, the EPA is establishing a streamlined approach for importing used ODS for destruction called the Certification of Intent to Import ODS for Destruction. Second, the EPA is extending that approach to virgin ODS, as there was no existing mechanism defined in the regulations for the EPA to pre-approve import of virgin ODS for destruction. The EPA received three comments on its proposal to create this process for both used and virgin ODS. The Agency received supportive comments on a streamlined approach and extending the approach to virgin material, but one commenter expresses concern about the potential for illegal imports. After considering the comments, the Agency is finalizing many of these provisions as proposed and is also adding requirements to obtain more information on the chain of custody after ODS is imported under this process.

ODS from decommissioned equipment, unwanted stockpiles, and mixtures that are contaminated and cannot be reclaimed are often imported into the United States for destruction. Facilitating the destruction of ODS is beneficial to the environment since it averts ODS emissions into the

[35] The EPA's reclamation program is described at *https://www.epa.gov/section608/stationary-refrigeration-refrigerant-reclamation-requirements.*

[36] An aircraft halon bottle is considered a ''used controlled substance'' as defined in 40 CFR 82.3, which is a controlled substance that has been recovered from its intended use system (and may include controlled substances that have been, or may be subsequently, recycled or reclaimed). Halon is placed into aircraft halon bottles and the bottles are then inserted into a fire suppression system. When the system is dismantled or the bottles are removed from the system, the halon contained in the bottles is considered used since it was removed from the system.

[37] The EPA refers to the import of ODS intended to be destroyed in the United States throughout this document as ''imports for destruction.''

atmosphere and thus supports the overarching goal of Title VI to protect stratospheric ozone. The Montreal Protocol's Scientific Assessment Panel estimated that capture and destruction of CFC, halon, and HCFC banks [38] in 2015 could avoid 1.8 million ODP-weighted metric tons of future emissions through 2050 and return stratospheric chlorine levels at mid-latitudes to 1980 levels more than six years sooner than in the baseline scenario.[39] The EPA recognizes that there is ongoing commercial demand for certain substances, as discussed earlier in this document with respect to halons and other ODS. Some ODS may, however, be unwanted and thus susceptible to release; this risk may be higher when they are stored in countries that do not have adequate capability to properly reclaim or destroy them. A process for the import of ODS for destruction helps facilitate the destruction of such ODS and reduces the risk of such releases. Destruction of unwanted ODS in the United States supports the ongoing availability of destruction options of ODS worldwide and may also generate revenue for domestic destruction facilities.[40] More information on the destruction facilities that destroy ODS and their technologies is available in the report in the docket titled ''U.S. Destruction in the United States and Abroad.''

As discussed above, the EPA's petition process for the import of used ODS is designed to allow the Agency to verify prior use of the material so that virgin ODS are not entering the United States under the pretense of being ''used.'' Under the existing regulations at 40 CFR 82.13(g)(2) and 82.24(c)(4), anyone wishing to import used class I or class II ODS, respectively, for destruction must submit a petition providing the same information as for any other petition to import used ODS. It is then the obligation of the second-party destruction facility to provide a verification report to the importer or producer that the material was destroyed (40 CFR 82.13(k) and 82.24(e)). Importers are required to keep records on imports for destruction of ODS under 40 CFR 82.13(g)(1) and 82.24(c)(2) and to submit quarterly reports, in accordance with 40 CFR 82.13(g)(4) and 82.24(c)(1). The regulations contain an exception to the prohibition on import of virgin ODS without consumption allowances in the case of imports for destruction but do not provide a specific process for such imports.

To facilitate the importation of used ODS for destruction, the EPA proposed to create a new petition process for the import of used and virgin ODS for destruction, called a Certification of Intent to Import ODS for Destruction, in 40 CFR 82.13(g)(5) and 82.24(c)(6). Under this proposed process, the importer would submit the petition at least 30 working days before the shipment's departure from the foreign port. After review, the EPA would send either a non-objection notice or an objection notice. The proposed period was shorter than the corresponding period for the import petition process, which is 40 working days from departure, because the petition would contain less information for the EPA to review and verify. The proposal was based on the expectation that 30 working days is enough for the EPA to review the petition and that this timeframe will not impede the import. The Agency proposed to use the same objection notice conditions as in the existing petition process for importing used ODS for reuse, such as if the petition provides insufficient information or if it contains false or misleading information. The EPA also proposed to require that the petitioner submit a destruction verification 30 days after destruction under 40 CFR 82.13(g)(6) and 82.24(c)(7). The Agency is finalizing the supporting prohibitions in 40 CFR 82.4(j)(2) and 82.15(b)(3) to prohibit the import of ODS for destruction without having received a non-objection notice consistent with the new Certification of Intent to Import ODS for Destruction.[41]

After considering the public comments received, as described below, the EPA is finalizing this process largely as proposed. The Agency is also making some changes to what was proposed based on its consideration of public comments. In general terms, this new process omits collecting the detailed source information that is required in import petitions, as that information is not necessary if the ODS is to be destroyed. Instead, it is more important for the EPA to collect information from the petitioner about the destruction. In particular, the Certification of Intent to Import ODS for Destruction finalized in this rulemaking does not include the following elements (which are included in the existing import petition process): information about all previous source facilities from which the ODS was recovered; a detailed description of the previous use at each source facility and a best estimate or documents indicating when the specific controlled substance was put into the equipment at each source facility; a list of the name, make and model number of the equipment from which the material was recovered at each source facility; contact information of all persons to whom the material was transferred or sold after it was recovered from the source facility; or a description of the intended use of the ODS.

The EPA is omitting these information elements because they are collected for import petitions to verify that the material is used, and the Agency concludes it is not necessary to verify that ODS is used if it is being imported for destruction. Simplifying the information requirements decreases the regulatory burden on existing importers who followed the import petition process to import used ODS for destruction. In addition, the information requirements for petitions to import used ODS had the potential to hinder imports for destruction if petitioners were unable to provide all the necessary information. Certain elements, such as information about each piece of equipment or each source facility from which the controlled substance was removed, might have been particularly difficult for petitioners to provide because used controlled substances intended for disposal are often part of a mixture of chemical waste recovered from a variety of systems and detailed information pertaining to each system may not be available. Although the Certification of Intent to Import ODS for Destruction relaxes the information requirements for importing used ODS for destruction compared to the existing import petition process, the EPA concludes that this relaxation benefits the environment because companies wishing to import used ODS into the United States for destruction will be able to do so more easily, and therefore more used ODS may be destroyed. This is consistent with the overarching goal of Title VI to protect stratospheric ozone.

[38] As used here, ''banks'' refers to the total ODS that have already been manufactured but not yet released to the atmosphere. This can include ODS contained within closed cell foams, installed in appliances, held in original containers, etc. This definition is broader than the definition of the term ''halon bank'' being finalized in this action.

[39] UNEP. (2014) Scientific Assessment of Ozone Depletion: 2014 World Meteorological Organization Global Ozone Research and Monitoring Project—Report No. 55 pg. 1–416. Available at: *https://www.esrl.noaa.gov/csd/assessments/ozone/2014/report.html.*

[40] EPA. (2018) ''U.S. Destruction in the United States and Abroad'' pg. 1–63. Available at: *https://www.epa.gov/sites/production/files/2018-03/documents/ods-destruction-in-the-us-and-abroad_feb2018.pdf.*

[41] The proposed regulatory text for 40 CFR 82.4(j)(2) and 82.15(b)(3) included different proposed effective dates. The EPA is finalizing both changes effective 30 days after publication of the rule to harmonize these requirements.

To better ensure that the ODS is destroyed, the EPA is adding provisions 40 CFR 82.13(g)(9) and (10) and 82.24(c)(10) and (11) to require importers and intermediaries that aggregate ODS for destruction [42] to keep certain records about the destruction of the ODS. In particular, the EPA is requiring that importers of ODS for destruction maintain: A copy of the certificate of intent to import for destruction; a copy of the non-objection notice; a copy of the export license, export license application, or official communication from the appropriate government agency; Customs and Border Protection (CBP) entry documents for the import that must include the commodity codes; records of that date, amount, and type of controlled substance sent for destruction per shipment; an invoice from the destruction facility verifying shipment was received; and a copy of the destruction verification. The EPA is requiring that intermediaries maintain: transactional records that include the name and address of the entity from whom they received the ODS and to whom they sent the ODS; records that include the date and quantity of controlled substances received and sent for destruction; and a copy of the destruction verification if they are the final aggregator.

The EPA is also extending the Certification of Intent to Import ODS for Destruction to imports of virgin ODS for destruction. While modeled in large part on the petition to import used ODS, there are also benefits to facilitating the import of virgin ODS for destruction. Virgin ODS that are to be destroyed may be imported without consumption allowances (see 40 CFR 82.4(d) and 82.15(b)). However, under existing regulations there was no established regulatory mechanism for the EPA to review and pre-approve those imports. As such, shipments may have been held at the port while the EPA determined whether the import is in fact bound for destruction. In some instances, proactive importers have petitioned the Agency to import virgin ODS for destruction and the EPA has allowed these imports on a case-by-case basis. However, the absence of an established regulatory mechanism for such approvals has created some uncertainty for these imports. Moreover, establishing regulatory requirements for such imports creates a mechanism to ensure that imports of virgin ODS for destruction are destroyed.

Providing an established mechanism to import virgin ODS for destruction is beneficial to importers and the EPA. Having a transparent process that allows approval to occur before the shipment reaches the port facilitates such imports and reduces potential delays and costs associated with the prior approach to imports of virgin ODS for destruction, as well as providing more certainty as to which imports can proceed. In turn, this encourages imports of unwanted virgin ODS for destruction, potentially avoiding the emission of such ODS. As noted above, this is consistent with an overarching goal of Title VI, to protect stratospheric ozone. The extension also closes a gap in regulatory provisions for the import of virgin material for destruction. As discussed previously in this document, the EPA originally established the import petition process for used ODS to verify that virgin ODS was not being imported under the pretext of being used to circumvent the regulatory requirements for expending consumption allowances. In the same way, the EPA concludes that a mechanism is needed to verify that virgin ODS imported for destruction are destroyed and that claims of importing for destruction are not used to circumvent the requirement to expend consumption allowances. In addition, the EPA has historically used the petition process as a mechanism to approve imports of used material for destruction and has applied an analogous but simpler process to imports of virgin material for destruction on a case-by-case basis. Based on this experience and these common goals for imports of used and virgin ODS for destruction, the EPA concludes that having the same process for imports for destruction of both used and virgin ODS is both feasible and appropriate. Furthermore, establishing a consistent regulatory process for used and virgin ODS simplifies the administration of this approach because the same requirements generally apply regardless of the type of ODS to be imported for destruction. Thus, the EPA is finalizing the proposal to have the same requirements for both used and virgin ODS in this new process.

The EPA is also revising the definitions of ''individual shipment'' and ''non-objection notice'' at 40 CFR 82.3, both of which previously referred only to the import of used material. As proposed, the EPA is amending these definitions by removing references to ''used'' controlled substances, so that ''individual shipment'' and a ''non-objection notice'' may apply to shipments of virgin ODS imported for destruction under a Certification of Intent to Import for Destruction, as well as to shipments of used ODS.

As for the import petitions process, the Agency is finalizing revisions that provide for flexibility for the timing of imports for destruction. In the previous petitions process, the EPA required the import to occur in the same control period (*i.e.,* calendar year) that the non-objection notice was issued. The EPA is finalizing a provision that non-objection notices issued for the Certification of Intent to Import for Destruction allow a year from the date of the notice to import the material. Therefore, once a non-objection notice is issued, the person receiving the non-objection notice is permitted to import the individual shipment within a year of the date stamped on the non-objection notice. For instance, if a non-objection letter is date-stamped October 1, the import of that material could occur up to and including September 30 of the following year but not thereafter. This provides flexibility to imports for destruction that may not operate on a calendar year basis.

As noted above, the EPA received three supportive comments for the portions of the proposed rule addressing the Certification of Intent to Import for Destruction. The Agency also received one comment suggesting changes to the proposed provisions. The first commenter suggesting changes to the proposal requests that the Agency require imports for destruction be sent directly to the destruction facility, instead of allowing for it to be sent to intermediaries. Specifically, ClimeCo, a company that assists in projects that destroy class I substances, states that several destruction facilities and offset project developers have imported ODS into the United States for destruction but have not shipped it directly to the destruction facility. They state that the ODS was shipped to intermediate facilities before being ''bulked up,'' in other words aggregated with other ODS, and sent to a destruction facility. The commenter states this could create opportunities for bad actors to manipulate, re-direct, or re-sell the imported ODS. ClimeCo suggests that the EPA require the ODS entering the United States be shipped directly to a destruction facility without any intermediate handling, processing, or other activities.

The EPA agrees that it is important to minimize the possibility that an ODS imported for destruction is diverted and sold illegally rather than being destroyed. The EPA notes that the importer has an obligation to ensure that

[42] The discussion of the requirements for intermediaries is included in the response to the comment received from ClimeCo which is discussed further below.

it identifies a destruction facility for all ODS imported for destruction, obtains a destruction verification once the destruction is complete, and submits that verification to the EPA. It is ultimately the importer's responsibility to ensure the imported ODS is destroyed in the required time frame, regardless of whether they engage an intermediate aggregator to facilitate the destruction. In light of these responsibilities, the EPA disagrees that it is necessary to prohibit intermediaries from aggregating ODS in a manner that facilitates destruction. However, after considering this comment, the EPA concludes that additional provisions are appropriate to address the concerns about the potential for material being diverted during the aggregation process. As discussed previously in this document and in the proposal, a mechanism is needed to verify that virgin ODS imported for destruction are destroyed and that claims of importing for destruction are not used to circumvent the requirement to expend consumption allowances and it also discussed the benefits of establishing the same process for imports of used and virgin ODS for destruction. (See 84 FR 41533, August 14, 2019). EPA is therefore requiring importers to provide in the Certification of Intent to Import ODS for Destruction the contact information of all persons who will aggregate ODS prior to it being sent to the destruction facility. Thus, the entire chain of custody from import to destruction must be known by the importer and the EPA prior to the EPA authorizing the import. Providing this information to the EPA helps the Agency track the chain of custody of imported ODS for destruction and ensure that it is destroyed. Providing this information is less burdensome to an importer than not allowing aggregation of imported ODS for destruction, as the commenter suggests. Thus, the EPA is finalizing provisions at 40 CFR 82.13(g)(5) and (10) and 82.24(c)(6) and (11).

To ensure accountability and allow for the Agency to verify, as needed, the material that intermediaries receive is transferred for destruction, the EPA is finalizing additional requirements in 40 CFR 82.13(g)(10) and 82.24(c)(11). Intermediaries aggregating ODS after it is imported, but prior to destruction, must keep records of the name, address, date, and amount of imported ODS bound for destruction that they receive from another entity and transfer to another entity. These records could include sales or other transactional records already generated during the normal course of business, so long as they include the required information. Additionally, the intermediary must maintain a record of the destruction verification if they are the final intermediary to receive the ODS prior to destruction. These additional provisions are intended to address the concern raised in comments on the proposal about the potential for material being diverted during the aggregation process. Further, establishing mechanisms to ensure that key information from both importers and intermediaries is available to the EPA helps meet the Agency's ability to fully track the chain of custody of imported ODS for destruction and ensure that it is destroyed, consistent with the goals described in the proposal. The EPA concludes that these provisions combined will allow for the EPA to check compliance and determine whether ODS imported for destruction is actually destroyed, even if it is aggregated prior to destruction.

iv. Prohibiting the Sale of Illegal Imports

The EPA proposed to prohibit the sale of illegal imports. The Agency received supportive comments on this proposal and no adverse comments. However, one commenter requested that the EPA prohibit the sale of disposable cylinders. For the reasons described in below, the Agency is finalizing the prohibition as proposed.

Based on the EPA's experience with the CFC phaseout, the incentive to illegally import class II substances will continue to increase after the allocation for HCFC–22 reaches zero in 2020. HCFC–22 is the most widely used HCFC in the United States and the EPA anticipates continued demand for HCFC–22 beyond 2020. In addition, there continues to be risk of illegal imports of class I substances. To allow for better enforcement of these requirements, the EPA proposed to add to 40 CFR 82.4(s) and 82.15(g)(8) an express prohibition against the sale or distribution, or offer for sale or distribution, of any class I or class II substance, respectively, that the seller knows, or has reason to know, was illegally imported into the United States.[43]

In finalizing this proposal, the EPA is relying primarily on its authority under sections 604(c) and 605(c) of the CAA. Section 604(c) directs the Administrator to promulgate regulations to ''insure that the consumption of class I substances in the United States is phased out and terminated'' in accordance with the applicable schedules for the phaseout and termination of production of class I substances under the CAA. Similarly, section 605(c) directs the Administrator to promulgate regulations to ''insure that the consumption of class II substances in the United States is phased out and terminated'' in accordance with the applicable schedules for the phaseout and termination of production of class II substances under the CAA. ''Consumption'' is defined in section 601 of the CAA as the amount of a substance produced in the United States, plus the amount of that substance imported, minus the amount exported.

The EPA remains concerned about the potential for illegal import of ODS. This concern is based largely on the risk that such illegal imports would interfere with the already-completed phaseout of consumption of class I substances and the ongoing phaseout of consumption of class II substances. ODS that is imported without allowances generally counts toward the United States' consumption cap unless additional action is taken to remove the ODS from the U.S. market (*e.g.,* the illegally imported ODS is destroyed or re-exported in the same year). There are no allowances for class I ODS as they have all been phased out. Furthermore, following the 2020 stepdown, there is a greater risk that illegal imports of HCFC–22 not destroyed or re-exported could cause an exceedance of the cap set forth under the Montreal Protocol and CAA.

To address this concern, as proposed, the EPA is strengthening its ability to enforce the phaseout of ODS by adding at 40 CFR 82.4(s) and 82.15(g)(8) an express prohibition against the sale or distribution, or offer for sale or distribution, of any class I or class II substance, respectively, that the seller knows, or has reason to know, was imported into the United States in violation of the import regulations.[44] These revisions to the regulations clarify that it is illegal to sell or distribute any material that the seller knows or had reason to know was imported into the United States without expending the appropriate consumption allowances or otherwise qualifying for an exemption

[43] The EPA has previously issued restrictions on sale as a means for implementing restrictions on consumption. See, *e.g.,* 40 CFR 82.4(h) (''No person may sell in the U.S. any Class I controlled substance produced explicitly for export to an Article 5 country''); 82.4(n)(2) (''Any person selling unused class I controlled substances produced or imported under authority of essential-use allowances or the essential-use exemption for uses other than an essential-use is in violation of this subpart.'').

[44] The proposed regulatory text for 40 CFR 82.4(s) and 82.15(g)(8) included different proposed effective dates. The EPA is finalizing both changes effective 30 days after publication of the rule to harmonize these requirements.

provided for in the regulations (*e.g.,* for transformation or destruction, or for used ODS). The revisions also explicitly state that every kilogram of illegally imported material sold or distributed, or offered for sale or distribution, constitutes a separate violation. They also include an exception for actions that are needed to re-export the controlled substance in such a situation.

The intent of this change is to strengthen the EPA's ability to enforce against illegal trade, which in turn helps ensure that consumption remains under the Montreal Protocol and CAA caps.[45] This change also increases the EPA's compliance and enforcement options where the Agency is not able to identify the importer. For example, these provisions facilitate the EPA's ability to pursue investigations where distributors or other sellers of CFCs attempt to sell virgin CFCs in the domestic market knowing that they were imported into the United States after the phaseout of CFCs, which occurred in 1996, without qualifying for any exemption from the consumption phaseout. Actions taken against such distributors not only address their violations but could also allow the Agency to gather the necessary information to identify the smuggler who illegally imported the material in the first place and to pursue compliance and enforcement action against them under existing authorities in 40 CFR 82.4 and 82.15, which will help deter illegal imports. Avoiding illegal imports helps to maintain the complete phaseout of class I ODS and achieve the phaseout of class II ODS, which is consistent with sections 604(c) and 605(c) of the CAA, as well as with the overarching goals of Title VI of the CAA.

This change also encourages distributors to be more cautious when purchasing ODS that seem suspiciously priced or packaged. Since the phaseout of class I ODS, the EPA has warned distributors of the risk of purchasing black market ODS and provided information on ways to identify illegally-imported material. While the incentive to circumvent the import controls will always exist, the EPA intends for these provisions to reduce the market for smuggled ODS, which will reduce illegal imports.

The Agency received supportive comments from The Alliance and National Refrigerants. EIA submitted supportive comments also requesting that the EPA prohibit the sale of disposable cylinders. EIA states that the majority of known ODS smuggling cases are facilitated by the use of disposable cylinders, also referred to as ''non-refillable containers.'' Disposable cylinders are containers charged with refrigerant, sold, used for servicing or commissioning equipment, and then discarded. The Agency responds that EIA's suggestion is beyond the scope of this rulemaking because it was not included in the proposed rule and that the Agency does not believe it prudent at this time to act on the suggestion without soliciting input from refrigerant distributors and other affected stakeholders. The Agency may consider in the future whether a ban on disposable cylinders could guard against illegal import of refrigerants and may consider proposing such a prohibition in a future rulemaking.

EIA also commented that the EPA should work more closely with other agencies to help prevent illegal imports. The EPA responds that the Agency has worked closely with other agencies and in particular with CBP to ensure compliance with the phaseout of ODS under sections 604, 605, and 606 of the CAA. Historically, the Agency has participated on interagency tasks forces to address potential illegal imports of ODS. Recent illegal imports have demonstrated to the Agency that additional regulatory clarity is needed to address the potential for domestic distribution of illegally imported material, as such material would generally be considered consumption. After considering all the comments on this issue, the Agency is finalizing its proposal to prohibit the sale or distribution or offer for sale or distribution of illegally imported ODS in 40 CFR 82.4(s) and 82.15(g)(8), for the reasons discussed above.

*I. Electronic Reporting and Updates to Other Provisions of the Production and Consumption Control Program*

The EPA proposed to require the use of an electronic reporting system for producers, importers, exporters, transformers, and destroyers of ODS in 40 CFR 82.3, 82.13, 82.14, 82.23, and 82.24 and to clarify the certification requirements for methyl bromide quarantine and preshipment uses in 40 CFR 82.4 and 82.13. The EPA did not receive any adverse comments on these proposals. For the reasons discussed below, the EPA is finalizing these provisions as proposed.

i. Electronic Reporting and Changes to Reporting Requirements in 40 CFR 82.3, 82.13, 82.14, 82.23, and 82.24

The EPA proposed to require that reports, petitions, and related reports be submitted through Central Data Exchange (CDX), and the Agency proposed to consolidate and harmonize requirements for class I and II substances for ease or reporting. The Agency received supportive comments on this proposal and no adverse comments. For the reasons described below, the Agency is finalizing these requirements as proposed.

The EPA is finalizing as proposed the requirements for the use of the Agency's CDX to submit reports electronically. The compliance date for this requirement is 30 days after the publication of the final rule in the **Federal Register**, in part to ensure that stakeholders have adequate time to register in CDX. To achieve this, the EPA is updating the definition of ''Administrator'' in 40 CFR 82.3, defining ''Central Data Exchange'' in § 82.3, adding a new section at § 82.14 with instructions on the process for electronic reporting, and revising provisions at §§ 82.13(c) and 82.24(a)(1) to indicate that reporters must comply with the requirement to report electronically through CDX. Thus, the EPA is amending the definition of ''Administrator'' to note that electronic reporting is required for the reports and petitions that are available in CDX, which includes the majority of reports under subpart A, as well as the import petitions and the Certification of Intent to Import ODS for Destruction. The EPA is also adding the definition of ''Central Data Exchange'' in § 82.3 and providing instructions on how to register in CDX and submit information electronically in § 82.14.

The Agency has provided the option of electronic reporting for most submissions since 2008, and many stakeholders have transitioned to an electronic reporting system. The regulatory changes reflect the current practices of the vast majority of reporting entities. Electronic reporting allows for faster review and transmission of submissions to the EPA. Additionally, all information submitted electronically is linked in an improved tracking system, which facilitates document management and allows companies to more easily manage past and future submissions.

The EPA monitors company compliance, in part, through the recordkeeping and reporting regulations at 40 CFR 82.13 and 82.24. The regulatory changes in this final rule will

[45] The addition of these prohibitions to the regulatory text does not change any regulated entity's obligations under the existing statutory and regulatory provisions, nor does it limit the Agency's ability to enforce, or to take measures to assure compliance with, the existing provisions.

ease the reporting burden. For example, the EPA is removing reporting elements in 40 CFR 82.23(a)(i)(F) and 82.24(b)(1)(iv) and (c)(1)(vi) that require the reporter to calculate values from data already provided. Requiring this is unnecessary because the requirement to report electronically through CDX means these values can automatically be calculated and populated. This will save reporting entities time in reporting and reduce errors in submissions. The EPA is also finalizing a change in 40 CFR 82.13(h)(1)(iii) and 82.24(d)(1)(iii)[46] to report the quantity (rather than the percentage) of used, recycled, or reclaimed class I and class II substances. This change improves consistency with the importer reporting requirements and corresponds with the way companies report their annual data. It also streamlines the exporter reporting forms by eliminating the need for an entity to calculate a percentage. The EPA is also removing references to expended and unexpended production and consumption allowances at 40 CFR 82.13(f)(3)(iv) and (g)(4)(vii), as they can be calculated automatically with the use of electronic reporting forms.

Other regulatory changes to the recordkeeping and reporting provisions harmonize the requirements for class I and class II substances. For example, under the existing regulations, the timeframe that submitters have to make revisions to forms for class I and class II substances is not the same. The EPA is adding a provision for reports for class I substances under 40 CFR 82.13 that revisions can be made within 180 days of the end of the applicable reporting period. This change is consistent with the previously established regulations in 40 CFR 82.24 for revisions to reports for class II substances. Likewise, the EPA is revising 40 CFR 82.13 and 82.24 to clarify that forms for both class I and class II ODS must be submitted electronically through CDX within 45 days of the end of the control period to harmonize the reporting timeframes for the two classes of ODS.

The EPA is amending 40 CFR 82.24(d)(1) to clarify that exporters who submit a Request for Additional Consumption Allowances (RACA) must still include that export on their quarterly exporter report. Under 40 CFR 82.20, companies may submit a request for additional consumption allowances if they export class II substances that were previously produced in or imported into the United States using consumption allowances. The existing regulatory text at 40 CFR 82.24(d)(1) excluded quarterly reporting for those RACAs even though exporters do typically include those exports in their quarterly reporting. Thus, for ease of review by the EPA, and for consistency of reporting by exporters, the Agency is finalizing a requirement that all exports be included in the quarterly export report even if the EPA had issued additional consumption allowances to the exporter for that export. The EPA is also amending the reporting requirements at 40 CFR 82.13(v) to add the contact information for the source company from which the material was purchased and the laboratories to whom the material is sold. Lastly, the EPA is revising class I reporting requirements for exporters by replacing the term ''Employee Identification Number'' with the correct term ''Employer Identification Number'' in 40 CFR 82.13(h).

ii. Changes to Methyl Bromide Provisions in 40 CFR 82.4 and 82.13

As discussed in more detail in the preamble to the proposed rule, the EPA proposed several changes to the QPS provisions under section 604(d)(5) of the CAA. In part, these changes were proposed in response to the misuse of QPS methyl bromide by applicators and distributors in the U.S. Virgin Islands and Puerto Rico, which led to human exposures and life-altering illnesses for some of the people exposed. Methyl bromide is highly toxic. Studies in humans indicate that the lung may be severely injured by the acute (short-term) inhalation of methyl bromide. Acute and chronic (long-term) inhalation of methyl bromide can lead to neurological effects in humans. To help prevent future exposures stemming from misuse of QPS methyl bromide and protect human health, the EPA is finalizing revisions to the QPS provisions to: (1) Clarify that it is a violation to sell or use methyl bromide produced under the QPS exemption for any uses other than QPS applications; (2) extend the existing certification requirement to all purchasers of QPS methyl bromide; and (3) make non-substantive changes to 40 CFR 82.4 and 82.13 to improve readability. The Agency did not receive any comments on these proposed provisions. For the reasons discussed below, the Agency is finalizing these revisions as proposed.

The EPA's regulations implementing section 604(h) of the CAA set January 1, 2005 as the production and import phaseout date for methyl bromide (40 CFR 82.4(b), (d)). Certain exceptions apply, including an exemption for methyl bromide produced or imported for quarantine and preshipment applications. Quarantine applications and preshipment applications are both defined at 40 CFR 82.3. Quarantine applications are treatments to prevent the introduction, establishment, and/or spread of quarantine pests (including diseases), or to ensure their official control. These can include commodities entering or leaving the United States or any State (or political subdivision thereof). Preshipment applications are those non-quarantine applications applied within 21 days before export to meet the official requirements of the importing country or existing official requirements of the exporting country. The recordkeeping and reporting regulations relating to QPS methyl bromide appear at 40 CFR 82.13 and establish specific requirements for producers, importers, distributors, and applicators, including in some instances a written certification that the methyl bromide will be used only for QPS applications in accordance with the definitions in 40 CFR 82.3.

First, the Agency is adding an express statement at 40 CFR 82.4(r) that no person may sell or use QPS methyl bromide for any purpose other than QPS applications. The existing regulations at 40 CFR 82.13(y)(1) and (z)(2) require certification statements from distributors, applicators, commodity owners, shippers or their agents that methyl bromide ''will be used only for quarantine and preshipment applications.'' Similarly, 40 CFR 82.13(f)(2)(xviii) and (xix) describe the exempted quantities of methyl bromide as ''produced solely for quarantine and preshipment applications.'' The EPA interprets this existing text as already prohibiting the use of methyl bromide produced or imported under the QPS exemption for any uses other than QPS applications. However, the EPA is adding an express statement of the prohibition at 40 CFR 82.4(r) to provide clarity to this prohibition; this revision does not change the existing requirements. The revisions at 40 CFR 82.4(r) also explicitly state that every kilogram of methyl bromide produced or imported under the authority of the QPS exemption and sold or used for a use other than QPS is a separate violation.

Second, the EPA is finalizing as proposed the extension of the existing certification requirement to all

[46] The preamble to the proposed rule discussed the EPA's intent to make this change at both 40 CFR 82.13(h) and 82.24(d), though the regulatory text accompanying the proposal contained text for only 40 CFR 82.13(h)(1)(iii). In order to ensure that the regulatory revisions fully implement the objective described in the preamble to the proposal, the EPA is revising 40 CFR 82.24(d)(1)(iii) in this final action to include the prohibition described above.

purchasers of QPS methyl bromide, including purchasers who purchase for further distribution. Under the existing recordkeeping and reporting requirements at 40 CFR 82.13(f)(2)(xviii), producers of methyl bromide must maintain certifications that methyl bromide produced for QPS applications has been purchased by distributors or applicators to be used only for QPS applications. Under 40 CFR 82.13(y), distributors of QPS methyl bromide must certify when they purchase or receive QPS material from producers and importers that the controlled substances will be used only for QPS applications. Applicators of QPS methyl bromide must also certify to distributors that the controlled substance will only be used for QPS applications under the existing regulation at 40 CFR 82.13(z).

The purpose of this certification requirement when established was to ensure that anyone selling or purchasing QPS methyl bromide verified that they will comply with requirements under Title VI of the CAA (see 66 FR 37760, July 19, 2001). However, the EPA identified a gap in this certification chain when the material is sold through multiple distributors before reaching the applicator. When one distributor sells to a second distributor, neither distributor was required to certify or maintain a certification that the material will be used only for a QPS application. The sales and misapplications of QPS methyl bromide in Puerto Rico and the U.S. Virgin Islands demonstrate that distributors may not have been aware of, or may have ignored, the limitations on the use of this material. The EPA is extending the certification requirement to all purchasers of QPS methyl bromide. This is meant to help ensure that distributors are knowledgeable about the requirements for the sale of QPS methyl bromide. Distributors are more likely to make themselves aware of those requirements, and to be mindful of the fact that QPS methyl bromide can be used only for QPS applications, if they are required to sign a certification addressing these requirements and to provide it before each purchase. This will fill the gap in the distribution chain and ensure the original intent of the regulation is implemented.

More specifically, the EPA is extending the existing requirement in 40 CFR 82.13(y) that every distributor of QPS methyl bromide certify to the producer or importer from whom the distributor purchased or received the material that quantities purchased or received will be sold only for quarantine applications or preshipment applications. The EPA is extending this requirement to also require such a certification when the material is purchased or received from a *distributor.* Likewise, the EPA is extending the existing requirement that such distributors receive from any applicator, to whom they sold or delivered the methyl bromide, a certification, prior to delivery of the quantity, stating that the quantity will be used or sold solely for quarantine or preshipment applications in accordance with definitions in subpart A. The EPA is extending this requirement to sales and deliveries to any *exporter or distributor.* The Agency is not making parallel revisions for exporters because the invoice or sales agreement required in 40 CFR 82.13(h)(2)(viii) is adequate for this purpose.

The EPA is also finalizing a revision that the distributor certify that the distributor is *selling* the material for a QPS application rather than certify that it will be *used* for a QPS application, as is required in the existing regulations. This will better align the rule text with the distributor's role. The proper sale of the material is within the distributor's control whereas the use may not be, given that the material may be resold by another distributor and applied by an end user or third-party applicator.

Third, the EPA is finalizing as proposed non-substantive changes to 40 CFR 82.4 and 82.13 that improve readability and clarity. The EPA is editing 40 CFR 82.13(h)(2), which contains the recordkeeping requirements for exporters of certain ''types'' of methyl bromide by companies that did not produce the material. The EPA is making edits to clarify what is meant by ''type'' of methyl bromide. The final rule more clearly states that the provision requires reporting of the quantity of methyl bromide exported for transformation, destruction, critical use, and QPS uses. These are the only exempted uses of methyl bromide, and this statement matches the information requested in the existing reporting forms. The EPA is removing the requirement in the existing provision that exporters state how much of the exports are of ''used, recycled or reclaimed material.'' Unlike other ODS, methyl bromide is a product that is registered and controlled under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and thus is not sold ''used'' or ''recycled'' or ''reclaimed.'' Therefore, these adjectives are not applicable to methyl bromide and this phrase is not needed.

Lastly, the EPA is replacing references to ''class I, Group VI controlled substances'' with ''methyl bromide'' where appropriate for readability throughout 40 CFR 82.4 and 82.13. ''Class I, Group VI controlled substances'' is how methyl bromide is classified under the EPA's regulations in appendix A to subpart A, but methyl bromide is the only compound within this category. Using the common name will improve the readability of the QPS regulations.

### *J. Addition of Polyurethane Foam Systems Containing CFCs to the Nonessential Products Ban*

The EPA proposed to add polyurethane foam systems containing CFCs to the list of nonessential products at 40 CFR part 82, subpart C. The Agency received supportive comments from The Alliance and EIA and is finalizing as proposed for the reasons discussed below. This provision has the effect of prohibiting the sale or distribution, or offer for sale or distribution, of any polyurethane foam system containing CFCs in interstate commerce.

Historically, CFC–11, CFC–12, and CFC–114 were used as foam blowing agents, but CFC production has been globally phased out since 2010. Nevertheless, an unexpected increase of CFC–11 emissions has been detected in the atmosphere. Recent reports indicate that this is the result of new production of CFC–11 in China likely for use in foams.[47] [48] [49] [50] [51] Except for feedstock applications, production and import of CFCs has been prohibited in the United States and many other countries since 1996 [52] and globally production and consumption of CFCs have been phased out since 2010 under the Montreal

[47] Montzka, S.A., Geoff S. Dutton, G.S., Yu, P., Ray, E., Portmann, R.W., Daniel, J.S., Kuijpers, L., Hall1, B.D., Mondeel, D., Siso, C., Nance, J.D., Rigby, M., Manning, A.J., Hu, L., Moore, F., Miller, B.R., and Elkins, J.W. ''An unexpected and persistent increase in global emissions of ozone-depleting CFC–11'' Nature 557; (2018): 413–429.

[48] WMO. (2018) Scientific Assessment of Ozone Depletion: 2014 World Meteorological Organization Global Ozone Research and Monitoring Project—Report No. 55 pg. 1–416. Available at: *https://www.esrl.noaa.gov/csd/assessments/ozone/2014/report.html.*

[49] Environmental Investigation Agency (EIA). (2018) Blowing It: Illegal Production and Use of Banned CFC–11 in China's Foam Blowing Industry. Available at: *https://eia-global.org/reports/20180709-blowing-it-illegal-production-and-use-of-banned-cfc-11-in-chinas-foam-blowing-industry.*

[50] Rigby, M. et al. ''Increase in CFC–11 emissions from eastern China based on atmospheric observations.'' Nature 569.7757 (2019): 546–550.

[51] UNEP. (2019) Decision XXX/3 TEAP Task Force Report on Unexpected Emissions of Trichlorofluoromethane (CFC–11). Available at *http://conf.montreal-protocol.org/meeting/mop/mop-31/presession/Background%20Documents/TEAP-TF-DecXXX-3-unexpected_CFC11_emissions-september2019.pdf.*

[52] Historically, limited amounts of CFC production and consumption were authorized after the phaseout for essential uses.

Protocol. The nonessential products ban implemented under section 610 of the CAA already prohibits sale or distribution, and the offer for sale or distribution, of certain products manufactured with or containing CFCs, including most plastic foam products. After reviewing the EPA's import restrictions and the nonessential product ban, the Agency identified the potential for sale or distribution, or offer for sale or distribution, of imported polyurethane foam systems [53] containing illegally-produced CFCs. The EPA is not currently aware of any imports of CFC–11 polyurethane systems into the United States, but the Agency is finalizing revisions to amend the list of nonessential products in 40 CFR 82.66 to address this gap and to ensure that the United States does not inadvertently contribute to demand for CFCs and prevent CFC emissions in the United States. The EPA is also adding a definition of ''polyurethane foam systems'' in 40 CFR 82.62 to correspond with the amendment to the list of nonessential products.

The EPA is also adding in 40 CFR 82.64(h) a prohibition on the sale or distribution, or offer for sale or distribution, of the products identified as being nonessential in § 82.66(f). While the EPA did not include specific text for the prohibition at 40 CFR 82.64(h) in the proposal, the Agency discussed in the proposal that the proposed changes would prohibit the sale or distribution, or offer for sale or distribution, of polyurethane foam systems containing CFCs (see, *e.g.,* 84 FR 41535, August 14, 2019). In order to ensure that the regulatory revisions fully implement the objective described in the preamble to the proposal, the EPA is revising 40 CFR 82.64(h) in this final action to include the prohibition described above. This revision is wholly consistent with the description of the EPA's intent for this regulation as set forth in the preamble to the proposal.

With respect to the added definition, the EPA is defining ''polyurethane foam systems'' in 40 CFR 82.62 as an item consisting of two transfer pumps that deliver ingredients (polyisocyanate or isocyanate from one side and a mixture including the blowing agent, catalysts, flame retardants, and/or stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions. In such systems, the components are sent to a mixing gun and dispensed as foam directly to a surface such as a roof or tank, usually to provide thermal insulation. These polyurethane foam systems are packaged and sold as complete systems, containing all the ingredients including the polyisocyanate and the blowing agent.

A polyurethane foam system is not a bulk ODS because the ODS is contained in a system and packaged as a product. Under the regulations in subpart A, bulk CFCs are a ''controlled substance'' and thus are subject to import controls such as the consumption allowance regime under 40 CFR 82.4. However, the definition of ''controlled substance'' in 40 CFR 82.3 excludes ''any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture.'' Because the CFCs in a polyurethane foam system are contained in a system that is sold as a product, they are not subject to the same import controls as bulk CFCs. If polyurethane foam systems are imported and sold through distribution chains in the United States, they could result in emissions of CFCs during their use. These foam systems are also distinct from a plastic foam product in that the foam product has already been blown. Plastic foam products manufactured with or containing a CFC are already listed as a nonessential product at 40 CFR 82.66(c) and are banned from sale or distribution, and from being offered for sale or distribution, in interstate commerce at 40 CFR 82.64(c).

The revisions to the nonessential product ban in this rulemaking are made under section 610 of the CAA, titled ''Nonessential products containing chlorofluorocarbons.'' That statutory section directs the EPA to issue regulations identifying nonessential products that ''release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal)'' and ''prohibit[ing] any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce.'' Section 610(b)(1) and (2) specify that this prohibition shall apply to ''chlorofluorocarbon-propelled plastic party streamers and noise horns'' and ''chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment.'' Section 610(b)(3) provides that the prohibition shall apply to other consumer products determined by the EPA to release class I substances into the environment (including releases during manufacture, use, storage, or disposal) and to be nonessential.

Section 610 further states that in determining whether a product is nonessential, the EPA shall consider the following criteria: ''the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.'' The CAA requires the EPA to consider each criterion listed in section 610 but does not establish either a ranking or a methodology for comparing their relative importance, nor does it require that any minimum standard within each criterion be met. Thus, section 610 provides the EPA discretion in determining how to consider the listed criteria and the relative weight to give to each. In addition, section 610 gives the EPA latitude to consider ''other relevant factors'' beyond the specific criteria set forth in the statute.

As indicated above, polyurethane foam systems are products that release blowing agent to the environment during use. If CFCs are used as the blowing agent, they would be emitted during the use of such systems. In taking this final action to add polyurethane foam systems containing CFCs as a nonessential product, the EPA considered the purpose or intended use of these systems, the technological availability of substitutes, and safety and health considerations. The first criterion, the purpose or intended use, relates to the importance of the product, in terms of benefits to society, specifically whether the product is sufficiently important that the benefits of its continued production outweigh the associated danger from the continued use of a class I ODS in it, or alternatively, whether the product has little benefit, such that even a lack of available substitutes might not prevent the product from being considered nonessential. While foam products, particularly closed-cell rigid polyurethane foams, have provided benefits to society, for more than two decades U.S. manufacturers have replaced the use of CFCs in foam production without compromising these benefits.

The intended use of polyurethane foam systems is often for insulation in buildings and residences. While insulation has benefits, such as reducing energy use and costs associated with heating and cooling, in previous rulemakings the EPA's consideration of this criterion has also been informed by consideration of whether use of the class I substance in the product is nonessential (see 58 FR 4474, January 15, 1993 and 66 FR 57514, January 14, 2002). For example, use of a class I

[53] These systems are also referred to as polyols, which are defined in Montreal Protocol reports as pre-blended foam chemicals.

substance in a product may be considered nonessential where substitutes are readily available, even if the product itself is important (see 58 FR 4474, January 15, 1993, and 66 FR 57514, January 14, 2002). This is reasonable because if the social benefits from a product can be provided by a similar product without use of the class I substance, that tends to support the conclusion that the product using the class I substance is nonessential. U.S. manufacturers successfully transitioned from using class I substances for foam products more than two decades ago, meaning that they were able to also replace the use of class I substances in foam blowing systems. Moreover, the same U.S. industry also replaced the use of class II substances in these plastic foam products. There are alternative foam blowing agents that can be used in foam systems as well as alternative methods and products for insulating buildings and residences that do not use class I substances. For instance, there are a variety of insulation types that can be applied throughout the building envelope to save energy and reduce leaks in buildings and homes with a similar R-value as a polyurethane foam system intended for use in insulation. The R-value refers to an insulating material's resistance to conductive heat flow and is measured or rated in terms of its thermal resistance. Alternative non-polyurethane foam insulation products with similar R-values include fiberglass, cellulose, and rigid foam boards.

For the criterion of technological availability of substitutes, the EPA considers the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing class I substances. As first explained in 1993, the EPA interprets this criterion to include both currently available substitutes and potentially available substitutes (see 58 FR 4474, January 15, 1993). There are numerous substitutes for CFCs in polyurethane foam systems that are listed as acceptable under the SNAP program and have been widely used by the foam industry since the mid-1990s.[54] As the EPA stated in the initial class I nonessential products rule, in sectors where the great majority of manufacturers have already shifted to substitutes, the use of a class I substance in that product may very well be nonessential (see 58 FR 4474, January 15, 1993). As in previous considerations of this criterion, in this rulemaking the EPA is examining sectors where the market has previously switched to substitutes. The class I nonessential products ban that included plastic foam products was promulgated more than two decades ago and there were also subsequent restrictions on the use of class II substances for polyurethane foam systems. All U.S. manufacturers have therefore switched from CFCs to non-ODS alternatives such as hydrofluorocarbons, hydrofluoroolefins, hydrocarbons, carbon dioxide, water, and other compounds listed as acceptable substitutes under SNAP in foam blowing.

For the criteria of safety and health, as in prior rules related to the nonessential product ban (see 66 FR 57514, January 14, 2002), the EPA interprets these criteria to mean the effects on human health and the environment of products releasing CFCs or their substitutes. As in past rules, in evaluating these criteria, the EPA considered the direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ODP, flammability, toxicity, corrosiveness, energy efficiency, ground-level air hazards, and other environmental factors (see 66 FR 57514, January 14, 2002). The ODPs of CFC–11, CFC–12, and CFC–114 are 1. For the purposes of evaluating other direct and indirect effects for foam systems, there is not a substantive difference between foam systems and plastic foam products, given that the former is a precursor for the latter. In developing the initial class I nonessential products ban, the Agency provided information in the docket concerning the known alternatives at that time. Subsequently, alternatives that were already in use, as well as additional alternatives for foam-blowing, have been evaluated and listed as acceptable under the SNAP program, such as hydrofluorocarbons, hydrofluoroolefins, hydrocarbons, carbon dioxide, and water. The current SNAP list of acceptable substitutes is more expansive than what was considered in the initial class I nonessential products ban. The range of alternatives includes those that have ODPs ranging from zero to between 0.00024 and 0.00034, significantly lower than the ODPs of CFC–11, CFC–12, and CFC–114, all of which are 1. The Montreal Protocol's TEAP also provides a quadrennial global assessment of alternatives for foam blowing, including information concerning many of the direct and indirect factors identified above.[55] The EPA considered all these sources of information when deciding whether to add to the list of banned products foam systems that contain phased-out CFCs and considered that U.S. industry has already successfully transitioned away from using CFCs.

Considering all these factors together, the EPA concludes that polyurethane foam systems containing CFCs meet the criteria in section 610 of the CAA for listing as a nonessential product and is adding them to the list of nonessential products in 40 CFR 82.66(f) and prohibiting their sale in 40 CFR 82.64(h).

*K. Updates to 40 CFR 82.3, 82.104, and 82.270 Related to Destruction*

The EPA proposed to update and harmonize definitions related to ODS destruction in 40 CFR 82.3, 82.104, and 82.270, by adding to the list of destruction technologies and amending the definition of ''destruction'' to allow inclusion of destruction technologies that incidentally result in commercially useful end products. The EPA received supportive comments from The Alliance on the proposal to update the list of destruction technologies consistent with the Montreal Protocol, and no adverse comments on this aspect of the proposal. For the reasons discussed below, the EPA is finalizing these revisions as proposed.

The EPA added a definition of the term ''destruction'' to 40 CFR 82.3 in 1993 (see 58 FR 65047–65048, December 10, 1993). The existing regulatory definition of ''destruction'' includes a limited list of technologies that may be used for destruction. When the EPA established the initial list of destruction technologies, the Agency also noted that it intended to propose authorizing use of additional destruction technologies through future rulemakings, as such technologies are approved by the Parties (see 58 FR 65049, December 10, 1993). Revising the definition of destruction to include these technologies will not affect the applicability of other regulatory requirements relating to use of these technologies.

In the revisions finalized in this rulemaking, the Agency is updating the definition of ''destruction'' in 40 CFR 82.3, as proposed, to add destruction technologies that have been approved by the Parties to the Montreal Protocol since the issuance of the 1993 rule. The Agency is adding these destruction

[54] The current list of SNAP-approved substitutes for foam blowing is available here: *https://www.epa.gov/snap/substitutes-foam-blowing-agents.*

[55] UNEP. 2018 TEAP Report Available at *http://conf.montreal-protocol.org/meeting/oewg/oewg-41/presession/Background-Documents/TEAP_2018_Assessment_Report.pdf.*

technologies so that industry in the United States has a greater variety of technology options for the destruction of ODS. All of these technologies are capable of destroying ODS or converting them into byproducts and can be grouped into three broad categories: Incineration, plasma, and other non-incineration technologies. The EPA is adding the following incineration technology: Porous thermal reactor. Porous thermal reactors are high-temperature systems with a porous layer that facilitates the decomposition of ODS and other industrial waste gases. Destruction takes place in an oxidizing atmosphere with a continuous supply of an auxiliary gas. For plasma, the EPA is adding nitrogen plasma arc, portable plasma arc, argon plasma arc, microwave plasma, and inductively coupled radio frequency plasma to allow for greater industry flexibility for using plasma destruction technologies. Although they reach higher temperatures than incineration technologies, plasma technologies are considered to be non-incineration technologies because they involve the thermo-chemical decomposition of organic material in a limited oxygen environment. Lastly, the EPA is also adding four non-incineration technologies: Chemical reaction with hydrogen and carbon dioxide, gas phase catalytic de-halogenation, superheated steam reactor, and thermal reaction with methane.

The EPA is also amending the definition of ''destruction'' to modify the statement that the process must not result in a commercially useful end product. The EPA is finalizing revisions to harmonize the definitions of the term ''destruction'' at 40 CFR 82.3, 82.104, and 82.270. These two existing definitions are intended to convey the same meaning but are slightly different. For instance, the definition in 40 CFR 82.104 refers to a code of good housekeeping contained in a United Nations Environment Programme report while the definition in 40 CFR 82.3 does not. In addition, both provide a list of destruction technologies approved under decisions of the Parties to the Montreal Protocol. The list at 40 CFR 82.3 contains seven technologies while the list at 40 CFR 82.104 contains five.[56] Both lists are out of date in that they fail to include certain technologies that can destroy ODS or convert them into byproducts and have been approved under more recent decisions of the Parties. Similarly, the existing prohibition on disposing of halons in 40 CFR 82.270 includes an exception for destruction that also provides an outdated list of destruction technologies. The EPA is therefore harmonizing these three definitions of destruction and updating the list of destruction technologies to allow the use of more destruction technologies in the United States. An explanation of these technologies appears in the EPA's report on destruction ''ODS Destruction in the United States and Abroad,'' which is available in the docket.

The EPA is also revising the definition of ''destruction'' in 40 CFR 82.104 and the prohibition in 40 CFR § 82.270 by removing the outdated lists found in those provisions and adding a cross reference to the list of destruction technologies in 40 CFR 82.3. This conforms the list of destruction technologies that can be used across subparts A, E, and H of 40 CFR part 82. The destruction technologies finalized through this action in § 82.3 are also applicable to these other subparts, although the EPA notes that the listing of municipal waste incinerators in the existing regulations at 40 CFR 82.3 is limited to the destruction of foams, and thus the added cross reference to 40 CFR 82.3 in § 82.270 does not make that technology available for the exception for the destruction of halons at 40 CFR 82.270.

As noted above, the EPA is also amending the definitions of ''destruction'' at 40 CFR 82.3 and 82.104 to modify language regarding commercially useful end products. The EPA is also editing provisions in 40 CFR 82.104 (subpart E, ''The Labeling of Products Using Ozone-Depleting Substances'') and 40 CFR 82.270 (subpart H, ''Halon Emissions Reduction'') to conform with the changes in this definition. The previously existing definition contained a restriction that a destruction technology cannot result in a commercially useful product. The EPA is revising that restriction in part because one of the destruction technologies that this action adds to the definition of destruction breaks down ODS into substances that have commercial viability. The process ''Chemical Reaction with hydrogen and carbon dioxide'' converts fluorinated compounds to hydrofluoric acid, hydrochloric acid, carbon dioxide, chlorine, and water. The reaction technology separates and collects the byproducts at a high purity allowing for them to be sold, potentially improving the economics of using this technology. Because the EPA has concluded that a process that would otherwise qualify as ''destruction'' should not fail to qualify simply because one of the outputs is a commercially useful end product, it is revising the definition of ''destruction'' so that the mere existence of such an end product does not bar the technology from being used. The revisions further clarify that for destruction processes, the commercial usefulness of the end product is secondary to the act of the ODS destruction. Thus, the changes to the definition of destruction recognize that while production of a commercially useful end product is not the primary purpose of a destruction process, the destruction process may nevertheless result in a commercially useful product.

The clarification that the usefulness of an end product should be secondary to ODS destruction is intended to maintain a distinction between the terms ''destruction'' and ''transformation.'' The EPA established the definitions of ''destruction,'' ''production,'' and ''transformation'' in the 1993 rule (see 58 FR 65048–65049, December 10, 1993). Among other things, the Agency excluded from the definition of ''production'': (1) Amounts of controlled substances that are destroyed using approved destruction technologies and (2) the manufacture of a controlled substance that is subsequently transformed. Similarly, the regulatory import prohibitions excluded both amounts destroyed, and amounts transformed. The definition of ''destruction'' noted that it does not result in a commercially useful end product whereas the definition of ''transformation'' noted that it occurs in a process specifically for the manufacture of other chemicals for commercial purposes. Thus, the original distinction in the definitions of these two terms related to whether the process was undertaken to intentionally result in a commercially useful end product or not. The distinction mattered (and is still relevant) because as explained in the 1993 rule, if a portion of the ODS remained after destruction, the destroyed portion could be excluded from production under the destruction exclusion, but the material had to be entirely consumed in the process (except for trace quantities) to qualify for the transformation exclusion (see 58 FR 65048, December 10, 1993).

Intent has been an important aspect of the distinction between ''destruction'' and ''transformation'' since the EPA first promulgated these definitions. For example, in the 1993 rule establishing the definition of ''destruction,'' in a discussion of whether heat or energy are commercially useful end products, the

[56] Similarly, the definition of ''completely destroy'' at 40 CFR 82.104 refers to using ''one of the five'' destruction processes approved by the Parties. The EPA is also removing this outdated language.

Agency said ''[t]he intent of the destruction process is to destroy the substance, for which a byproduct in the way of heat or energy may be produced, rather than production of an end product being the goal of the destruction activity.'' (See 58 FR 65049, December 10, 1993). This discussion recognizes that something useful may incidentally result from destruction. Similarly, the 1993 rule recognized the possibility of a destruction technology converting ODS into other useful substances. In explaining the inclusion of reactor cracking as a destruction technology, the EPA stated ''[s]ince 1983, this process has treated waste gases resulting from the production of CFCs. The gases are converted to hydrofluoric acid, hydrochloric acid, carbon dioxide, chlorine, and water. The two acids are usable in-house and/or marketable, and the chlorine is scrubbed, leaving only water vapor, oxygen, and carbon dioxide as waste gases.'' (See 58 FR 65047, December 10, 1993).

Consistent with that recognition and with the inclusion of a new destruction technology with commercially useful end products, the EPA concludes that the creation of a commercially useful end product should not in itself preclude a technology from being listed in the definition of ''destruction.'' The creation of such an end product does not change whether chemical decomposition occurs. Many destruction processes incinerate the chemicals, but other technologies break down the controlled substance. In breaking down the chemical, it is possible that the result includes a commercially valuable end product that is not a controlled substance. ''Transformation,'' on the other hand, means to use and entirely consume a controlled substance in the manufacture of other chemicals for commercial purposes. Thus, the purpose is to create new compounds using the ODS as a feedstock rather than the decomposition of ODS as a waste.

Accordingly, to update the regulatory text but preserve a distinction between transformation and destruction, the EPA is amending the definitions of ''destruction'' at 40 CFR 82.3 and 82.104 by removing the previously existing restriction that a destruction technology cannot result in a commercially useful product and by also adding a clarification that, while destruction might result in a commercially useful end product, such usefulness would be secondary to the act of destruction.

*L. Removal of Obsolete Provisions in 40 CFR 82.3, 82.4, 82.9, 82.10, 82.12, 82.13, 82.16, and 82.24*

The EPA proposed to remove obsolete provisions from several sections of part 82. The Agency received supportive comments from The Alliance on this proposal and no adverse comments. For the reasons described below, the EPA is finalizing the removal of outdated provisions for class I ODS related to Article 5 allowances, transformation and destruction credits, and transfers of allowances issued prior to the phaseout as proposed for ease of reading and to reduce confusion. The EPA is also removing definitions and reporting provisions for HCFC–141b exemption allowances and export production allowances.

i. Class I Article 5 Allowances

Before the global phaseout of CFCs and other class I ODS, the EPA historically had provided additional production allowances, known as ''Article 5 allowances,'' for production of certain class I ODS for export to and use by Article 5 countries consistent with the Montreal Protocol.[57] These are countries that were subject to a later production and consumption phaseout schedule than non-Article 5 countries such as the United States. Section 82.9(a) of the existing regulations granted Article 5 allowances until 2010, when the phaseout of these substances was completed in Article 5 countries. Because these provisions no longer have any purpose or effect, the EPA is removing the schedule for issuing Article 5 allowances found at 40 CFR 82.9(a) and the corresponding recordkeeping and reporting requirements in 40 CFR 82.13(f)(2)(v) and (f)(3)(ix). Section 82.9(b) of the existing regulations provides that holders of Article 5 allowances may produce class I controlled substances for export to Article 5 countries and transfer Article 5 allowances. Because there are no more holders of Article 5 allowances, the EPA is removing these provisions as well.

ii. Class I Allowances and Credits Related to Transformation and Destruction

Before the domestic phaseout of class I ODS, the EPA historically had provided additional production allowances in cases where class I ODS were destroyed or transformed. Because these provisions no longer have any purpose or effect, the EPA is removing these provisions and removing references to these obsolete allowances in certain other provisions.

Section 82.9(e) of the existing rules contains the provisions related to such allowances, including detailing the information needed in a request for allowances based on having destroyed or transformed a specified quantity of class I ODS. The EPA stopped issuing such allowances in 1996 for all class I controlled substances (except methyl bromide) and in 2005 for methyl bromide. The EPA is removing 40 CFR 82.9(e) and related obsolete reporting and recordkeeping requirements in 40 CFR 82.13(f)(2)(iv), (g)(1)(xv), and (g)(4)(xi) and (i).

Section 82.9(f) authorized persons who were nominated for an essential use exemption to obtain destruction and transformation credits between 1996 and 2000. The EPA established these provisions because of the difference between the phaseout date for class I substances under the CAA and the phaseout date for the same substances under the Montreal Protocol. These provisions include a description of the information needed and the grounds for which the EPA can disallow the request. Section 82.4(f) addresses production and import with destruction and transformation credits. The EPA stopped issuing such credits in 2000. Because these provisions no longer have any purpose or effect, the EPA is removing 40 CFR 82.4(f) and 82.9(f).

iii. Class I Consumption Allowances

Before the phaseout of class I ODS, the EPA historically had provided additional consumption allowances where class I ODS were exported, transformed or destroyed, or where an amount of production was transferred from another Party to the Montreal Protocol. Section 82.10 contains provisions related to these additional consumption allowances, including detailing the information needed in a request for them. The EPA stopped issuing those allowances in 1996 for all class I controlled substances (except methyl bromide) and in 2005 for methyl bromide. Because these provisions no longer have any purpose or effect, the EPA is removing 40 CFR 82.10 in its entirety. The EPA is also finalizing the removal of references to 40 CFR 82.10 from the definition of ''consumption allowance'' in 40 CFR 82.3, as well as from the provisions in 40 CFR 82.9(c) and 82.13(h)(1) and (2) as those references are no longer applicable. As discussed earlier in this document, the EPA is entirely removing 40 CFR 82.9(e) and (f) in this action, and it is also removing § 82.13(i), as its provisions are no longer needed. Accordingly, the

[57] For the purposes of the Montreal Protocol, this is called production for basic domestic need.

references to § 82.10 in those provisions will also be removed.

iv. Transfer of Class I Allowances

The EPA historically had allowed for the transfer of production and consumption allowances for class I substances in various ways. Under section 607 of the CAA, the EPA was required to issue regulations providing for inter-pollutant allowance transfers and allowance transfers between companies. For class I substances, those regulations appear at 40 CFR 82.12. Due to the class I phaseout, the EPA no longer allocates production or consumption allowances for class I substances. Because these provisions no longer have any purpose or effect, the EPA is removing provisions related to pre-1996 allowance transfers for class I ODS (and pre-2005 for methyl bromide) found at 40 CFR 82.12, by revising paragraph (a)(1) and removing paragraph (b)(1), as any such transfers occurred years ago and these provisions no longer have any purpose or effect.

As discussed earlier in this section, the EPA is removing certain provisions governing class I Article 5 allowances and destruction and transformation credits. The EPA is therefore also removing provisions allowing for the transfer of class I Article 5 allowances and destruction and transformation credits found at 40 CFR 82.12(a)(2), (b)(2) through (5), and (c) as those provisions are longer needed.

v. HCFC–141b Allowances

In 2003, the EPA issued regulations (see 68 FR 2820, January 21, 2003) to ensure compliance with the first reduction milestone in the HCFC phaseout. In that rule, the EPA established chemical-specific consumption and production baselines for HCFC–141b, HCFC–22, and HCFC–142b for the initial regulatory period ending December 31, 2009. The rule phased out the production and import of HCFC–141b effective January 1, 2003 (see 40 CFR 82.16(b)). The EPA created a petition process at 40 CFR 82.16(h) to allow applicants to request ''HCFC–141b exemption allowances'' to produce or import small amounts of HCFC–141b beyond the phaseout. The Agency removed 40 CFR 82.16(h) from the regulations and terminated the HCFC–141b exemption allowance program, effective January 1, 2015 (79 FR 64267, October 28, 2014). At that time, the EPA did not remove definitions and reporting and recordkeeping requirements that pertain only to HCFC–141b exemption allowances. In the current rulemaking, the EPA proposed to remove those provisions, and is now finalizing those revisions as proposed, as described in the following paragraphs.

In this action, the EPA is removing the definitions in 40 CFR 82.3 specific to HCFC–141b production or import after the 2003 phaseout, in particular, the definitions of ''Formulator,'' ''HCFC–141b exemption allowances,'' and ''Unexpended HCFC–141b exemption allowances.'' The definitions for HCFC–141b exemption allowances are no longer relevant since the EPA has removed the substantive regulations that these definitions support. For the same reasons, the EPA is removing references to HCFC–141b in the definition of ''Confer,'' but is retaining the remainder of that definition. The EPA is also removing references and recordkeeping and reporting requirements specifically relating to HCFC–141b exemption allowances. These edits are made by removing 40 CFR 82.24(b)(1)(ix) and (xi), (b)(2)(xiv), (c)(1)(xi), (c)(2)(xvi),and (g).

The EPA also created provisions at 40 CFR 82.18(b) to allow producers to use ''export production allowances'' to produce HCFC–141b for export beyond the phaseout. These allowances ended in 2010 and therefore these provisions have no further purpose or effect. The EPA is retaining the definition of export production allowances and certain references where appropriate to provide context to the reader but is removing the recordkeeping and reporting provisions. These edits are made in 40 CFR 82.16(e)(1) and (2) and 82.24(b)(2)(iv), and by removing § 82.24(b)(1)(iv) and (ix), (b)(2)(xii), and (d)(2).

*M. Other Comments Not Related to the Proposal*

The EPA received a comment that is unrelated to the proposed rule on the management and destruction of ODS held in banks in relation to the venting prohibition in section 608 of the CAA. In this comment, EIA notes that a substantial bank of ODS persists in the United States, including of CFC–11 contained in foams as well as other class I and class II ODS substances contained in existing refrigeration and air-conditioning equipment or stockpiles. They state that despite a growing bank of ODS found to be available for recovery from retired equipment, the rate of proper disposal of these substances through either reclamation or destruction has declined. The commenter suggests that the low rates of reclamation and destruction in the United States, particularly of class II ODS, indicates that significant quantities of these substances are likely being vented in violation of section 608 of the CAA. They argue that in order to enforce the venting prohibition and encourage responsible management and disposal of the remaining bank of ODS, the EPA should propose additional measures on lifecycle ODS management. The EPA notes that this comment pertains to section 608 of the CAA and the regulations under 40 CFR part 82, subpart F, and is beyond the scope of this rulemaking, which did not propose and is not finalizing any changes to the subpart F requirements. As the comment is not relevant to this final action, no response is required.

## IV. Economic Analysis

The EPA considered the incremental costs and benefits associated with this rulemaking, which primarily stem from changes to reporting and recordkeeping requirements. In total, the EPA estimates that the quantified costs and benefits of this rule results in a net savings of $13,000 per year. The Agency analyzed the quantitative costs and benefits associated with transitioning to electronic reporting, the streamlined import petition process for used halons, exempting halon 1211 in aircraft bottles from the import petitions process, establishing the Certification of Intent to Import ODS for Destruction, adding a recordkeeping requirement for certain distributors of methyl bromide QPS applications, and labeling containers of Halotron® I. The quantifiable costs and benefits of this rule primarily result from the revisions to the reporting and recordkeeping requirements and the requirement to use electronic reporting. For the phaseout of ODS, the EPA previously considered the domestic costs and benefits of the United States' phaseout.[58] Many of the regulatory revisions finalized in this action, such as the removal of obsolete requirements, will not result in any new costs or benefits. The EPA has provided in the docket technical support documents that consider the costs and the benefits commensurate with changes to the ODS phaseout regulations.

Electronic reporting allows for faster review and transmission of submissions to the EPA. Additionally, all information submitted electronically is linked in an improved tracking system, which facilitates document management and allows companies to more easily

[58] The following documents are available in the docket: ''EPA. 1999. The Benefits and Costs of the Clean Air Act: 1990 to 2010;'' ''EPA. 1992. Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals;'' and ''EPA. 1993. Addendum to the 1992 Phaseout Regulatory Impact Analysis: Accelerating the Phaseout of CFCs, Halons, Methyl Chloroform, Carbon Tetrachloride, and HCFCs.''

manage past and future submissions. The estimated burden hours and labor costs will decrease as a result of the complete transition from paper to electronic reporting, including removing unnecessary data elements and auto-populating others. Similarly, the estimated Agency burden hours and labor costs decreases. The streamlined petitions process for importing used halons and the new Certification of Intent to Import ODS for Destruction both decrease the estimated respondent burden. Specifically, the number of reporting elements for importers for destruction is reduced from 13 to 9, reducing burden hours per response by four hours. The EPA also estimates that exempting halon 1211 used in aircraft bottles from the petition process reduces the number of responses per respondent by one. These changes are detailed in the supporting statement for the Information Collection Request available in the docket to this rule.

The EPA estimates that redesigning the existing labels on containers of Halotron® I will result in a one-time cost of approximately $4,000. Administrative and graphic design labor costs are estimated based on the total amount of hours required to redesign existing labels as well as hourly labor costs. Hourly costs include wages, overhead rates, and fringe rates. Additional information on this analysis is available in the docket titled ''Estimated costs of Regulatory Changes to Labeling of Containers of HCFC Fire Suppression Agent, 2020–2029.''

There are also unquantifiable effects of this rule. Prohibiting both the sale of QPS methyl bromide for non-QPS purposes and the sale of illegally imported ODS is designed to improve compliance with the existing provisions. These costs are unquantifiable as the scale of these sales is not known but are anticipated to be small due to the illegality of such sales. The prohibition on sales and distribution of polyurethane foam systems containing CFCs will have no cost because there is no evidence to suggest this practice is occurring in the United States. Updating the definition of destruction allows for the use of new destruction technologies that are currently not in use in the United States but can now be employed with the additional technologies. Additional destruction of unwanted ODS in the United States may generate revenue for domestic destruction facilities. Lastly, the removal of obsolete provisions is not anticipated to have any material cost or benefit.

Previous analyses provide information on the costs and benefits of the United States' ODS phaseout, and specifically the phaseout of all HCFCs through 2030, but do not quantify the costs and benefits of each individual phaseout step for each individual chemical. A memorandum summarizing these analyses, including the original regulatory impact analysis for the full phaseout of ODS, is available in the docket.[59] This rule allows for the production and consumption of HCFC–123 and HCFC–124 that will otherwise not be allowed in the absence of this rulemaking. These HCFCs will then be used to service existing fire suppression, refrigeration, and air-conditioning equipment, as modeled in the *2019 Final Servicing Tail Report.* This rule relieves a regulatory prohibition on production and consumption of HCFC–123 and HCFC–124 and results in greater benefits than taking no action.

In finalizing the level of allocation for HCFC–123, the EPA considered the quantities needed to satisfy estimated demand for HCFC–123 to service equipment manufactured before 2020 and the amount of HCFC–123 that will likely be reclaimed annually, and thus be available to meet part of the demand for HCFC–123. The Agency is issuing consumption allowances equal to the 2020 estimated HCFC–123 demand for servicing existing refrigeration and air-conditioning and fire suppression equipment for years 2020 through 2022 and then decreasing the number of allowances issued in each subsequent year by an equal amount each year such that there are zero allowances issued in 2030. This allocation will avoid stranding existing equipment due to an inadequate supply of HCFCs while achieving a complete phaseout of production and consumption by 2030. As discussed in Section III of this document, a viable reclamation market is a necessary element in achieving those two goals. Issuing allowances in excess of demand would suppress the reclamation market and result in less supply to service equipment after the 2030 phaseout. In the near term, the final allocation provides sufficient allowances to meet the near-term needs of the market while also fostering reclamation and transition. A final allocation that is significantly too high or too low could adversely affect the availability of reclaimed HCFC–123 for the fire suppression sector because reclamation is the only source of HCFC–123 for the manufacture of new fire suppression equipment once stockpiles of previously-imported material is exhausted. Thus, if the reclaim market is suppressed from 2020 through 2029, there will be less supply and higher costs for HCFC–123 for the manufacture of new fire suppression equipment and less supply and higher costs as the phaseout progresses since the supply of HCFC–123 will eventually only be from the recycling or reclamation market.

The EPA finds there is no significant impact on a substantial number of small entities (SISNOSE). The EPA performed a sales test to assess the economic impact of a regulatory option on small businesses and compared the results of the sales test. This analysis is available in the docket. Based on the screening analysis of allowance holders of HCFC–123 and HCFC–124, this rulemaking has no SISNOSE because it is expected to result in a small net benefit to small businesses through the ability to continue producing, importing and/or selling HCFC–123 and HCFC–124. The EPA notes that there are only eight companies total that hold consumption allowances for HCFC–123 and HCFC–124, only three of which are small businesses.

## V. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

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

This action is not subject to Executive Order 13771, because this final rule is expected to result in no more than *de minimis* costs.

### *C. Paperwork Reduction Act (PRA)*

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned the EPA ICR number 1432.34. You can find a copy of the ICR and supporting statement in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

This ICR covers provisions under the Montreal Protocol and Title VI of the CAA that establish limits on total U.S. production, import, and export of ODS. The EPA monitors compliance with the

[59] EPA 2008, ''HCFC Cost Analysis'' and EPA 2018, ''Overview of CFC and HCFC Phaseout.''

CAA and commitments under the Montreal Protocol through the recordkeeping and reporting requirements established in the regulations at 40 CFR part 82, subpart A. The EPA informs the respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed as confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed to the extent, and by means of procedures, set forth in subpart B. If no claim of confidentiality is asserted when the information is received by the EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

*Respondents/affected entities:* Producers, importers, exporters, and certain users of ozone depleting substances; methyl bromide applicators, distributors, and end users including commodity storage and quarantine users.

*Respondent's obligation to respond:* Mandatory—Sections 603(b) and 114 of the CAA.

*Estimated number of respondents:* 98.

*Frequency of response:* Quarterly, annually, and as needed.

*Total estimated burden:* 2,940 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $363,683, includes $7,400 annualized capital or operation & maintenance costs.

The ICR addresses changes to the existing reporting and recordkeeping programs that are approved under OMB control number 2060–0170.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities potentially subject to increased costs from this action include allowance holders, distributors, applicators, and end users of methyl bromide and importers of ODS. The EPA estimates that the total incremental savings associated with this final rule is $13,000 per year in 2019 dollars.

*E. Unfunded Mandates Reform Act*

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

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects of excessive exposure to UV radiation on children: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994: 30A: 1647–54; (2) Elwood JM Japson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK, ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et al. ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma,'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, DK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

The EPA believes that it is not feasible to quantify any disproportionately high and adverse effects from this action on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

*L. Congressional Review Act (CRA)*

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

**List of Subjects in 40 CFR Part 82**

Environmental protection, Air pollution control, Chemicals, Reporting and recordkeeping requirements.

Dated: December 19, 2019.

**Andrew R. Wheeler,**

*Administrator.*

For the reasons set forth in the preamble, the EPA amends 40 CFR part 82 as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–767q.

■ 2. Effective April 16, 2020, amend § 82.3 by:
■ a. Revising the definitions for ''Administrator'' and ''Aircraft halon bottle;''
■ b. Adding a definition in alphabetical order for ''Central Data Exchange;''
■ c. Revising the definitions for ''Confer,'' ''Consumption allowances,'' and ''Destruction;''
■ d. Removing the definition for ''Formulator;''
■ e. Adding a definition in alphabetical order for ''Halon bank;''
■ f. Removing the definition for ''HCFC–141b exemption allowances;''
■ g. Revising the definitions for ''Individual shipment,'' ''Non-Objection notice,'' and ''Production;'' and
■ h. Removing the definition for ''Unexpended HCFC–141b exemption allowances.''

The revisions and additions read as follows:

**§ 82.3 Definitions for class I and class II controlled substances.**

* * * * *

*Administrator* means the Administrator of the United States Environmental Protection Agency or his or her authorized representative. Starting May 18, 2020, reports and petitions that are available to be submitted through the Central Data Exchange, as well as any related supporting documents, must be submitted through that tool. Any other reports and communications shall be submitted to Stratospheric Protection Manager, 1200 Pennsylvania Ave. NW, Mail Code: 6205T, Washington, DC 20460.

*Aircraft halon bottle* means a vessel used as a component of an aircraft fire suppression system containing halon-1301 or halon-1211 approved under FAA rules for installation in a certificated aircraft.

* * * * *

*Central Data Exchange* means EPA's centralized electronic document receiving system, or its successors.

* * * * *

*Confer* means to shift the essential-use allowances obtained under § 82.8 from the holder of the unexpended essential-use allowances to a person for the production of a specified controlled substance.

* * * * *

*Consumption allowances* means the privileges granted by this subpart to produce and import controlled substances; however, consumption allowances may be used to produce controlled substances only in conjunction with production allowances. A person's consumption allowances for class I substances are the total of the allowances obtained under §§ 82.6 and 82.7 as may be modified under § 82.12 (transfer of allowances). A person's consumption allowances for class II controlled substances are the total of the allowances obtained under §§ 82.19 and 82.20, as may be modified under § 82.23.

* * * * *

*Destruction* means the expiration of a controlled substance to the destruction and removal efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction might result in a commercially useful end product, but such usefulness would be secondary to the act of destruction. Destruction must be achieved using one of the following controlled processes approved by the Parties to the Protocol:

(1) Liquid injection incineration;
(2) Reactor cracking;
(3) Gaseous/fume oxidation;
(4) Rotary kiln incineration;
(5) Cement kiln;
(6) Radio frequency plasma;
(7) Municipal waste incinerators (only for the destruction of foams);
(8) Nitrogen plasma arc;
(9) Portable plasma arc;
(10) Argon plasma arc;
(11) Chemical reaction with hydrogen and carbon dioxide;
(12) Inductively coupled radio frequency plasma;
(13) Microwave plasma;
(14) Porous thermal reactor;
(15) Gas phase catalytic de-halogenation;
(16) Superheated steam reactor; or
(17) Thermal reaction with methane.

* * * * *

*Halon bank* means a facility run by a national government or privately run and authorized by a national government that collects and stores previously-recovered halon for reuse at a later date.

* * * * *

*Individual shipment* means the kilograms of a controlled substance for which a person may make one (1) U.S. Customs entry, as identified in the non-objection letter from the Administrator under §§ 82.13(g) and 82.24(c).

* * * * *

*Non-Objection notice* means the privilege granted by the Administrator to import a specific individual shipment of a controlled substance in accordance with §§ 82.13(g)(2), (3), and (5) and 82.24(c)(3), (4), and (6).

* * * * *

*Production* means the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a controlled substance that is subsequently transformed;
(2) The reuse or recycling of a controlled substance;
(3) Amounts that are destroyed by approved destruction technologies; or
(4) Amounts that are spilled or vented unintentionally.

* * * * *

■ 3. Effective April 16, 2020, amend § 82.4 by:
■ a. Removing and reserving paragraph (f);
■ b. Revising paragraph (j); and
■ c. Adding paragraphs (r) and (s).

The revision and additions read as follows:

**§ 82.4 Prohibitions for class I controlled substances.**

* * * * *

(j)(1) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, without having received a non-objection notice from the Administrator in accordance with § 82.13(g)(2) and (3). A person who receives a non-objection notice for the import of an individual shipment of used controlled substances may not transfer or confer the right to import and may not import any more than the exact quantity, in kilograms, of the used controlled substance cited in the non-objection notice. Every kilogram of importation of used controlled substance in excess of the quantity cited in the non-objection notice issued by the Administrator in accordance with § 82.13(g)(2) and (3) constitutes a separate violation.

(2) No person may import for purposes of destruction, at any time in any control period, a class I controlled substance for which EPA has apportioned baseline production and consumption allowances, without having submitted a certification of intent to import for destruction to the Administrator and received a non-objection notice in accordance with § 82.13(g)(5). A person issued a non-objection notice for the import of an individual shipment of class I controlled substances for destruction may not transfer or confer the right to import and may not import any more than the exact quantity (in kilograms) of the class I controlled substance stated in the non-objection notice. For imports intended to be destroyed in the United

States, a person issued a non-objection notice must destroy the controlled substance within one year of the date stamped on the non-objection letter, may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the class I controlled substance stated in the non-objection notice. Every kilogram of import of class I controlled substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with § 82.13(g)(5) constitutes a separate violation of this subpart.

* * * * *

(r) No person may sell or use methyl bromide produced or imported under the quarantine and preshipment exemption for any purpose other than for quarantine applications or preshipment applications as defined in § 82.3. Each kilogram of methyl bromide produced or imported under the authority of the quarantine and preshipment exemption and sold or used for a use other than quarantine or preshipment is a separate violation of this subpart.

(s) No person may sell or distribute, or offer for sale or distribution, any class I substance that they know, or have reason to know, was imported in violation of this section, except for such actions needed to re-export the controlled substance. Every kilogram of a controlled substance imported in contravention of this paragraph (s) that is sold or distributed, or offered for sale or distribution, constitutes a separate violation of this subpart.

■ 4. Effective April 16, 2020, amend § 82.9 by:

■ a. Removing and reserving paragraphs (a) and (b);

■ b. Revising paragraph (c) introductory text; and

■ c. Removing and reserving paragraphs (e) and (f).

The revision reads as follows:

**§ 82.9 Availability of production allowances in addition to baseline production allowances for class I controlled substances.**

* * * * *

(c) A company may increase or decrease its production allowances, including its Article 5 allowances, by trading with another Party to the Protocol according to the provision under this paragraph (c). A company may increase or decrease its essential-use allowances for CFCs for use in essential MDIs according to the provisions under this paragraph (c). A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production or import that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production or import that the person is permitted under this subpart. If the controlled substance is produced under the authority of production allowances and is to be sold in the United States or to another Party (not the Party from whom the allowances are received), the U.S. company must expend its consumption allowances allocated under §§ 82.6 and 82.7 in order to produce with the additional production allowances.

* * * * *

**§ 82.10 [Removed and Reserved]**

■ 5. Effective April 16, 2020, remove and reserve § 82.10.

■ 6. April 16, 2020, amend § 82.12 by:

■ a. Revising paragraph (a)(1) introductory text; and

■ b. Removing and reserving paragraphs (a)(2), (b), and (c).

The revision reads as follows:

**§ 82.12 Transfers of allowances for class I controlled substances.**

(a) * * *

(1) After January 1, 2002, any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) (''transferor'') may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs. After January 1, 2005, any critical use allowance holder (''transferor'') may transfer critical use allowances to any other person (''transferee'').

* * * * *

■ 7. Effective April 16, 2020, amend § 82.13 by:

■ a. Revising paragraphs (a) and (c);

■ b. Adding headings for paragraphs (f) and (f)(2);

■ c. Removing and reserving paragraphs (f)(2)(iv) and (v);

■ d. In paragraphs (f)(2)(xiv) and (xv), removing the periods at the ends of the paragraphs and adding semicolons in their places;

■ e. Removing and reserving paragraph (f)(2)(xvi);

■ f. Revising paragraphs (f)(2)(xvii) through (xxii);

■ g. Removing ''Reporting Requirements—Producers'' in paragraph (f)(3) introductory text and adding in its place ''*Reporting requirements—producers*'';

■ h. Removing and reserving paragraphs (f)(3)(iv) and (ix);

■ i. Revising paragraphs (f)(3)(xiii) through (xvii) and (g)(1)(xi), (xv), and (xvii) through (xxi);

■ j. Adding a heading for paragraph (g);

■ k. Removing ''Recordkeeping—Importers'' in paragraph (g)(1) introductory text and adding in its place ''*Recordkeeping—importers*'';

■ l. Revising paragraphs (g)(2) introductory text and (g)(2)(i) through (iii), (vi), and (viii) through (xiii);

■ m. Removing and reserving paragraph (g)(2)(xiv);

■ n. Adding paragraph (g)(2)(xv) and a heading for paragraph (g)(3);

■ o. Revising paragraphs (g)(3)(i)(A) and (g)(3)(vii);

■ p. Adding a heading for paragraph (g)(4);

■ q. Removing and reserving paragraphs (g)(4)(vii) and (xi);

■ r. Revising paragraphs (g)(4)(xv) through (xviii);

■ s. Adding paragraphs (g)(5) through (10);

■ t. Revising paragraphs (h) heading, (h)(1) introductory text, (h)(1)(ii) and (iii), (h)(2) introductory text, and (h)(2)(ii) through (v) and (viii);

■ u. Removing and reserving paragraph (i);

■ v. Revising paragraph (v);

■ w. Adding a heading for paragraph (w); and

■ x. Revising paragraphs (w)(2), (y), (z), and (aa).

The revisions and additions read as follows:

**§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.**

(a) *Effective dates.* Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995. For class I, Group VIII controlled substances, the recordkeeping and reporting requirements set forth in this section take effect on August 18, 2003. For critical use methyl bromide, the recordkeeping and reporting requirements set forth in this section take effect January 1, 2005.

* * * * *

(c) *Timing of reports.* Unless otherwise specified, reports required by this section must be submitted to the Administrator within 45 days of the end of the applicable reporting period. Revisions of reports that are required by this section must be submitted to the Administrator within 180 days of the end of the applicable reporting period, unless otherwise specified. Starting May 18, 2020, reports that are available for submission through the Central Data Exchange must be submitted electronically through that tool.

* * * * *

(f) *Producers.* * * *

(2) *Recordkeeping requirements—producers.* * * *

(xvii) For methyl bromide, dated records of the quantity of controlled substances produced for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of methyl bromide produced solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine applications and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that methyl bromide produced solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine applications and preshipment applications upon receipt of a certification in accordance with the definitions of this subpart and requirements in paragraph (h) of this section.

(xx) For methyl bromide, dated records such as invoices and order forms, and a log of the quantity of controlled substances produced for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, and the quantity sold for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use;

(xxi) Written certifications that quantities of methyl bromide produced for critical use were purchased by distributors, applicators, or approved critical users to be used or sold only for critical use in accordance with the definitions and prohibitions in this subpart. Certifications must be maintained by the producer for a minimum of three years; and

(xxii) For methyl bromide, dated records such as invoices and order forms, and a log of the quantity of controlled substances produced solely for export to satisfy critical uses authorized by the Parties for that control period, and the quantity sold solely for export to satisfy critical uses authorized by the Parties for that control period.

(3) * * *

(xiii) The amount of methyl bromide sold or transferred during the quarter to a person other than the producer solely for quarantine and preshipment applications;

(xiv) A list of the quantities of methyl bromide produced by the producer and exported by the producer and/or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not produced expending production or consumption allowances; and

(xv) For quarantine and preshipment applications of methyl bromide in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(xvi) For critical uses of methyl bromide, producers shall report annually the amount of critical use methyl bromide owned by the reporting entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, as well as quantities held by the reporting entity on behalf of another entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use along with the name of the entity on whose behalf the material is held; and

(xvii) A list of the quantities of methyl bromide produced by the producer and exported by the producer and/or by other U.S. companies in that control period, solely to satisfy the critical uses authorized by the Parties for that control period; and

* * * * *

(g) *Importers.* * * *

(1) * * *

(xi) The quantity of imports of used, recycled, or reclaimed class I controlled substances;

* * * * *

(xv) Dated records of the quantity of controlled substances imported for an essential use; and

* * * * *

(xvii) Dated records of the quantity of methyl bromide imported for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of methyl bromide imported solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that methyl bromide imported solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this subpart and requirements in paragraph (h) of this section.

(xx) For methyl bromide, dated records such as invoices and order forms, of the quantity of controlled substances imported for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, and the quantity sold for critical use, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use; and

(xxi) Written certifications that quantities of methyl bromide imported for critical use were purchased by distributors, applicators, or approved critical users to be used or sold only for critical use in accordance with the definitions and prohibitions in this subpart. Certifications must be maintained by an importer for a minimum of three years.

(2) *Petitioning—importers of used, recycled, or reclaimed controlled substances.* For each individual shipment over 5 pounds of a used controlled substance as defined in § 82.3, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing and imports intended for destruction, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) Name, commodity code, and quantity in kilograms of the used controlled substance to be imported;

(ii) Name and address of the importer, the importer ID number, and the contact person's name, email address, and phone number;

(iii) Name, address, contact person, email address, and phone number of all previous source facilities from which the used controlled substance was recovered or the halon bank storing the controlled substance;

* * * * *

(vi) Name, address, contact person, email address, and phone number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility;

* * * * *

(viii) A description of the intended use of the used controlled substance, and, when possible, the name, address, contact person, email address, and phone number of the ultimate purchaser in the United States;

(ix) Name, address, contact person, email address, and phone number of the U.S. reclamation facility, where applicable;

(x) If someone at the source facility recovered the controlled substance from

the equipment, the name, email address, and phone number of that person;

(xi) If the imported controlled substance was reclaimed in a foreign Party, the name, address, contact person, email address, and phone number of any or all foreign reclamation facility(ies) responsible for reclaiming the cited shipment;

(xii) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and, if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents;

(xiii) If the imported used controlled substance is intended to be sold as a refrigerant in the United States, the name, address, and email address of the EPA-certified U.S. reclaimer who will bring the material to the standard required under subpart F of this part if not already reclaimed to those specifications; and

* * * * *

(xv) If the used controlled substance is stored in a halon bank, in lieu of the information required in paragraphs (g)(2)(iv) through (vi) of this section, the petitioner may provide an official letter from the appropriate government agency in the country where the material is stored indicating that the halon is used and that the halon bank is authorized to collect used halon. If source information in paragraphs (g)(2)(iv) through (vi) is available, it should also be provided in addition to the letter.

(3) *Review of petition to import a used substance.* * * *

(i) * * *

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (g)(2) of this section or other information that may be requested during the review of the petition necessary to verify that the controlled substance is used;

* * * * *

(vii) A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

* * * * *

(4) *Reporting requirements—importers.* * * *

(xv) The amount of methyl bromide sold or transferred during the quarter to a person other than the importer solely for quarantine and preshipment applications;

(xvi) A list of the quantities of methyl bromide exported by the importer and or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not imported expending consumption allowances; and

(xvii) For quarantine and preshipment applications of methyl bromide in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(xviii) For critical uses of methyl bromide, importers shall report annually the amount of critical use methyl bromide owned by the reporting entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use, as well as quantities held by the reporting entity on behalf of another entity, specifying quantities dedicated for pre-plant use and quantities dedicated for post-harvest use along with the name of the entity on whose behalf the material is held.

* * * * *

(5) *Certification of intent to import for destruction.* For each individual shipment of a class I controlled substance imported with the intent to destroy that substance, an importer must submit electronically to the Administrator, at least 30 working days before the shipment is to leave the foreign port of export, the following information:

(i) Name, commodity code, and quantity in kilograms of each controlled substance to be imported;

(ii) Name and address of the importer, the importer ID number, and the contact person's name, email address, and phone number;

(iii) Name and address of any intermediary who will aggregate controlled substances imported for destruction, and the contact person's name, email address, and phone number;

(iv) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the material. If at the time of submitting the certification of intent to import for destruction the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the material, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the entry of the individual shipment into the United States;

(v) Name, address, contact person, email address, and phone number of the responsible party at the destruction facility;

(vi) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and, if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents; and

(vii) A certification of accuracy of the information submitted in the certification.

(6) *Destruction verification.* For each individual shipment of a class I controlled substance imported with the intent to destroy that substance, an importer must submit to the Administrator a copy of the destruction verification within 30 days after destruction of the controlled substance(s).

(7) *Review of certification of intent to import for destruction.* (i) Starting on the first working day following receipt by the Administrator of a certification of intent to import a class I controlled substance for destruction, the Administrator will initiate a review of the information submitted under paragraph (g)(5) of this section and take action within 30 working days to issue either an objection notice or a non-objection notice for the individual shipment to the person who submitted the certification of intent to import the class I controlled substance for destruction.

(ii) The Administrator may issue an objection notice if the petition lacks or appears to lack any of the information required under paragraph (g)(5) of this section or for the reasons listed in paragraphs (g)(3)(i)(B) through (F) of this section.

(iii) In cases where the Administrator does not object to the petition, the Administrator will issue a non-objection notice.

(iv) To pass the approved class I controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(v) If for some reason, following EPA's issuance of a non-objection notice, new information is brought to EPA's

attention which shows that the non-objection notice was issued based on false information, then EPA has the right to:

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the class I controlled substance is not imported into the United States; and

(C) Take appropriate enforcement actions.

(8) *Timing of import.* A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

(9) *Additional recordkeeping requirements—importers of used, recycled, or reclaimed controlled substances.* A person receiving a non-objection notice from the Administrator for a certification of intent to import class I controlled substances for destruction must maintain the following records:

(i) A copy of the certificate of intent to import for destruction;

(ii) The EPA non-objection notice;

(iii) A copy of the export license, export license application, or official communication from the appropriate government agency in the country of export;

(iv) U.S. Customs entry documents for the import that must include one of the commodity codes from appendix K to this subpart;

(v) The date, amount, and type of controlled substance sent for destruction, per shipment;

(vi) An invoice from the destruction facility verifying the shipment was received;

(vii) A copy of the destruction verification from the destruction facility; and

(viii) An English translation of the document in paragraph (g)(9)(iii) of this section.

(10) *Recordkeeping requirements-aggregators.* A person identified in paragraph (g)(5)(iii) of this section as aggregating a controlled substance prior to destruction must:

(i) Maintain transactional records that include the name and address of the entity from whom they received the controlled substance imported for destruction;

(ii) Maintain transactional records that include the name and address of the entity to whom they sent the controlled substance imported for destruction;

(iii) Maintain records that include the date and quantity of the imported controlled substance received for destruction;

(iv) Maintain records that include the date and quantity of the imported controlled substance sent for destruction; and

(v) If the person is the final aggregator of such a controlled substance before the material is destroyed, maintain a copy of the destruction verification.

(h) *Reporting requirements—exporters.* (1) For any exports of class I controlled substances (except methyl bromide) not reported under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I controlled substance (except methyl bromide) must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

* * * * *

(ii) The exporter's Employer Identification Number;

(iii) The type and quantity of each controlled substance exported including the quantity of controlled substance that is used, recycled, or reclaimed;

* * * * *

(2) For any exports of methyl bromide not reported under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported methyl bromide must submit to the Administrator the following information within 45 days after the end of each quarter in which the unreported exports left the United States:

* * * * *

(ii) The exporter's Employer Identification Number;

(iii) The quantity of methyl bromide exported by use (transformation, destruction, critical use, or quarantine and preshipment);

(iv) The date on which, and the port from which, the methyl bromide was exported from the United States or its territories;

(v) The country to which the methyl bromide was exported;

* * * * *

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported methyl bromide intends to transform those substances, the destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this subpart.

* * * * *

(v) *Laboratory use exemption distributors.* Any distributor of laboratory supplies who purchased controlled substances under the global essential laboratory and analytical use exemption must submit quarterly (except distributors following procedures in paragraph (x) of this section) the quantity of each controlled substance purchased by each laboratory customer or distributor whose certification was previously provided to the distributor pursuant to paragraph (w) of this section, the contact information for the source company from which material was purchased, and the laboratories to whom the material is sold.

(w) *Laboratory use exemption customers.* * * *

(2) The name, email address, and phone number of a contact person for the laboratory customer;

* * * * *

(y) *Quarantine and preshipment methyl bromide distributors.* Every distributor of methyl bromide who purchases or receives a quantity produced or imported for quarantine or preshipment applications under the exemptions in this subpart must comply with the following recordkeeping and reporting requirements:

(1) Every distributor of quarantine and preshipment methyl bromide must certify to the producer, importer, or distributor from whom they purchased or received the controlled substance that quantities purchased or received will be sold only for quarantine applications or preshipment applications in accordance with the definitions in this subpart.

(2) Every distributor of quarantine and preshipment methyl bromide must receive from an applicator, exporter, or distributor to whom they sell or deliver the controlled substance a certification, prior to delivery, stating that the quantity will be used or sold solely for quarantine applications or preshipment applications in accordance with definitions in this subpart.

(3) Every distributor of quarantine and preshipment methyl bromide must maintain the certifications as records for 3 years.

(4) Every distributor of quarantine and preshipment methyl bromide must report to the Administrator within 45 days after the end of each quarter, the total quantity delivered to applicators or end users for quarantine applications and preshipment applications in accordance with definitions in this subpart.

(z) *Quarantine and preshipment methyl bromide applicators.* Every applicator of methyl bromide who

purchases or receives a quantity produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must comply with the following recordkeeping and reporting requirements:

(1) *Recordkeeping.* Every applicator of methyl bromide produced or imported for quarantine and preshipment applications under the exemptions of this subpart must maintain, for every application, a document from the commodity owner, shipper, or their agent requesting the use of methyl bromide citing the requirement that justifies its use in accordance with definitions in this subpart. These documents shall be retained for 3 years.

(2) *Reporting.* Every applicator who purchases or receives methyl bromide that was produced or imported for quarantine and preshipment applications under the exemptions in this subpart shall provide the distributor of the methyl bromide, prior to shipment, with a certification that the methyl bromide will be used only for quarantine applications or preshipment applications as defined in this subpart.

(aa) *Quarantine and preshipment methyl bromide end user certification.* Every commodity owner, shipper or their agent requesting an applicator to use methyl bromide that was produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this subpart and citing the requirement that justifies its use. The record must include the following statement: ''I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements.''

* * * * *

■ 8. Effective April 16, 2020, add § 82.14 to read as follows:

**§ 82.14 Process for electronic reporting.**

(a) Starting May 18, 2020, reports and petitions that are available to be submitted through the Central Data Exchange, as well as any related supporting documents, must be submitted through that tool.

(b) Entities can register and access the Central Data Exchange as follows:

(1) Go to EPA's Central Data Exchange website at *https://cdx.epa.gov* and follow the links for the submission of ozone-depleting substances.

(2) Call EPA's Central Data Exchange Help Desk at 1–888–890–1995.

(3) Email the EPA's Central Data Exchange Help Desk at *HelpDesk@epacdx.net.*

■ 9. Amend § 82.15 by:

■ a. Redesignating paragraphs (g)(5) and (6) as (g)(6) and (7), respectively; and

■ b. Adding new paragraph (g)(5).

The addition reads as follows:

**§ 82.15 Prohibitions for class II controlled substances.**

* * * * *

(g) * * *

(5)(i) Effective January 1, 2020, no person may introduce into interstate commerce or use HCFC–123 or HCFC–124 (unless used, recovered and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for use as a refrigerant in equipment manufactured before January 1, 2020; for use as a fire suppression streaming agent listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications in accordance with the regulations at subpart G of this part and only to the extent permitted under paragraph (g)(5)(ii) of this section; for export to Article 5 Parties under § 82.18(a); as a transhipment or heel; or for exemptions permitted under paragraph (f) of this section.

(ii) HCFC–123 that was produced or imported on or after January 1, 2020 may be used as a fire suppression streaming agent only to service equipment manufactured before January 1, 2020. HCFC–123 that was produced or imported prior to January 1, 2020 (or used, recovered and recycled) may be used as a fire suppression streaming agent in equipment manufactured before, on, or after January 1, 2020.

(iii) Notwithstanding the prohibition on use in paragraph (g)(5)(i) of this section, the use of HCFC–123 as a refrigerant in equipment manufactured on or after January 1, 2020 but before January 1, 2021 is permitted if the conditions of this paragraph (g)(5)(iii) are met. The HCFC–123 must be in the possession of an entity that will complete the manufacture of the appliance and imported prior to January 1, 2020. The appliance components must be ready for shipment to a construction location prior to July 24, 2019 and be specified in a building permit or a contract dated before July 24, 2019 for use on a particular project. All HCFC–123 used to service such appliances on or after January 1, 2021 must be used, recovered, or recycled.

* * * * *

■ 10. Effective April 16, 2020, amend § 82.15 by adding paragraphs (b)(3) and (g)(8) to read as follows:

**§ 82.15 Prohibitions for class II controlled substances.**

* * * * *

(b) * * *

(3) No person may import for purposes of destruction, at any time in any control period, a class II controlled substance for which EPA has apportioned baseline production and consumption allowances, without having submitted a certification of intent to import for destruction to the Administrator and received a non-objection notice in accordance with § 82.24(c)(6). A person issued a non-objection notice for the import of an individual shipment of class II controlled substances for destruction may not transfer or confer the right to import and may not import any more than the exact quantity (in kilograms) of the class II controlled substance stated in the non-objection notice. For imports intended to be destroyed in the United States, a person issued a non-objection notice must destroy the controlled substance within one year of the date stamped on the non-objection letter, may not transfer or confer the right to import, and may not import any more than the exact quantity (in kilograms) of the class II controlled substance stated in the non-objection notice. Every kilogram of import of class II controlled substance in excess of the quantity stated in the non-objection notice issued by the Administrator in accordance with § 82.24(c)(6) constitutes a separate violation of this subpart.

* * * * *

(g) * * *

(8) No person may sell or distribute, or offer for sale or distribution, any class II substance that they know, or have reason to know, was imported in violation of this section, except for such actions needed to re-export the controlled substance. Every kilogram of a controlled substance imported in contravention of this paragraph (g)(8) that is sold or distributed, or offered for sale or distribution, constitutes a separate violation of this subpart.

■ 11. Amend § 82.16 by removing the heading from paragraph (a) and revising paragraphs (a)(1) and (e) to read as follows:

**§ 82.16 Phaseout schedule of class II controlled substances.**

(a)(1) *Calendar-year allowances.* In each control period as indicated in the

following tables, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19:

TABLE 1 TO PARAGRAPH (a)—CALENDAR-YEAR HCFC PRODUCTION ALLOWANCES

| Control period | Percent of HCFC–141b | Percent of HCFC–22 | Percent of HCFC–142b | Percent of HCFC–123 | Percent of HCFC–124 | Percent of HCFC–225ca | Percent of HCFC–225cb |
|---|---|---|---|---|---|---|---|
| 2003 | 0 | 100 | 100 | | | | |
| 2004 | 0 | 100 | 100 | | | | |
| 2005 | 0 | 100 | 100 | | | | |
| 2006 | 0 | 100 | 100 | | | | |
| 2007 | 0 | 100 | 100 | | | | |
| 2008 | 0 | 100 | 100 | | | | |
| 2009 | 0 | 100 | 100 | | | | |
| 2010 | 0 | 41.9 | 0.47 | 0 | 125 | 125 | 125 |
| 2011 | 0 | 32 | 4.9 | 0 | 125 | 125 | 125 |
| 2012 | 0 | 17.7 | 4.9 | 0 | 125 | 125 | 125 |
| 2013 | 0 | 30.1 | 4.9 | 0 | 125 | 125 | 125 |
| 2014 | 0 | 26.1 | 4.9 | 0 | 125 | 125 | 125 |
| 2015 | 0 | 21.7 | 0.37 | 0 | 5 | 0 | 0 |
| 2016 | 0 | 21.7 | 0.32 | 0 | 5 | 0 | 0 |
| 2017 | 0 | 21.7 | 0.26 | 0 | 5 | 0 | 0 |
| 2018 | 0 | 21.7 | 0.21 | 0 | 5 | 0 | 0 |
| 2019 | 0 | 21.7 | 0.16 | 0 | 5 | 0 | 0 |
| 2020 | 0 | 0 | 0 | 0 | 5.0 | 0 | 0 |
| 2021 | 0 | 0 | 0 | 0 | 5.0 | 0 | 0 |
| 2022 | 0 | 0 | 0 | 0 | 5.0 | 0 | 0 |
| 2023 | 0 | 0 | 0 | 0 | 4.4 | 0 | 0 |
| 2024 | 0 | 0 | 0 | 0 | 3.8 | 0 | 0 |
| 2025 | 0 | 0 | 0 | 0 | 3.2 | 0 | 0 |
| 2026 | 0 | 0 | 0 | 0 | 2.5 | 0 | 0 |
| 2027 | 0 | 0 | 0 | 0 | 1.9 | 0 | 0 |
| 2028 | 0 | 0 | 0 | 0 | 1.3 | 0 | 0 |
| 2029 | 0 | 0 | 0 | 0 | 0.7 | 0 | 0 |
| 2030 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2 TO PARAGRAPH (a)—CALENDAR-YEAR HCFC CONSUMPTION ALLOWANCES

| Control period | Percent of HCFC–141b | Percent of HCFC–22 | Percent of HCFC–142b | Percent of HCFC–123 | Percent of HCFC–124 | Percent of HCFC–225ca | Percent of HCFC–225cb |
|---|---|---|---|---|---|---|---|
| 2003 | 0 | 100 | 100 | | | | |
| 2004 | 0 | 100 | 100 | | | | |
| 2005 | 0 | 100 | 100 | | | | |
| 2006 | 0 | 100 | 100 | | | | |
| 2007 | 0 | 100 | 100 | | | | |
| 2008 | 0 | 100 | 100 | | | | |
| 2009 | 0 | 100 | 100 | | | | |
| 2010 | 0 | 41.9 | 0.47 | 125 | 125 | 125 | 125 |
| 2011 | 0 | 32 | 4.9 | 125 | 125 | 125 | 125 |
| 2012 | 0 | 17.7 | 4.9 | 125 | 125 | 125 | 125 |
| 2013 | 0 | 18 | 4.9 | 125 | 125 | 125 | 125 |
| 2014 | 0 | 14.2 | 4.9 | 125 | 125 | 125 | 125 |
| 2015 | 0 | 7 | 1.7 | 100 | 8.3 | 0 | 0 |
| 2016 | 0 | 5.6 | 1.5 | 100 | 8.3 | 0 | 0 |
| 2017 | 0 | 4.2 | 1.2 | 100 | 8.3 | 0 | 0 |
| 2018 | 0 | 2.8 | 1 | 100 | 8.3 | 0 | 0 |
| 2019 | 0 | 1.4 | 0.7 | 100 | 8.3 | 0 | 0 |
| 2020 | 0 | 0 | 0 | 32.3 | 8.3 | 0 | 0 |
| 2021 | 0 | 0 | 0 | 32.3 | 8.3 | 0 | 0 |
| 2022 | 0 | 0 | 0 | 32.3 | 8.3 | 0 | 0 |
| 2023 | 0 | 0 | 0 | 28.4 | 7.3 | 0 | 0 |
| 2024 | 0 | 0 | 0 | 24.4 | 6.3 | 0 | 0 |
| 2025 | 0 | 0 | 0 | 20.4 | 5.3 | 0 | 0 |
| 2026 | 0 | 0 | 0 | 16.4 | 4.2 | 0 | 0 |
| 2027 | 0 | 0 | 0 | 12.5 | 3.2 | 0 | 0 |
| 2028 | 0 | 0 | 0 | 8.5 | 2.2 | 0 | 0 |
| 2029 | 0 | 0 | 0 | 4.5 | 1.1 | 0 | 0 |
| 2030 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

* * * * *

(e)(1) Effective January 1, 2020, no person may produce HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their

transformation or their destruction, for export under § 82.18(a) using unexpended Article 5 allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2020, no person may import HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation or their destruction or for exemptions permitted in § 82.15(f).

(2) Effective January 1, 2020, no person may produce HCFC–123 for any purpose other than for use in a process resulting in its transformation or its destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for export under § 82.18(a) using unexpended Article 5 allowances, or for exemptions permitted in § 82.15(f). Effective January 1, 2020, no person may import HCFC–123 for any purpose other than for use in a process resulting in its transformation or its destruction, for use as a refrigerant in equipment manufactured before January 1, 2020, for use as a fire suppression streaming agent in equipment manufactured before January 1, 2020 and listed as acceptable for use or acceptable subject to narrowed use limits for nonresidential applications, or for exemptions permitted in § 82.15(f).

* * * * *

■ 12. Effective April 16, 2020, amend § 82.23 by:
■ a. Removing and reserving paragraph (a)(i)(F); and
■ b. Adding paragraphs (b)(1)(i) and (ii).

The additions read as follows:

**§ 82.23 Transfers of allowances of class II controlled substances.**

* * * * *

(b) * * *

(1) * * *

(i) A person (transferor) may only convert allowances for one class II controlled substance for which EPA has issued allowances under § 82.16 to another class II controlled substance for which EPA has issued allowances under § 82.16.

(ii) [Reserved]

* * * * *

■ 13. Effective April 16, 2020, amend § 82.24 by:
■ a. Revising paragraph (a)(1);
■ b. Removing and reserving paragraph (b)(1)(iv);
■ c. In paragraph (b)(1)(viii), adding ''and'' at the end of the paragraph;
■ d. Removing and reserving paragraph (b)(1)(ix);
■ e. In paragraph (b)(1)(x), removing ''; and'' and adding a period in its place;
■ f. Removing paragraph (b)(1)(xi);
■ g. Revising paragraph (b)(2)(iv);
■ h. In paragraph (b)(2)(xi), adding ''and'' at the end of the paragraph;
■ i. Removing and reserving paragraph (b)(2)(xii);
■ j. In paragraph (b)(2)(xiii), removing the semicolon and adding a period in its place;
■ k. Removing paragraph (b)(2)(xiv);
■ l. Removing and reserving paragraph (c)(1)(vi);
■ m. Removing paragraphs (c)(1)(x) and (xi);
■ n. In paragraph (c)(2)(xiv), add ''and'' at the end of the paragraph;
■ o. Removing paragraph (c)(2)(xvi);
■ p. Revising paragraphs (c)(3)(i) through (iii), (vi), and (viii) through (xiii), (c)(4)(i)(A), and (c)(4)(vii);
■ q. Adding paragraphs (c)(6) through (11);
■ r. Revising paragraphs (d)(1) introductory text and (d)(1)(iii);
■ s. Removing and reserving paragraph (d)(2); and
■ t. Removing paragraph (g).

The revisions and additions read as follows:

**§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.**

(a) * * *

(1) Reports required by this section must be submitted to the Administrator within 45 days of the end of the applicable reporting period, unless otherwise specified. Starting May 18, 2020, reports that are available for submission through the Central Data Exchange must be submitted electronically through that tool.

* * * * *

(b) * * *

(2) * * *

(iv) Dated records of the quantity (in kilograms) of class II controlled substances produced with Article 5 allowances;

* * * * *

(c) * * *

(3) * * *

(i) The name, commodity code and quantity (in kilograms) of the used class II controlled substance to be imported;

(ii) The name and address of the importer, the importer ID number, the contact person, email address, and phone number;

(iii) Name, address, contact person, email address, and phone number of all previous source facilities from which the used class II controlled substance was recovered;

* * * * *

(vi) Name, address, contact person, email address, and phone number of the exporter and of all persons to whom the material was transferred or sold after it was recovered from the source facility;

* * * * *

(viii) A description of the intended use of the used class II controlled substance, and, when possible, the name, address, contact person, email address, and phone number of the ultimate purchaser in the United States;

(ix) The name, address, contact person, email address, and phone number of the U.S. reclamation facility, where applicable;

(x) If someone at the source facility recovered the class II controlled substance from the equipment, the name, email address, and phone number of that person;

(xi) If the imported class II controlled substance was reclaimed in a foreign Party, the name, address, contact person, email address, and phone number of any or all foreign reclamation facility(ies) responsible for reclaiming the cited shipment;

(xii) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and, if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents;

(xiii) If the imported used class II controlled substance is intended to be sold as a refrigerant in the United States, the name, address, and email address of the EPA-certified U.S. reclaimer who will bring the material to the standard required under subpart F of this part, if not already reclaimed to those specifications; and

* * * * *

(4) * * *

(i) * * *

(A) If the Administrator determines that the information is insufficient, that is, if the petition lacks or appears to lack any of the information required under paragraph (c)(3) of this section or other information that may be requested during the review of the petition necessary to verify that the controlled substance is used;

* * * * *

(vii) A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

* * * * *

(6) *Certification of intent to import for destruction.* For each individual shipment of a class II controlled substance imported with the intent to destroy that substance, an importer must submit electronically to the

Administrator, at least 30 working days before the shipment is to leave the foreign port of export, the following information:

(i) Name, commodity code, and quantity in kilograms of each controlled substance to be imported;

(ii) Name and address of the importer, the importer ID number, and the contact person's name, email address, and phone number;

(iii) Name and address of any intermediary who aggregates controlled substances imported for destruction, and the contact person's name, email address, and phone number;

(iv) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the material. If at the time of submitting the certification of intent to import for destruction the importer does not know the U.S. port of entry, the expected date of shipment and the vessel transporting the material, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the Administrator of this information prior to the entry of the individual shipment into the United States;

(v) Name, address, contact person, email address, and phone number of the responsible party at the destruction facility;

(vi) The export license, application for an export license, or official communication acknowledging the export from the appropriate government agency in the country of export and, if recovered in another country, the export license or official communication from the appropriate government agency in that country, and quantity authorized for export in kilograms on the export license, and an English translation of these documents; and

(vii) A certification of accuracy of the information submitted in the certification.

(7) *Destruction verification.* For each individual shipment of a class II controlled substance imported with the intent to destroy that substance, an importer must submit to the Administrator a copy of the destruction verification within 30 days after destruction of the controlled substance(s).

(8) *Review of certification of intent to import for destruction.* (i) Starting on the first working day following receipt by the Administrator of a certification of intent to import a class II controlled substance for destruction, the Administrator will initiate a review of the information submitted under paragraph (c)(6) of this section and take action within 30 working days to issue either an objection notice or a non-objection notice for the individual shipment to the person who submitted the certification of intent to import the class II controlled substance for destruction.

(ii) The Administrator may issue an objection notice if the petition lacks or appears to lack any of the information required under paragraph (c)(6) of this section or for the reasons listed in paragraphs (c)(4)(i)(B) through (E) of this section.

(iii) In cases where the Administrator does not object to the petition, the Administrator will issue a non-objection notice.

(iv) To pass the approved class II controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(v) If for some reason, following EPA's issuance of a non-objection notice, new information is brought to EPA's attention which shows that the non-objection notice was issued based on false information, then EPA has the right to:

(A) Revoke the non-objection notice;

(B) Pursue all means to ensure that the class II controlled substance is not imported into the United States; and

(C) Take appropriate enforcement actions.

(9) *Timing of import.* A person receiving the non-objection notice is permitted to import the individual shipment only within one year of the date stamped on the non-objection notice.

(10) *Additional recordkeeping requirements—importers of used, recycled, or reclaimed controlled substances.* A person receiving a non-objection notice from the Administrator for a certification of intent to import class II controlled substances for destruction must maintain the following records:

(i) A copy of the certificate of intent to import for destruction;

(ii) The EPA non-objection notice;

(iii) A copy of the export license, export license application, or official communication from the appropriate government agency in the country of export;

(iv) U.S. Customs entry documents for the import that must include one of the commodity codes from appendix K to this subpart;

(v) The date, amount, and type of controlled substance sent for destruction, per shipment;

(vi) An invoice from the destruction facility verifying the shipment was received;

(vii) A copy of the destruction verification from the destruction facility; and

(viii) An English translation of the document in paragraph (c)(10)(iii) of this section.

(11) *Recordkeeping requirements-aggregators.* A person identified in paragraph (c)(6)(iii) of this section as aggregating a controlled substance prior to destruction must:

(i) Maintain transactional records that include the name and address of the entity from whom they received the controlled substance imported for destruction;

(ii) Maintain transactional records that include the name and address of the entity to whom they sent the controlled substance imported for destruction;

(iii) Maintain records that include the date and quantity of the imported controlled substance received for destruction;

(iv) Maintain records that include the date and quantity of the imported controlled substance sent for destruction; and

(v) If the person is the final aggregator of such a controlled substance before the material is destroyed, maintain a copy of the destruction verification.

(d) * * *

(1) *Reporting requirements—exporters.* For any exports of class II controlled substances not reported under paragraph (b)(2) of this section (reporting for producers of class II controlled substances), each exporter who exported a class II controlled substance must submit to the Administrator the following information within 30 days after the end of each quarter in which the unreported exports left the United States:

* * * * *

(iii) The type and quantity of each class II controlled substance exported, including the quantity of controlled substance that is used, reclaimed, or recycled;

* * * * *

■ 14. Effective April 16, 2020, revise appendix K to subpart A to read as follows:

APPENDIX K TO SUBPART A OF PART 82—COMMODITY CODES FROM THE HARMONIZED TARIFF SCHEDULE FOR CONTROLLED SUBSTANCES AND USED CONTROLLED SUBSTANCES

| Description of commodity or chemical | Commodity code from harmonized tariff schedule |
|---|---|
| *Class II:* | |
| HCFC–22 (Chlorodifluoromethane) | 2903.71.0000 |
| HCFC–123 (Dichlorotrifluoroethane) | 2903.72.0020 |
| HCFC–124 (Monochlorotetrafluoroethane) | 2903.79.1000 |
| HCFC–141b (Dichlorofluoroethane) | 2903.73.0000 |
| HCFC–142b (Chlorodifluoroethane) | 2903.74.0000 |
| HCFC–225ca, HCFC–225cb (Dichloropentafluoropropanes) | 2903.75.0000 |
| HCFC–21, HCFC–31, HCFC–133, and other HCFCs | 2903.79.9070 |
| HCFC Mixtures (R–401A, R–402A, etc.) | 3824.74.0000 |
| *Class I:* | |
| CFC–11 (Trichlorofluoromethane) | 2903.77.0010 |
| CFC–12 (Dichlorodifluoromethane) | 2903.77.0050 |
| CFC–113 (Trichlorotrifluoroethane) | 2903.77.0020 |
| CFC–114 (Dichlorotetrafluoroethane) | 2903.77.0030 |
| CFC–115 (Monochloropentafluoroethane) | 2903.77.0040 |
| CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, CFC–217, and other CFCs | 2903.77.0080 |
| CFC Mixtures (R–500, R–502, etc.) | 3824.71.0100 |
| Carbon Tetrachloride | 2903.14.0000 |
| Halon 1301 (Bromotrifluoromethane) | 2903.76.0010 |
| Halon, other | 2903.76.0050 |
| Methyl Bromide | 2903.39.1520 |
| Methyl Chloroform | 2903.19.6010 |

■ 15. Effective April 16, 2020, amend § 82.62 by adding, in alphabetical order, the definition for ''Polyurethane Foam System'' to read as follows:

**§ 82.62 Definitions.**

* * * * *

*Polyurethane Foam System* means an item consisting of two transfer pumps that deliver ingredients (polyisocyanate or isocyanate from one side and a mixture including the blowing agent, catalysts, flame retardants, and/or stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions.

* * * * *

■ 16. Effective April 16, 2020, amend § 82.64 by adding paragraph (h) to read as follows:

**§ 82.64 Prohibitions.**

* * * * *

(h) No person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in § 82.66(f).

■ 17. Effective April 16, 2020, amend § 82.66 by:

■ a. Revising paragraphs (d)(2)(vi) and (e); and

■ b. Adding paragraph (f).

The revisions and addition read as follows:

**§ 82.66 Nonessential Class I products and exceptions.**

* * * * *

(d) * * *

(2) * * *

(vi) Document preservation sprays which contain CFC–113 as a solvent, but which contain no other CFCs, and/or document preservation sprays which contain CFC–12 as a propellant, but which contain no other CFCs, and which are used solely on thick books, books with coated or dense paper and tightly bound documents;

(e) Any air-conditioning or refrigeration appliance as defined in the Clean Air Act (CAA) 601(1) that contains a Class I substance used as a refrigerant; and

(f) Any polyurethane foam system that contains any CFC.

■ 18. Effective April 16, 2020, amend § 82.104 by revising paragraphs (c) and (h) to read as follows:

**§ 82.104 Definitions.**

* * * * *

(c) *Completely destroy* means to cause the destruction of a controlled substance by one of the destruction processes approved by the Parties and listed in § 82.3 at a demonstrable destruction efficiency of 98 percent or more or a greater destruction efficiency if required under other applicable Federal regulations.

* * * * *

(h) *Destruction* means the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction might result in a commercially useful end product but such usefulness would be secondary to the act of destruction. Destruction must be achieved using one of the controlled processes approved by the Parties and listed in the definition of *destruction* in § 82.3.

* * * * *

■ 19. Effective April 16, 2020, amend § 82.106 by revising paragraph (a) to read as follows:

**§ 82.106 Warning statement requirements.**

(a) *Required warning statements.* (1) Unless otherwise exempted by this subpart, each container or product identified in § 82.102(a) or (b) shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(2) Each container of fire suppression agent containing HCFC–123 produced or imported on or after January 1, 2020 shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. Use Only for Recharge of

Equipment Manufactured before January 1, 2020.

(3) Each container of fire suppression agent containing reclaimed HCFC–123 or HCFC–123 that was imported prior to January 1, 2020, shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere. For use in any equipment.

* * * * *

■ 20. Effective April 16, 2020, amend § 82.270 by revising paragraph (e) to read as follows:

**§ 82.270 Prohibitions.**

* * * * *

(e) No person shall dispose of halon except by sending it for recycling to a recycler operating in accordance with NFPA 10 and NFPA 12A standards, or by arranging for its destruction using one of the controlled processes approved by the Parties and listed in the definition of *destruction* in § 82.3.

* * * * *

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Part III

## Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271 and 273
Employment and Training Opportunities in the Supplemental Nutrition Assistance Program; Proposed Rule

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 271 and 273

**[FNS–2019–0008]**

**RIN 0584–AE68**

## Employment and Training Opportunities in the Supplemental Nutrition Assistance Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would implement the changes made by section 4005 of the Agriculture Improvement Act of 2018 (the Act) to the Supplemental Nutrition Assistance Program (SNAP) pertaining to the Employment and Training (E&T) program and aspects of the work requirement for able-bodied adults without dependents (ABAWDs). In general, these changes are related to strengthening the SNAP E&T program, adding workforce partnerships as a way for SNAP participants to meet their work requirements, and modifying the work requirement for ABAWDs.

**DATES:** Written comments must be received on or before May 18, 2020 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Moira Johnston, Food and Nutrition Service, Office of Employment and Training, 1320 Braddock Place, Alexandria, VA 22314.
- *Email:* Send comments to *ETORule@usda.gov.* Include Docket ID Number [FNS–2019–0008], ''Employment and Training Opportunities in the Supplemental Nutrition Assistance Program'' in the subject line of the message.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Moira Johnston, Food and Nutrition Service, Office of Employment and Training, 1320 Braddock Place, Alexandria, VA 22314, or *ETORule@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The proposed rule would implement the changes made by section 4005 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) (the Act) to the Supplemental Nutrition Assistance Program (SNAP). The proposed rule would require State agencies to consult with their State workforce development boards on the design of their E&T programs and require State agencies to document in their E&T State plans the extent to which their E&T programs will be carried out in coordination with activities under title I of the Workforce Innovation and Opportunity Act (WIOA). The proposed rule would also make changes to E&T components including: Replacing job search with supervised job search as a component; eliminating job finding clubs; replacing job skills assessments with employability assessments; adding apprenticeships and subsidized employment as allowable activities; requiring a 30-day minimum for provision of job retention services; and allowing those activities from the E&T pilots authorized under the Agricultural Act of 2014 (Pub. L. 113–79) that have had the most demonstrable impact on the ability of participants to find and retain employment that leads to increased income and reduced reliance on public assistance to become allowable E&T activities.

The proposed rule would also require that, in addition to providing one or more E&T components, all E&T programs provide case management services to E&T participants. The rule would revise the definition of good cause for failure to comply with the requirement to participate in E&T to include instances in which an appropriate component or opening in an E&T program is not available and would also modify the required reporting elements in the final quarterly E&T Program Activity Report provided by State agencies to include the number of SNAP participants who are required to participate in E&T and, of those, the number who begin participation. The proposed rule would add workforce partnerships as a way for SNAP participants to meet their work requirements. It would also establish a funding formula for reallocated E&T funds, and increase the minimum allocation of 100 percent funds for each State agency to $100,000, as prescribed by the Act. The proposed rule would require State agencies to re-direct individuals who are determined ill-suited for an E&T program component to other more suitable activities.

The proposed rule would also codify some changes to ABAWD policy. These changes include updating the regulations to reflect the reduction in the number of ABAWD work exemptions from 15 percent to 12 percent (this change was implemented at the start of Fiscal Year 2020) and referring to such exemptions as ''discretionary exemptions,'' as well as adding workforce partnerships and employment and training programs for veterans operated by the Department of Labor or the Department of Veteran's Affairs to the list of work programs for ABAWDs. The rule would also replace ''job search'' with ''supervised job search'' as a type of activity that cannot count as a work program for the purposes of an ABAWD fulfilling their work requirement, unless it comprises less than half the work requirement.

The proposed rule would add the requirement that all State agencies advise certain types of households subject to the general work requirement at recertification of employment and training opportunities. The rule would also require State agencies to provide to all households subject to work requirements with a consolidated written statement and comprehensive oral explanation of the work requirements for individuals within the household.

Overall, the Department believes the statutory changes made by section 4005 of the Act will strengthen E&T programs, and improve SNAP participants' ability to gain and retain employment, thus reducing participant reliance on the social safety net. Through this legislation, Congress has tasked the Department and State agencies with reviewing and bolstering the quality and accountability of E&T programs for SNAP participants. The proposed rule would allow for more evidence-based components and require more accountability on the part of both State agencies and E&T participants while also retaining State flexibility. Notably, the addition of case management to the definition of an E&T program fundamentally changes SNAP E&T and the expectation for how State agencies must engage with E&T participants. As a result, the Department proposes several changes to the way E&T programs are described. Under the proposed rule, an E&T program would be defined as a program providing both case management and one or more E&T components. E&T components may be

comprised of a number of activities which are designed to achieve the purpose of the component. The Department is also asking for input around the requirement to verify SNAP eligibility for E&T participation.

The Department will discuss each of the proposed regulatory changes in more detail below.

**Consultation With Workforce Development Boards and Coordination With the Workforce Innovation and Opportunity Act (WIOA)**

Current regulations at 7 CFR 273.7(c)(5) require that E&T components must be delivered through the State's statewide workforce development system, unless the component is not available locally through such a system. The Act added the requirement in section 6(d)(4)(A) of the Food and Nutrition Act (FNA) that State agencies must design their SNAP E&T programs in consultation with their State workforce development board or, if the State agency demonstrates that consultation with private employers or employer organizations would be more effective or efficient, in consultation with private employers or employer organizations. The Act also added a new requirement that State agencies include in their E&T State plans the extent to which the State agency will coordinate with the activities carried out under title I of the Workforce Innovation and Opportunity Act (WIOA). The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T (*https://www.fns.usda.gov/snap/snap-section-4005-agriculture-improvement-act-2018-informational-memorandum*) that these provisions were self-enacting and States should begin implementing them immediately and incorporate a description into their FY 2020 E&T State plans. The Department proposes to modify the regulation at 7 CFR 273.7(c)(5) to add the requirement that State agencies design their E&T programs in consultation with their State workforce development board or with employers or employer organizations, if the State agency demonstrates such consultation would be more effective or efficient. The Department also proposes to modify the regulation at 7 CFR 273.7(c)(6)(xii), as redesignated, to require State agencies to describe in their E&T State plans how they met this requirement to consult, and to include a description of any outcomes from this consultation. The Department also proposes to modify the regulation at 7 CFR 273.7(c)(6)(xii), as redesignated, to require State agencies to document in their E&T State plan the extent to which their E&T programs are coordinated with activities carried out under title I of WIOA. The Department would like to clarify that, despite these new requirements for consultation with State workforce development boards and for documenting in E&T State plans the extent to which State agencies have coordinated with activities carried out under title I of WIOA, State agencies would not need approval from the State workforce development board to implement their E&T program. The State SNAP agency would remain responsible for implementing and operating the State's E&T program.

The Department encourages State agencies to take full advantage of the workforce development expertise that already exists in their States to inform their E&T programs. Generally, E&T programs must be delivered through statewide workforce development systems—a broad network of service providers which may include: Government and the public sector; community-based organizations and nonprofits; employers and industry; occupational training providers; and post-secondary institutions, such as community colleges. State agencies should work with their Departments of Labor, State and local workforce development boards, and American Job Centers, as well as tribal workforce development programs, to obtain comprehensive labor market information when designing their E&T programs, and to capitalize on existing workforce development infrastructure and resources to ensure E&T participants have access to appropriate E&T services necessary to move them into good jobs and toward economic self-sufficiency. The Department encourages State agencies to design programs that are responsive to the needs of employers. Local Departments of Labor or American Jobs Centers may have existing relationships with local employers through which they have generated important information about the local labor market and employer training needs. State agencies should leverage the insights gained through these existing relationships as they build their own E&T programs. Nevertheless, the Department would again emphasize that, while State agencies may utilize the workforce development expertise of other agencies or organizations, it ultimately remains the responsibility of the State agency to ensure that E&T programs meet all SNAP requirements and operate in compliance with SNAP law and regulations.

**Supervised Job Search**

Current regulations at 7 CFR 273.7(e)(1)(i) establish job search as an allowable E&T component. In addition, current regulations at 7 CFR 273.7(e)(1) specify that ''job search or job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.'' However, the current provision goes on to state that ''job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components.'' The Act replaced the E&T job search component with supervised job search in section 6(d)(4)(B)(i)(I) of the FNA, and defined supervised job search as an E&T component that occurs at State-approved locations at which the activities of participants shall be directly supervised, and the timing and activities of participants tracked in accordance with guidelines issued by the State agency. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that, if they offer job search as part of SNAP E&T, that job search must be supervised, in compliance with the new statutory requirements in FY 2020. Likewise, here the Department proposes to codify the new supervised job search component at current 7 CFR 273.7(e)(1)(i), now being redesignated as 7 CFR 273.7(e)(2)(i). In addition, the Department proposes to make edits to current 7 CFR 273.7(e)(1), at redesignated 7 CFR 273.7(e)(2), to specify that job search, including supervised job search, when offered as components of an E&T program, are not in and of themselves ''qualifying activities relating to the participation requirements necessary to fulfill the ABAWD work requirement under § 273.24.''

However, job search, including supervised job search, are acceptable activities when offered as part of other E&T program components and those activities comprise less than half of the total required time spent in the components. The Department also proposes changes related to supervised job search in the section on ABAWD work programs at 7 CFR 273.24(a)(1)(iii), which are discussed in the section titled *Work Programs for Fulfilling the ABAWD Work Requirement* later in this preamble.

As noted above, the Department proposes to update the job search component to supervised job search in

current 7 CFR 273.7(e)(1)(i), at redesignated 7 CFR 273.7(e)(2)(i). In accordance with the Act, the Department proposes to define supervised job search as an E&T component that occurs at State-approved locations at which the activities of participants shall be directly supervised, and the timing and activities of participants tracked, in accordance with guidelines issued by the State agency. The requirements encourage the development of environments and engagement strategies that ensure the time an E&T participant spends looking for a job is productive and more likely to lead to improved employment outcomes.

The Department also believes that supervised job search should not create unnecessary impediments that would hinder an E&T participant's ability to move toward self-sufficiency. The Department recognizes that meeting this expectation may require additional State agency resources, particularly with regard to directly supervising E&T participants and tracking their timing and activities. For instance, State agencies may need to identify new environments or tools to provide supervised job search and invest in staff to actively engage E&T participants to help them find meaningful work. In this proposed rule the Department has chosen to include the regulatory text as written in the statute and seek comments about how to further define what constitutes ''supervised'' and ''State-approved location.'' The Department in particular seeks comments on how to define supervision for the purposes of this provision, including whether supervision shall be provided in-person, and whether a ''State-approved location'' shall be a set geographic point, or whether State agencies may be able to meet this requirement in a virtual or telephonic environment.

In addition, the Department seeks comments on the various modes or approaches for providing supervised job search, including how State agencies and E&T providers would administer such programs in a physical location and how they might provide these services for E&T participants, such as those in rural areas, who may have challenges fulfilling their requirement on-site. Commenters are also asked to describe how other programs have implemented similar supervised job search programs and how SNAP E&T could align with those other programs within the bounds of the statutory changes made by the 2018 Farm Bill. The Department is only seeking comments on those various potential modes and approaches and does not intend to presuppose how supervision or State-approved location may be defined in the final rule.

The Department seeks comments especially from State agencies and E&T providers on the ways in which this provision can best be implemented by State agencies choosing to provide supervised job search as a tool to move E&T participants toward improved employment outcomes. Particular questions include:

- *State-approved locations:* What types of locations would State agencies consider as State-approved locations (*e.g.,* in a specific type of facility such as local SNAP office, an American Job Center, or the office of an E&T provider; an interactive website; or through an application on a mobile phone)? What criteria would State agencies consider when determining State-approved locations (*e.g.,* ease of access for E&T participants; ability of the State agency to provide oversight of activities; cost to the State agency)? How would these different approaches affect the ability of E&T participants to access supervised job search activities and State agency administrative burden?
- *Directly supervise participants:* How might State agencies directly supervise E&T participants participating in supervised job search? What types of activities would State agencies include as part of this supervision (*e.g.,* guiding E&T participants to increase the success of their job search; ensuring that E&T participants spend an appropriate number of hours searching for jobs to fulfill their work requirement, as applicable; or connecting E&T participants with other resources to improve their ability to gain employment)? What modes would State agencies consider to deliver this supervision (*e.g.,* in-person, text messages, chat rooms, or phone calls)? How would these different potential approaches affect the ability of E&T participants to access supervised job search activities and State agency administrative burden? How might different approaches impact E&T outcomes and move participants toward self-sufficiency through work?
- *Tracking timing and activities of participants:* How might State agencies track the timing and activities of E&T participants in supervised job search? What would the State agency track (*e.g.,* number of job applications submitted to employers; number of hours spent searching for a job; or number of log-ins to a State-approved website)? What modes might State agencies consider to track the timing and activities of participants (*e.g.,* in-person contacts; emails, phone calls, or text messages; or electronic sign-ins through State-approved websites or web-based applications)? How would these different potential approaches affect the ability of E&T participants to access supervised job search activities and State agency administrative burden?

In addition, the Department seeks comments describing current job search programs operated as part of E&T programs or other workforce development programs that are directly supervised and where the timing and activities of participants are tracked by the State agency or providers. How are State agencies or providers providing this direct supervision and tracking the timing and activities of E&T participants? Do these programs require that the activities and supervision take place at a State-approved location? If so, how is location defined? What lessons learned can State agencies or their providers share to assist the Department in ensuring State agencies create supervised job search components that are accessible to E&T participants, particularly those in rural areas or who might otherwise have challenges accessing a physical location, that employ evidence-based strategies to move participants towards improved employment outcomes, and that effectively maximize all available State E&T resources?

The Department recognizes that job search, supervised or otherwise, can be an important activity for E&T participants seeking employment or looking for a new job where they can apply the skills gained through E&T. The Joint Explanatory Statement of the Committee of Conference, issued with the Act, reinforced that view by stating that ''unsupervised job search'' may be a ''subsidiary component'' for the purposes of meeting a work requirement, so long as it is less than half of the requirement.[1] As a result, the Department proposes in 7 CFR 273.7(e)(1)(i), redesignated as 7 CFR 273.7(e)(2)(i), that job search not meeting the definition of supervised job search (*i.e.,* that does not meet all three of the following conditions: Takes place at a State-approved location, is directly supervised, and the timing and activities of participants are tracked) can be a subsidiary activity of another E&T component as long as it makes up less than half of the total required time spent in that component. For E&T participants subject to the mandatory E&T requirement, this proposed rule would

[1] Conf. Rept. 115–1072, p. 617, *https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf.*

allow them to meet their mandatory E&T requirement through participation in an E&T component in which less than 50 percent of the time in the component is spent in job search, supervised or otherwise, or job search training. This would enable E&T participants who are engaged in such an E&T component to begin looking for a position while they are still in training and to have those hours count toward meeting their work requirement. The Department anticipates this flexibility would maximize the potential of E&T participants to build upon potential job connections gained while in the E&T component and increase the speed with which E&T participants can move into employment, while providing them sufficient time to transition from SNAP to self-sufficiency.

The Department proposes to make conforming changes throughout 7 CFR 273.7(e)(1)(i), now redesignated as 7 CFR 273.7(e)(2)(i), to change references from ''job search'' to ''supervised job search.''

The Department also proposes to modify regulations at 7 CFR 273.7(e)(1), now redesignated as 7 CFR 273.7(e)(2), to specify that supervised job search and job search training programs provided through an E&T program cannot alone count as qualifying activities relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs. However, the current regulations at 7 CFR 273.7(e)(1) allow job search and job search training to count as qualifying activities when offered as a part of other E&T components, as long as those job search and job search training activities comprise less than half the total required time spent in the components. As stated previously, the Joint Explanatory Statement of the Committee of Conference states that ''unsupervised job search'' may be a ''subsidiary component'' for the purposes of meeting a work requirement, so long as it comprises less than half of the requirement. As a result, the Department proposes that job search, whether it meets the definition of supervised job search or not, when offered as part of other E&T components, should continue to serve as an allowable way for ABAWDs to fulfill their work requirement, so long as the job search activities comprise less than half the total required time spent in the components. This change does not reflect a change from existing policy; rather, it is only intended to include supervised job search as a type of job search.

Current regulations at 7 CFR 273.7(c)(6)(i) require State agencies to submit an E&T State Plan that provides details on the E&T components the State agency plans to provide, including cost information. The Act required State agencies to issue guidelines explaining how they intend to implement supervised job search programs. As a result, the Department proposes to modify regulations at 7 CFR 273.7(c)(6)(i) to specify that a State agency planning to offer supervised job search must include a summary of the guidelines established for supervised job search in its annual E&T State plan. At a minimum, the guidelines would need to specify: The locations of the State-approved sites; how they were selected as State-approved locations; and how the supervised job search component meets the statutory requirements to directly supervise the activities of participants and track the timing and activities of participants.

Lastly, the Department proposes to make an update to the statutory citation in 7 CFR 273.7(e)(1), now redesignated as 7 CFR 273.7(e)(2), to indicate that the section in the FNA referring to work programs for ABAWDs is currently located in section 6(o)(1)(C). A similar change to update the statutory citation is made in 7 CFR 273.7(e)(1)(i), now redesignated as 7 CFR 273.7(e)(2)(i).

**Employability Assessments**

Current regulations at § 273.7(e)(1)(ii) permit the use of job skills assessments as part of a job search training component in a State's E&T program. The Act replaced job skills assessments in section 6(d)(4)(B)(i)(II) of the FNA with ''employability assessments.'' The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they must implement employability assessments in compliance with the new statutory requirements for FY 2020. The Department now proposes to incorporate this change into the regulations by modifying 7 CFR 273.7(e)(1)(ii), now redesignated as 7 CFR 273.7(e)(2)(ii), to remove the reference to job skills assessments and replace it with employability assessments.

The Department notes that employability assessments are more comprehensive and provide a more in-depth assessment than job skills assessments. Employability assessments should help determine an individual's readiness for employment, which includes assessing a set of cross-cutting skills such as, applied academic, interpersonal, critical thinking, and communication skills, as well as barriers to work. Job skills assessments determine whether an individual has the skills appropriate for a specific job and may be one piece of an employability assessment. The information collected through employability assessments should be used, together with ongoing case management, to improve and individualize services to E&T participants, including matching them to appropriate components and identifying appropriate participant reimbursements that are reasonable and necessary for participation in an E&T component.

**Removal of Job Finding Clubs**

Current regulations at 7 CFR 273.7(e)(1)(ii) include job finding clubs as an allowable activity under the job search training component. The Act modified the job search training component in section 6(d)(4)(B)(i)(II) of the FNA to remove job finding clubs from the list of activities that can be included in a job search training program. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they must not include job finding clubs in their FY 2020 E&T programs. The Department now proposes to modify the regulation at 7 CFR 273.7(e)(1)(ii), now redesignated as 7 CFR 273.7(e)(2)(ii), to remove job finding clubs as an activity under the job search training component. The proposed regulation would state that a job search training program ''may consist of employability assessments, training in techniques to increase employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program.''

The Department would like to clarify that State agencies have broad flexibility in the design of their job search training component and the specific activities that may be included in such a component. While job finding clubs are specifically eliminated as an allowable activity, other activities that increase the employability of participants are still permitted, such as State facilitated peer-to-peer learning opportunities or offering job search trainings in a group format, if the State agency determines such activities will expand the job search capabilities or employability of E&T participants.

**Job Retention**

Current regulations at 7 CFR 273.7(e)(1)(viii) allow job retention services as an allowable E&T component. These regulations explain

that State agencies offering this component must provide no more than 90 days of job retention services. The Act modified the job retention E&T component in section 6(d)(4)(B)(i)(VII) of the FNA to require that State agencies choosing to provide job retention services must offer a minimum of 30 days of services, but did not modify the existing 90 day statutory maximum for the receipt of job retention services. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that any job retention services must be implemented in compliance with the new statutory requirements in FY 2020. The Department now proposes to modify the current regulations at 7 CFR 273.7(e)(2)(viii), as redesignated, to add a 30-day minimum for the receipt of job retention services. The proposed regulation would state that job retention services must be provided for a minimum of 30 days and no more than 90 days.

For State agencies choosing to offer job retention services, providing at least 30 days of services ensures participants are supported during a period of time when they are most vulnerable. When individuals begin employment, they may need to make many adjustments in their lives, such as arranging day care, using new modes of transportation, or navigating the new work culture. Providing job retention services for these first few weeks would help facilitate the transition to employment and improve their long-term attachment to work. However, the Department understands that, for many reasons, it may be difficult for State agencies to maintain job retention services for a full 30 days due to circumstances outside of their control. For instance, a State agency may plan to provide 90 days of job retention services to a participant, but the participant becomes unreachable after 14 days, making the continued provision of job retention services unachievable.

Given the importance of providing job retention services during the first few weeks of a new job, and the change in the statutory requirements, the Department proposes that State agencies offering this E&T component must make a good faith effort to provide job retention services for a minimum of 30 days to all job retention program participants. The Department proposes that this good faith effort should include, at a minimum, communicating the 30 day minimum to all job retention participants at enrollment in job retention services, and creating a case management plan for each job retention program participant that extends at least 30 days (and no more than 90 days). If a State agency demonstrates a good faith effort to provide job retention services for at least 30 days to a participant, the Department proposes that the activities supporting the good faith effort would satisfy the 30-day minimum requirement.

**E&T Pilot Activities**

The Act provided the Secretary with discretion to allow programs and activities from the E&T pilots authorized under the Agricultural Act of 2014 (Pub. L. 113–79) (2014 Farm Bill) as regular E&T components in section 6(d)(4)(B)(i)(VIII). The Act specified that this determination must be based on the results from the independent evaluation of the 2014 Farm Bill E&T pilots showing which programs and activities have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. As a result, the Department proposes adding similar language to the regulations in a new paragraph at 7 CFR 273.7(e)(2)(ix) to create a new E&T component category. The Department would note that the independent evaluation of the 2014 Farm Bill E&T pilots is not yet completed; as a result, the Department is not yet able to specifically identify new E&T components from the 2014 Farm Bill E&T pilots.

**Subsidized Employment and Apprenticeships**

Current regulations at 7 CFR 273.7(e)(1)(iv) describe a work experience program as a program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. The Act added subsidized employment and apprenticeship in section 6(d)(4)(B)(i)(IV) of the FNA as examples of allowable activities under a program designed to improve the employability of individuals through actual work experience or training (*i.e.,* a work experience program). The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they may offer apprenticeships in FY 2020. The Department now proposes to modify the regulation at 7 CFR 273.7(e)(1)(iv), now redesignated as 7 CFR 273.7(e)(2)(iv), to convey the types of activities allowable as part of a SNAP E&T work experience component. The Department also proposes amending 7 CFR 273.7(d)(1)(ii)(A) to allow E&T funds to be used to subsidize the wages of E&T participants.

To implement the changes made by the Act, the Department proposes several changes to the regulations at 7 CFR 273.7(e)(1)(iv), now redesignated as 7 CFR 273.7(e)(2)(iv). The changes would better align the definition of a work experience program and activities with other Federal workforce development programs, and would delineate work experience programs into two sets of activities—work activities and work-based learning. First, the Department proposes incorporating the Department of Labor's definition of work experience under WIOA into the E&T definition of work experience. Department of Labor regulations at 20 CFR 680.180 define work experience as a planned, structured learning experience that takes place in a workplace for a limited period of time. Second, the Department proposes to delineate the two sets of work experience program activities noted above: Work activity and work-based learning. In defining a work activity, the Department proposes to incorporate part of the definition of a work experience program from the Temporary Assistance for Needy Families (TANF) program (see 45 CFR 261.2), as the Department considers this part of the TANF definition of work experience to be comparable to a work activity in E&T. According to this new E&T definition, a work activity that is performed in exchange for SNAP benefits would provide the individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose is to improve the employability of those who cannot find unsubsidized full-time employment. The Department's goal in adopting these definitions is to align E&T programs with programs offered through other partners, so as to streamline service delivery across programs, better facilitating State agencies' delivery of their E&T programs through their statewide workforce development systems to the greatest extent possible.

Third, the Department proposes to use the definition of work-based learning included in Perkins V (Pub. L. 115–224). Perkins V defines the term ''work-based learning'' as ''sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction'' (20 U.S.C.

2302). Among other activities, work-based learning includes apprenticeships and subsidized employment, which were specifically added by the Act, and may also include instruction in a classroom setting. Work-based learning emphasizes employer engagement, includes specific training objectives, and is expected to lead to regular employment. Because most SNAP participants cannot afford to leave the labor market while they increase their skills, paid work-based learning can be a useful strategy to help them gain skills while also meeting their immediate need to earn income. Ideally, work-based learning should lead to the attainment of industry-recognized certificates or credentials, and should be explicitly linked to increased earnings. Examples of work-based learning models include, but are not limited to, internships, apprenticeships, pre-apprenticeships, customized training, transitional jobs, incumbent worker training, and on-the-job training. While paid work based learning can be useful, as noted, work based learning can include both subsidized and unsubsidized employment models. The Department also proposes to make a conforming change to existing 7 CFR 273.7(d)(1)(ii)(A) to strike language that E&T funds cannot be used to subsidize the wages of participants, since subsidized employment is an allowable E&T work experience program activity.

Work-based learning is a workforce development best practice, and work-based learning programs are increasingly available through States' statewide workforce development systems. The Department strongly encourages State agencies interested in incorporating work-based learning activities into their E&T programs to work with their State Departments of Labor, American Job Centers, Perkins Career and Technical Education (CTE) providers, and other stakeholders, such as community colleges and community-based organizations, to capitalize on existing work-based learning infrastructure and services. State agencies choosing to include work-based learning as part of their E&T programs should ensure that the activities are implemented in a manner that is consistent with applicable Federal requirements and regulations.

When designing work-based learning activities as part of an E&T program, State agencies should be cognizant of the fact that section 5(d) of the FNA requires that, for the purposes of determining eligibility, household income must include all income from any source, including subsidized wages earned through E&T, that is not otherwise excluded in the FNA or any other Federal statute. FNS is not aware of any existing laws that would allow income from subsidized employment to be excluded when determining eligibility for SNAP. The State agency should consider and, as a best practice, advise participants of whether earnings from a work-based learning activity under an E&T program could potentially decrease the amount of SNAP benefits they receive or make their household ineligible for SNAP, and by extension, E&T, depending on their circumstances.

The Department would note that, in accordance with section 6(d)(4)(B)(i)(IV)(aa) and (bb) of the FNA and 7 CFR 273.7(e)(1)(iv)(A) and (B), redesignated as 7 CFR 273.7(e)(2)(iv)(B)(*1*) and (*2*), a work experience component must be consistent with the Fair Labor Standards Act (FLSA), should not replace an existing employee or position, and should provide participants with the same benefits and opportunities as anyone else doing a substantially similar job.

**WIOA Programs**

Current regulations at 7 CFR 273.7(e)(1)(v) describe the following E&T component: ''a project, program or experiment such as a supported work program, or a WIA [Workforce Investment Act] or State or local program aimed at accomplishing the purpose of the E&T program.'' While the Act did not address this provision, the Department would like to use this rule-making opportunity to clarify in the regulations the relationship between WIA (the predecessor to WIOA), or State or local programs, and the E&T program. The Department notes that ''WIA or State or local program'' has never been listed as a separate component in the FNA, but that the Department originally included ''WIA or State or local program'' as a separate component in the regulations to signal that these programs can be included in a State's E&T program. With the changes made by the Act to include subsidized employment and apprenticeships as allowable activities in E&T programs, all activities operated under WIOA are now allowable within other E&T components. Similarly, any services offered by the State agency or through State or local programs can be included in one of the other E&T components. The Department has found that listing ''WIOA or State or local program'' as its own separate component category in the regulations implies that State agencies should not use the other more descriptive component categories when they report on WIOA, or State or local programs in their E&T programs. The Department has provided guidance to State agencies about using other more descriptive E&T component categories, but is now proposing to codify this as a regulatory requirement by removing the reference to WIA. Therefore, the Department proposes to strike ''or a WIA or State or local program'' from the regulatory language at 7 CFR 273.7(e)(2)(v), as now redesignated. It is important to note that, in proposing this change, the Department is not intending to convey that programs operated under WIOA would be unallowable as E&T activities, in fact, all would be allowable and coordination would be encouraged.

**Case Management**

Current regulations at 7 CFR 273.7(c)(4) establish the requirement that each State agency must design and operate an E&T program that must consist of one or more E&T components as described in 7 CFR 273.7(e)(1). The Act modified the definition of an E&T program in section 6(d)(4)(B)(i) of the FNA to require that each State E&T program must also provide case management services, such as comprehensive intake assessments, individualized service plans, progress monitoring, or coordination with service providers, in addition to at least one E&T component. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they must offer case management to all E&T participants in FY 2020. The Department now proposes to modify the regulation at 7 CFR 273.7(c)(4) to add that State agencies must offer case management services as part of their E&T programs. The Department also proposes to modify the regulations at 7 CFR 273.7(e) to add a new paragraph (e)(1), stating that case management services are a required part of all State E&T programs, and to provide examples from the Act of case management services. In addition, the Department proposes various changes to the definitions in 7 CFR 271.2 to reflect the inclusion of case management services in the E&T program.

The Department believes that, in order to best move SNAP participants toward self-sufficiency, State agencies should connect E&T participants to programs and activities that best meet their employment needs, while supporting participants as they overcome challenges to E&T program completion and employment success. The provision of case management services is an opportunity for State agencies to increase their accountability to E&T participants by expanding their use of tools and resources to ensure all

E&T participants are successfully supported as they move through an E&T program. The Department recognizes that State agencies may have many approaches to offering case management, depending on resources and the structure of the E&T program in the State. State agencies may also adopt different modes for the delivery of these services (*e.g.,* virtual, over the telephone, in-person, or hybrid approaches) and may employ different staffing arrangements for case managers (*e.g.,* State agency staff, community-based organizations, or contractors). No matter the approach, the Department encourages State agencies to provide case management services that ensure individuals are assessed and placed in appropriate activities, and are provided the individualized and on-going guidance and support they need in order to be successful. The Department also encourages State agencies to provide case management services that are aligned with best practices in workforce development and human services.

While the Department proposes that State agencies have flexibility in the types of case management services offered, the provision of case management services should generally be consistent with the examples provided in the Act, and the State agency should be able to demonstrate how the case management service is supporting an individual to successfully participate in E&T. As stated in the Joint Explanatory Statement (Conf. Rept. 115–1072, p. 617), the requirement for case management services is not intended to be an impediment to the State agency nor to the E&T participant. As a result, the Department is proposing regulatory language at 7 CFR 273.7(e)(1), stating that the provision of case management services must not be an impediment to the participant's successful participation in E&T. Similarly, the Department stands ready to offer technical assistance to State agencies to assist in developing case management services that align with State agency priorities, resources, the needs of local participants, and best practices, while meeting the Act's requirement to provide these services to all E&T participants.

In accordance with the Act, the Department also proposes that State agencies must provide all E&T participants with case management services, along with at least one E&T component. The Department proposes that the type and frequency of case management services provided to E&T participants may vary by E&T participant, depending on the needs of the E&T participant, and resources of the State agency, and the entities providing case management services (*e.g.,* State Agency office, community-based organizations, contractor, etc.) within the State. As a best practice, the Department notes that case management should be an ongoing activity that must enhance the participant's ability to participate and complete the E&T component to which they are assigned. Case management should not be limited to initial intake activities and should occur as the E&T participant progresses through the E&T program. As such, case management should be tailored to the needs of the individual, and be adaptable to the individual's changing support requirements.

Since case management services are now a required part of all E&T programs, and because Congress requested in the Joint Explanatory Statement to include case management in E&T State plans (Conf. Rept. 115–1072, p. 617), the Department proposes to also require State agencies to include a description of the case management services they intend to offer as part of their E&T State plan. The Department proposes in new 7 CFR 273.7(c)(6)(ii) that State agencies include information about case management operations, including a description of their case management services and models, the cost for providing the services, how participants will be referred to case management, how the participant's case will be managed, who will provide services, and how the service providers will coordinate with E&T providers, the State agency, and other community resources, as appropriate.

As a result of the requirement that all E&T participants receive case management services, the Department also proposes adding or updating several definitions related to E&T. First, the Department proposes to update the definition of an *Employment and Training (E&T) program* to indicate that E&T programs must consist of case management and at least one E&T component. Second, the Department proposes to revise the definition of an *Employment and Training (E&T) mandatory participant* to update the statutory citation and to indicate these individuals are required to participate in E&T. Third, the Department proposes a definition of *Employment and Training (E&T) voluntary participant* as a SNAP applicant or recipient who volunteers to participate in an Employment and Training (E&T) program. Fourth, the Department proposes to add the definition of an *Employment and Training (E&T) participant* as an individual that meets the definition of either a mandatory or voluntary E&T participant. Fifth, the Department proposes to revise the definition of an *Employment and Training (E&T) component* to update the statutory citation contained within the definition. And sixth, the Department proposes to delete the definition of *Placed in an employment and training program* as this terminology no longer applies to the current structure of E&T programs.

To reconcile the new structure of E&T programs, to include both case management and one or more E&T components, and to incorporate the new E&T definitions within the current regulations, the Department proposes the following regulatory changes. Title 7 CFR 273.7(c)(2) would be simplified to indicate that when the State agency screens an individual and determines it appropriate to require the individual to participate in an E&T program, the State agency must refer that individual to the E&T program, newly defined as consisting of case management and at least one E&T component. This referral process may vary from State to State and from participant to participant, but in all cases, the E&T participant must receive both case management services and at least one E&T component, and the State agency must determine how a participant progresses through these required elements of an E&T program. For example, the State agency could choose to first refer individuals required to participate in E&T to case management services, rather than refer them directly to an E&T component. The case manager would then determine the most appropriate E&T component for the E&T participant and make the referral to that component. In another example, the State agency could refer the individual directly to an E&T component, and the provider of that component would provide the case management services. In other situations, the State agency could refer the individual initially to both case management services and an E&T component provided by separate entities.

The new proposed regulatory text would also more clearly make a distinction between when the State agency determines an individual is required to participate in E&T (*i.e.,* the determination) and when an individual is referred to E&T (*i.e.,* the referral). While these two steps may often occur closely in time, the Department would like to clarify that it is at the point the State agency determines an individual is required to participate in E&T that an individual becomes a mandatory E&T participant. It is the State agency's

responsibility to ensure all mandatory E&T participants are referred to the E&T program in a timely manner and that there is an appropriate and available opening in the E&T program. If there is not an appropriate or available opening in the E&T program for a mandatory participant, the Department proposes that the State agency must determine that a mandatory participant has good cause for failure to participate in an E&T program and not sanction the participant, as discussed later in this preamble in the section titled *State agency accountability for participation in an E&T Program and good cause.*

The Department also proposes changes to 7 CFR 273.7(e)(4), as redesignated, to indicate that, when a State agency determines the maximum amount of time an E&T participant may spend in an E&T program, the calculation must include time spent in case management in addition to time spent in E&T components and workfare. Other conforming changes include changes to 7 CFR 273.7(d)(4)(v) and (f)(6).

**Referral of Individuals**

Section 4005 of the Act added a new requirement for State agencies regarding any E&T participant, not otherwise exempted from the work requirement, who is determined by the operator of an E&T component to be ill-suited to participate in that E&T program component. For individuals determined to be ill-suited, the Act required the State agency to do the following: (1) Refer the individual to an appropriate E&T component; (2) refer the individual to an appropriate workforce partnership, if available; (3) re-assess the individual's physical and mental fitness; or (4) to the maximum extent practicable, coordinate with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual. During this time, the State agency shall ensure that an individual undergoing and complying with the process above shall not be found to have refused without good cause to participate in an E&T program. This new requirement was added at new section 6(d)(4)(O) of the FNA. The Department proposes to codify this new requirement in a new paragraph at 7 CFR 273.7(c)(18). The Department believes that this new provision was intended by Congress to increase the accountability of State agencies for their E&T programs, particularly when State agencies require participation in E&T. While State agencies are already required to develop State criteria to determine who should be required to participate in E&T, State agencies often do not apply sufficient due diligence to ensure the SNAP participants who are referred to the E&T program have the capacity to benefit from that training, and that the particular component to which they are referred matches the SNAP participant's needs and skill level. Unfortunately, in these situations, SNAP participants referred to an E&T program may fail to benefit from the program, and ultimately could be disqualified for failure to participate. This new provision strives to strengthen State accountability for their E&T programs by requiring State agencies take additional steps to ensure SNAP participants subject to this provision receive the targeted help they need to move toward self-sufficiency. The Department proposes several new processes to implement the provision, as discussed below.

Consistent with section 4005 of the Act, the proposed regulation in new 7 CFR 273.7(c)(18)(i) would provide the authority to the E&T provider to determine if an individual referred to or participating in an E&T component is ill-suited for that E&T component. For the purposes of this provision, an E&T provider is understood as the provider of an E&T component. While some E&T providers may provide other E&T services like case management, only E&T providers that offer at least one E&T component would have the authority to determine if an individual is ill-suited to participate in that component. The proposed regulation would also require the State agency to ensure E&T providers are informed of their authority to determine what constitutes being ill-suited for a particular E&T component. The Department believes that the authority for determining if an individual is ill-suited for a particular E&T component should rest primarily with the E&T provider of that component as they generally set the criteria for who they serve in their E&T program and are in the most appropriate position to determine if a particular individual will be successful, given the requirements of the program. However, the State agency still has the responsibility to properly screen individuals for participation in an E&T program and refer individuals to an appropriate component. The State agency would also be responsible for overseeing the E&T provider and ensuring that the ill-suited determinations that are made are reasonable and nondiscriminatory. The Department proposes that E&T providers have the authority to determine if an individual is ill-suited for an E&T component from the time the individual is referred by the State agency until the individual completes the component.

When a determination of ill-suited has been made, the proposed rule in new 7 CFR 273.7(c)(18)(i)(A) would require the E&T provider to notify the State agency as soon as possible. The State agency would be expected to establish procedures, including system enhancements, with their E&T providers to ensure this notification occurs promptly, so that the State agency can notify the individual and determine appropriate next steps for the individual with an ill-suited determination (*i.e.,* re-screening the individual for physical and mental fitness; referring the individual to a different E&T component or to a workforce partnership; or identifying other work opportunities or assistance). The State agency may also proactively contact E&T providers for information about any ill-suited determinations that have occurred or may have occurred, but about which notification has not yet been provided by the E&T provider to the State agency.

The Department also proposes that, when the E&T provider notifies the State agency of an ill-suited determination for an individual, the E&T provider also include the reason for the ill-suited determination. Providing the reason would assist the State agency in determining the most appropriate next step for such an individual. If an E&T provider fails to notify the State agency of an ill-suited determination and/or does not provide the reason, and the State agency learns in another way of the ill-suited determination, perhaps from the SNAP participant or a case manager, the State agency should follow-up with the E&T provider to obtain this information. If the State agency is unable to obtain the reason for the ill-suited determination from the E&T provider, the State agency must continue to act on the ill-suited determination as described later in this section and proposed for 7 CFR 273.7(c)(18)(i) and (ii).

While the authority to determine if an individual is ill-suited for a particular E&T component would rest with the E&T provider, State agencies could engage in a discussion with E&T providers about the factors that constitute ill-suited determinations for a particular E&T component. As a best practice, State agencies should be consistently working with their E&T providers to understand the characteristics of individuals who would be most successful in their programs so that, to the maximum extent practicable, the State agency

could make appropriate referrals and reduce the number of individuals who are referred to E&T components for which they are ill-suited. In particular, this information could be used by the State agency when screening individuals to determine if it is appropriate to refer them to an E&T program and, if it is appropriate, the information could be used to assist the State agency, including case managers, in referring individuals to the specific E&T component where they would most likely be successful. State agencies might consider incorporating information they glean from E&T providers about factors that are most likely to signal success in an E&T component into more specific State agency criteria to be used when determining if an individual should be required to participate in E&T. The Department stresses that it is the responsibility of the State agency to do a thorough screening of individuals to determine if the individual is exempt from the general work requirement or if it is appropriate to refer them to an E&T program or particular E&T component. It is not the E&T provider's responsibility to determine if an individual is exempt from the general work requirements or meets State criteria for referral to an E&T program or specific component. However, the Department would also like to note that nothing precludes the E&T provider from communicating with the State agency to aid the State agency in its determination of whether an individual is exempt from the general work requirements.

Once the State agency receives a notification from the E&T provider that an individual has been determined ill-suited for an E&T component, proposed 7 CFR 273.7(c)(18)(i)(A) would require the State agency to send as soon as possible a Notice of E&T Participation Change (NETPC) to the household member. The NETPC should inform the individual of the ill-suited determination. If the individual with the ill-suited determination is an ABAWD, the NETPC should also explain that, regardless of the ill-suited determination, the ABAWD would begin to accrue countable months toward their 3-month participation time limit as of the date of the notice unless the ABAWD fulfills the work requirement in accordance with 7 CFR 273.24. Lastly, the NETPC should provide contact information for the E&T program. The Department seeks comments regarding if and how the Department should more specifically regulate the timing of this notice, and any additional information the Department should include in the final regulations regarding information printed in the NETPC. The Department also seeks comments on any additional language the Department should include in the final rule addressing required actions the State agency would be expected to take following the notice being sent, including if the final rule should specify when the State agency would be expected to take one of the four actions described below (*e.g.,* within 30 days, at the next recertification, etc.), and how to ensure an individual with an ill-suited determination is moved into a more suitable activity as soon as reasonably possible.

In accordance with the Act, the proposed rule would also require the State agency, in proposed 7 CFR 273.7(c)(18)(i)(B), to take the most appropriate of the following four actions for an individual who has been determined ill-suited and is not exempt from the general work requirement: (1) Refer the individual to an appropriate E&T program component; (2) refer the individual to an appropriate workforce partnership, if available; (3) reassess the physical and mental fitness of the individual; or (4) coordinate, to the maximum extent practicable, with other Federal, State, and local workforce or assistance programs to identify work opportunities or assistance for the individual. Additional information about each of these actions is provided below. The Department also notes that decisions about the most appropriate of the four actions to take for an individual with an ill-suited determination is an eligibility function; however, eligibility staff making this decision may consult with E&T case managers and E&T providers to gather important E&T case information about the individual with an ill-suited determination to inform their decision.

A State agency may choose to refer the just determined ill-suited individual to a more appropriate E&T program component. However, before a State agency refers an individual to an appropriate E&T program component, the proposed rule at 7 CFR 273.7(c)(18)(i)(B)(*1*) would require the State agency to screen the individual in accordance with the existing regulation at 7 CFR 273.7(c)(2) to determine if the individual meets State agency criteria for participation in the E&T program. The requirement applies even when individuals were previously screened, as their circumstances may have changed. If appropriate, the State agency should then refer the individual to an E&T program component, and case management according to the State's E&T procedures. If the individual does not meet State agency criteria for participation in the E&T program, the individual should not be required to participate in the E&T program. The Department also recognizes that there may be circumstances where an individual seemingly meets State agency criteria for participation in E&T, but identification of other work opportunities or assistance (*i.e.,* the fourth available action under this provision) or informing the individual about voluntary participation in a workforce partnership (*i.e.,* the second available action under this provision) would be more appropriate for the individual. In this situation, the Department would encourage State agencies to consider exempting the individual from E&T, as permitted by section 6(d)(4)(D) of the FNA and 7 CFR 273.7(e)(2) (redesignated as § 273.7(e)(3)), identifying other work opportunities or assistance, or informing the individuals about voluntary workforce partnerships. The Department proposes these clarifications to ensure that an individual who has already been found ill-suited for one E&T component is not cycled through additional E&T components that may also not provide the appropriate foundation to move the individual toward self-sufficiency. The Department also believes this approach would allow the State agency to best match limited E&T resources with participants of suitable backgrounds and career interests, and reduce the confusion that multiple unsuccessful E&T referrals can create for individuals with significant barriers to employment.

If the State agency has one or more workforce partnerships available in the State, the State agency could choose to refer an individual, if appropriate, to a workforce partnership. As proposed, 7 CFR 273.7(c)(18)(i)(B)(*2*) explains how the State agency would need to ensure the workforce partnership meets the requirements in proposed 7 CFR 273.7(n), and that the referral be conducted in accordance with these requirements. In particular, and in accordance with the Act, the proposed regulation at 7 CFR 273.7(n)(9) states that no individual can be required to participate in a workforce partnership. Pursuant to these requirements, the Department proposes that before an individual is referred to a workforce partnership, the State agency would first need to provide information to assist the individual in making an informed decision about participation in the workforce partnership. If the individual determines he or she would like to

participate, the State agency would make the referral to the workforce partnership. If the individual determines he or she would not like to participate in the workforce partnership, then the State agency would need to consider one of the other three actions available in this section. Lastly, the Department proposes in 7 CFR 273.7(n)(6) that individuals subject to mandatory E&T requirements, who choose to participate in a workforce partnership, would need to be considered by the State agency to be fulfilling the mandatory E&T requirement.

The third action available to the State agency when deciding next steps for an individual who has been found ill-suited would be to reassess the physical and mental fitness of the individual, as proposed in 7 CFR 273.7(c)(18)(i)(B)(*3*). The Department proposes that this reassessment could be part of a broader reassessment of any exemptions from the general work requirement in existing regulations at 7 CFR 273.7(b). If an individual is not found physically or mentally fit, the individual should be exempted from the general work requirement. If the individual is found mentally and physically fit, and the State agency determines the individual is not otherwise exempt from the general work requirements, the State agency would be expected to consider one of the other available actions in this provision that would most likely lead to increased self-sufficiency for the individual.

The fourth action available to the State agency would be to coordinate with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual, as proposed in 7 CFR 273.7(c)(18)(i)(B)(*4*). The Department proposes that the State agency have broad discretion in identifying other workforce or assistance programs that would provide the most appropriate services to the individual to move them toward self-sufficiency, including tribal workforce or assistance programs, with the qualification that these other programs are not included in the E&T State plan. Likewise, since the other work opportunities or assistance programs identified in 7 CFR 273.7(c)(18)(i)(B)(*4*) are not SNAP E&T programs, the State agency cannot require an individual to participate in programs under 7 CFR 273.7(c)(18)(i)(B)(*4*) as a way to fulfill their mandatory E&T participation requirement, nor would participation in such a program fulfill the individual E&T requirement. If the State agency determines it is appropriate to require an individual to participate in SNAP E&T, the State agency should refer the individual to an E&T program in accordance with 7 CFR 273.7(c)(18)(i)(B)(*1*) or, at the option of the individual, to a workforce partnership in accordance with 7 CFR 273.7(c)(18)(i)(B)(*2*). As stated previously, the State agency should strongly consider whether it would be appropriate to require an individual to participate in a new E&T component, if that individual has already been found ill-suited for a previous E&T component. Exempting the individual from E&T and identifying well-targeted programs under 7 CFR 273.7(c)(18)(i)(B)(*4*) could better prepare an individual to overcome barriers to training and employment in some circumstances than referral to another E&T component. In addition, while the Department proposes that State agencies have broad discretion in identifying other work opportunities or assistance programs, there would need to be a connection between these other programs and the workforce needs and interests of the individual.

The Act also requires that individuals undergoing and complying with the ill-suited process shall not be found to have refused without good cause to participate in an E&T program. As such, the Department proposes in new 7 CFR 273.7(c)(18)(ii) that, from the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the four actions in 7 CFR 273.7(c)(18)(i)(B), the individual would not be found to have refused without good cause to participate in an E&T program. In other words, the individual cannot be disqualified for failure to comply with mandatory E&T from the time the individual is determined to be ill-suited until after the State agency takes one of the four actions in 7 CFR 273.7(c)(18)(i)(B) and the individual subsequently refuses or fails to comply without good cause. On the other hand, regardless of the process described above, from the time an E&T provider makes an ill-suited determination, an ABAWD would continue to accrue countable months toward their 3-month participation time limit unless the ABAWD fulfills the work requirement in accordance with 7 CFR 273.24.

The Department is also proposing revisions to other paragraphs in 7 CFR 273.7 to conform with the requirements of the ill-suited process described in proposed 7 CFR 273.7(c)(18)(i) and (ii). The Department proposes to add language to existing 7 CFR 273.7(c)(3) and (e) to indicate that mandatory E&T participants who are determined ill-suited shall not be found to have refused without good cause to comply with a mandatory E&T program from the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the four actions in 7 CFR 273.7(c)(18)(i)(B).

At several points in this section, the Department has proposed how the ill-suited determination and subsequent State actions specifically affect mandatory E&T participants. The Department notes that all the regulatory measures discussed in this section also apply to voluntary E&T participants who are not exempt from the general work requirements, unless otherwise specified. For example, the Department would require State agencies to work with their E&T providers to ensure E&T providers notify the State agency when voluntary E&T participants are determined ill-suited for an E&T component, and that the State agency would send voluntary E&T participants a NETPC in accordance with the proposed regulations and take the most appropriate action among the four available State options. As a reminder, voluntary E&T participants are not subject to disqualification for refusal or failure to participate in E&T, in accordance with current 7 CFR 273.7(e)(4)(ii), redesignated as 7 CFR 273.7(e)(5)(ii).

**State Agency Accountability for Participation in an E&T Program and Good Cause**

The Act introduced several new provisions that emphasize State agencies' responsibilities to build E&T programs that are well-targeted to E&T participants' needs and support E&T participants as they engage with those programs. Two of those provisions in particular—referral of individuals with an ill-suited determination and the requirement to provide case management—highlight the State agency's responsibility to provide on-going services and support to all SNAP recipients in E&T, and to ensure that those recipients are matched to services for which they are well-suited. While it has long been the State agency's responsibility to appropriately screen individuals for work exemptions and exemptions from mandatory E&T, to determine if it is appropriate to refer them to an E&T program, and to provide a real opportunity for mandatory E&T participants to meet their E&T requirement, changes made to E&T by the Act strengthen these requirements and State agency accountability.

To be clear, the Department does not believe the new authority of E&T

providers to determine if an individual is ill-suited for their E&T component, as provided for by the Act, and the addition of case management as a required service for all E&T participants absolves the State agency from doing a thorough initial screening to ensure it is appropriate to require an individual to participate in an E&T program. Existing statutory and regulatory language clearly indicate that the State agency has primary responsibility for the design and operation of their E&T program, which may include agreements with one or more E&T providers who may provide case management, E&T components, or other activities as outlined in the E&T State plan. While State agencies may choose the method of delivery that best meets their operational needs, the Department emphasizes the State agency retains responsibility for their E&T program. For example, if the State agency were to require an individual to participate in an E&T program when in fact it was not appropriate to do so, the State agency has the responsibility to take the appropriate action when the State agency later learns the individual was ill-suited for an E&T component or the individual should not have been required to participate in E&T because they meet an exemption from mandatory E&T. In fact, the State agency could obtain new information at several points in the process after the State agency makes the determination to require an individual to participate in E&T, but before or shortly after the individual actually engages with an E&T component. For example, a State agency may determine an individual is a mandatory E&T participant and refer that individual to an E&T case manager (*e.g.,* a State agency staff, a community based organization, or a contractor) who conducts an intake and assessment to determine which E&T component is an appropriate fit for the individual. If during this process, it is discovered that the participant in fact meets a criterion for exemption from the mandatory E&T program, the Department proposes the E&T case manager must inform State agency eligibility staff and, if the State agency determines the participant does in fact meet an exemption, the individual would then be exempted from mandatory E&T by the State agency. The Department proposes in 7 CFR 273.7(e)(1), as redesignated, to add the requirement that E&T case managers must inform the appropriate staff within the State agency regarding possible mandatory E&T exemptions for a mandatory E&T participant receiving their case management services. The State agency would then determine if an exemption in fact exists, and exempt the individual from mandatory E&T, if appropriate. Similarly, if an E&T provider of an E&T component determines an individual is ill-suited for the E&T component, the State agency must determine the appropriate next step for the individual, as discussed in the previous section of the Preamble and in proposed 7 CFR 273.7(c)(18)(i).

The Department also believes that it is the State agency's responsibility to build an E&T program that can accommodates all mandatory E&T participants. In situations where there is not an appropriate and available opening for a mandatory E&T participant in the E&T program, the Department does not believe that the mandatory E&T participant should be disqualified for failing to comply with the E&T requirement, as the lack of an appropriate and available opening in an E&T program is beyond the E&T participant's control. As a result, the Department proposes adding to the definition of good cause to encompass such circumstances, so that the individual will not be disqualified for refusal or failure to comply with the mandatory E&T requirement. The Department proposes that the period of good cause would extend until the State agency identifies an appropriate and available opening in the E&T program, and the State agency informs the SNAP participant of such an opening. Ideally, if there is not an appropriate and available opening in the E&T program, the State agency should exempt the individual from mandatory E&T under the discretion provided to State agencies in 7 CFR 273.7(e)(2), redesignated as 7 CFR 273.7(e)(3). However, in the absence of such a State agency exemption, if an individual is required to participate in E&T and there is no appropriate and available opening in an E&T program for the mandatory E&T participant, the Department now further proposes that the State agency must determine that the failure to participate in E&T was with good cause. In situations where it is the E&T case manager who is unable to identify an appropriate and available opening in an E&T component, the Department proposes that the E&T case manager must provide this information to the appropriate State agency staff with the authority to make the determination regarding good cause. Alternatively, at this point, the State agency could determine that it is no longer appropriate to require participation, and exempt the individual from participation in E&T.

To codify this new criteria for good cause, the Department proposes to add new § 273.7(i)(4) to define good cause to include circumstances where the State agency determines that there is no appropriate and available opening in the E&T program to accommodate a mandatory E&T participant. In addition, the Department proposes in 7 CFR 273.7(c)(2) that, if there is not an appropriate and available opening in an E&T program for a mandatory participant, the State agency must determine the participant has good cause for failure to comply with the mandatory E&T requirement in accordance with 7 CFR 273.7(i)(4). The Department also proposes in 7 CFR 273.7(e)(1), as redesignated, that case managers must inform the appropriate staff in the State agency if they are unable to identify an appropriate and available E&T component for a mandatory E&T participant. The Department would provide oversight, under existing authority, including management evaluations and review of E&T State plans, to determine if State agencies with mandatory E&T programs are operating programs with an appropriate and sufficient number of openings, and would provide ongoing technical assistance to State agencies to assist those facing challenges in appropriately serving all mandatory participants through effective E&T programs.

The Department notes that this proposed new form of good cause would only apply to mandatory E&T participants, and would not provide all ABAWDs with good cause for failure to fulfill the ABAWD work requirement in 7 CFR 273.24. As provided in *Supplemental Nutrition Assistance Program—ABAWD Time Limit Policy and Program Access* published on November 19, 2015,[2] when good cause is provided for failure to comply with mandatory SNAP E&T (7 CFR 273.7(a)(ii)) or State-assigned workfare (7 CFR 273.7(a)(iii)) under good cause for the general work requirement at 7 CFR 273.7(i), the State agency must also provide good cause under 7 CFR 273.24(b)(2) for the ABAWD work requirement. However, while this longstanding policy provided a way to provide good cause for ABAWDs who were assigned to a mandatory E&T program or State-assigned workfare to meet their ABAWD work requirement, it has not provided a way to provide good cause for ABAWDs participating in

[2] *https://fns-prod.azureedge.net/sites/default/files/resource-files/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf.*

other work programs or other types of workfare programs.

Therefore, the Department proposes taking this opportunity to codify two changes to the good cause regulation at 7 CFR 273.24(b)(2). First, as determined by the State agency, if an ABAWD is participating in work, a work program, or workfare, and would have fulfilled the ABAWD work requirement in 7 CFR 273.24, but missed some hours for good cause, the individual shall be considered to have fulfilled the ABAWD work requirement if the absence from work, the work program, or workfare is temporary and the individual retains his or her job, training or workfare slot. This proposed change codifies longstanding policy allowing State agencies to provide good cause to ABAWDS who failed to meet their ABAWD work requirement through mandatory E&T or State-assigned workfare. In addition, the proposed change allows State agencies to provide good cause to ABAWDs participating in other work programs or other types of workfare programs. The Department is proposing this change so that State agencies can apply fair and consistent treatment to ABAWDs who have good cause, regardless of how the ABAWD chooses to meet the ABAWD work requirement. Second, if an individual is determined to have good cause for failure or refusal to comply with mandatory E&T under 7 CFR 273.7(i), the State agency would be required to provide good cause for failure to meet the ABAWD work requirement without having to make a separate good cause determination. However, the Department would also specify that an ABAWD who is provided good cause under the proposed 7 CFR 273.7(i)(4) for failure to participate in mandatory E&T, due to the lack of an appropriate and available opening in SNAP E&T, would not be provided good cause for failure to fulfill the ABAWD work requirement. There are many ways to fulfill the ABAWD work requirement other than through SNAP E&T. The lack of an appropriate or available opening in a SNAP E&T program would not prevent the ABAWD from fulfilling the ABAWD work requirement in another way.

The Department has also noted a discrepancy in the process for establishing good cause and issuing a notice of adverse action between current 7 CFR 273.7(c)(3) and (f)(1)(i). Current language at 7 CFR 273.7(c)(3) does not include the requirement for a State agency to first establish that non-compliance with the SNAP work requirement was without good cause before sending the notice of adverse action. On the other hand, the requirement to first establish good cause is present in current 7 CFR 273.7(f)(1)(i). The Department believes the paragraphs should be consistent with one another and is taking this opportunity to propose revising the language in 7 CFR 273.7(c)(3) to clarify that before a State agency issues a notice of adverse action to an individual or a household, if appropriate, for non-compliance with SNAP work requirements, the State agency must determine that the non-compliance was without good cause. This proposed clarification would provide consistent instruction to State agencies regarding the necessity of establishing that non-compliance was without good cause before issuing a notice of adverse action.

**Improving Accountability in State Agency Quarterly Reports**

Current regulations at 7 CFR 273.7(c)(9), (10), and (11) require State agencies to submit quarterly E&T Program Activity Reports. Title 7 CFR 273.7(c)(11) specifies that the fourth quarter report provide a list of all the E&T components offered during the fiscal year, as well as the number of ABAWDs and non-ABAWDs who began participation in each. The report must also provide the number of ABAWDs and non-ABAWDs who participated in the E&T program during the fiscal year. The Department is committed to ensuring that State agencies are providing mandatory E&T participants with real opportunities to gain skills and appropriate services that help them be successful. Therefore, the Department proposes adding additional reporting elements to this fourth quarter report: the unduplicated number of SNAP participants required to participate in an E&T program during the fiscal year and, of those, the number who actually begin to participate in an E&T program. An E&T participant begins to participate in an E&T program when the participant commences at least one part of an E&T program, including an orientation, assessment, case management, or a component. The Department proposes to codify this new requirement by inserting a new paragraph at 7 CFR 273.7(c)(11)(iii).

**Workforce Partnerships**

The Act established workforce partnerships as a new way for SNAP participants to gain high-quality, work-related skills, training, work, or experience that will increase the ability of the participants to obtain regular employment. The Act added workforce partnerships to the list of work programs through which an ABAWD may fulfill the ABAWD work requirement, and the partnerships may also be used by mandatory E&T participants to meet their E&T requirement. The Act added workforce partnerships to several sections of the FNA including sections 6(d)(4)(B)(ii), 6(d)(4)(E), 6(d)(4)(H), and new paragraph 6(d)(4)(N). The Department proposes adding the description and requirements for workforce partnerships to new 7 CFR 273.7(n). In addition, the Department proposes including two additional State agency responsibilities associated with workforce partnerships. First, the proposed rule would require State agencies to re-screen any individual for the requirement to participate in mandatory E&T when the State agency learns the individual is no longer participating in a workforce partnership. Second, the proposed rule would require State agencies to provide sufficient information to household members subject to the general work requirements of 7 CFR 273.7 and ABAWD work requirements of 7 CFR 273.24 about workforce partnerships, so that individuals may make an informed decision about participation. In this preamble section, the Department highlights several significant aspects of workforce partnerships, as required by the Act, and provides further explanation for the proposed additional State agency responsibilities.

In accordance with the Act, the proposed regulation in new 7 CFR 273.7(n)(1) states that workforce partnerships mean programs operated by a private employer, an organization representing private employers, a non-profit organization providing services related to workforce development, or an entity identified as an eligible provider of training services under section 122(d) of WIOA. New 7 CFR 273.7(n)(2) proposes that workforce partnerships may be multi-State programs. All workforce partnerships must be in compliance with the Fair Labor Standards Act, as proposed in new 7 CFR 273.7(n)(3). Workforce partnerships would need to be certified, either by the Secretary or by the State agency to the Secretary, to ensure they meet specific certification criteria outlined in the Act and in proposed 7 CFR 273.7(n)(4). In certifying a workforce partnership, the Secretary or the State agency would require that the workforce partnership report sufficient information to describe the services or activities that would provide participants with at least 20 hours a week (which may be averaged monthly to equal 80 hours a month) of training, work, or experience, and how those services or activities would directly enhance the employability or

job readiness of the participant. This latter requirement would be codified in new 7 CFR 273.7(n)(5).

The Department proposes to describe the application of workforce partnerships to E&T programs in new 7 CFR 273.7(n)(6). This includes proposing in new 7 CFR 273.7(n)(6)(i) the requirement from the Act that no funding authorized by the FNA can be used for workforce partnerships. The Department also proposes to codify the requirement from the Act in new 7 CFR 273.7(n)(6)(ii) that, if a State agency requires an individual to participate in an E&T program (also referred to as mandatory E&T), the State agency must consider an individual participating in a workforce partnership to be in compliance with the E&T requirement. In other words, the State agency is prohibited from disqualifying an individual for non-compliance with the requirement to participate in an E&T program if the individual is participating in a workforce partnership. In addition, if the State agency learns while screening the individual for the requirement to participate in E&T that the individual is already participating a workforce partnership, and the State agency determines the individual meets the criteria to be required to participate in E&T, the State agency would need to consider the individual to already be in compliance with the requirement to participate in E&T. The State agency would not be able to impose an additional E&T requirement on the individual.

The Department also proposes to add a clarification in new 7 CFR 273.7(n)(6)(ii) that, if an individual who has been fulfilling the mandatory E&T requirement by participating in a workforce partnership no longer participates in a workforce partnership, the State agency would have to re-screen the individual to determine if the individual qualifies for an exemption from the work requirement and from mandatory E&T. If the individual were to not meet an exemption from mandatory E&T, the State agency would then identify an appropriate E&T component. This new paragraph also proposes that, if an individual who has been fulfilling the mandatory E&T requirement by participating in a workforce partnership no longer participates in a workforce partnership, the State agency must not consider the individual to have failed to comply with mandatory E&T without going through the steps above. The Department believes this clarification is necessary to resolve certain policy questions arising from the interaction of workforce partnerships with the mandatory E&T requirement.

Workforce partnerships are not part of a State's E&T program and are not an E&T component. The Act located workforce partnerships in section 6(d)(4)(B)(ii) of the FNA, outside the definition of an E&T program in section 6(d)(4)(B)(i), and strictly limits the reporting requirements that can be imposed on workforce partnerships. However, the Act stated that State agencies must consider an individual's participation in a workforce partnership to be fulfilling the State agency requirement for that individual to participate in an E&T program. So while an individual may fulfill their mandatory E&T requirement through participation in a workforce partnership, a workforce partnership is not by definition an E&T program. The Act also stated that an individual cannot be required by the State agency to participate in a workforce partnership. On the other hand, an individual may choose to participate in a workforce partnership as a way fulfill their mandatory E&T requirement. The Act did not address what happens to an individual who no longer participates in a workforce partnership, but continues to receive SNAP benefits. In these cases, the Department proposes that the State agency screen the individual to determine whether the individual is subject to the general work requirement and mandatory E&T. Screening is necessary as the individual's circumstances and abilities may have changed since the initial screening. In other words, when the State agency learns an individual is no longer participating in a workforce partnership, the State agency would need to determine if the individual remains subject to the general work requirements at 7 CFR 273.7(b) and, if the individual were to remain subject to the general work requirements, the State agency would need to then screen the work registrant to determine whether or not they meet the State's criteria for the requirement to participate in E&T, in accordance with 7 CFR 273.7(c)(2). If, after this re-screening, the State agency were to determine that it is appropriate to require the individual to participate in mandatory E&T, the State agency would need to refer the individual to the E&T program or, if the individual chooses, to another workforce partnership. The Department proposes to add this additional State agency responsibility to screen individuals who are no longer participating in a workforce partnership in new 7 CFR 273.7(n)(6)(ii).

Other significant parts of the proposed regulations pertaining to workforce partnerships, as required by the Act, include the codification at 7 CFR 273.7(n)(7) that State agencies may use workforce partnerships to supplement, not supplant, the E&T programs of the State agency. Also, the proposed regulation at 7 CFR 273.7(n)(8) states that workforce partnerships are included in the definition of a work program in 7 CFR 273.24(a)(3) for the purposes of fulfilling the ABAWD work requirement.

Proposed regulations at 7 CFR 273.7(n)(9) codify the constraint from the Act that the State agency shall not require any member of a household participating in SNAP to participate in a workforce partnership. That is, once again, participating in a workforce partnership could only be at the participant's option. New regulations at 7 CFR 273.7(n)(10) would reflect the requirement from the Act that the State agency provide, not less frequently than at certification and recertification, a list of workforce partnerships to household members subject to the work requirement. Since household members must have a choice about participation in a workforce partnership, the Department proposes an additional State agency responsibility in 7 CFR 273.7(n)(10) that the workforce partnership list also provide sufficient information to the household members about the available workforce partnerships so that the SNAP participant can make an informed decision about voluntary participation in a particular workforce partnership. This additional information should include, if available, contact information for the workforce partnership, the types of activities the participant would be engaged in through the workforce partnership, the screening criteria used by the workforce partnership to select individuals, the location of the workforce partnership, work schedules, any special skills required to participate, and wage and benefit information (if applicable). To maximize the ability of household members to review the above information, the Department proposes that all information in the workforce partnership list must be provided in writing, either electronically or in paper form.

The Department also proposes to codify in new 7 CFR 273.7(n)(11) the requirement from the Act that a workforce partnership shall not replace the employment and training of an individual not participating in a workforce partnership. The Department interprets this to mean that an

individual in a workforce partnership shall not be provided any work that has the effect of replacing the employment or training of an individual not participating in a workforce partnership. The Department also proposes codifying in 7 CFR 272.7(n)(12) the requirement from the Act that none of the SNAP work requirements—general work requirements, including mandatory E&T, and the ABAWD time limit and work requirement—affect the criteria or screening process for selecting participants by a workforce partnership. That is, a workforce partnership may screen individuals for participation in a workforce partnership independently of the criteria used by the State agency to determine who is subject to SNAP work requirements.

Lastly, new 7 CFR 273.7(n)(13) would codify the limited responsibilities of workforce partnerships to report to the Department or State agencies. The reporting requirements of workforce partnerships are limited to: Upon notification that an individual is a SNAP recipient, notifying the State agency that the individual is participating in a workforce partnership; identifying individuals who completed or are no longer participating in a workforce partnership; identifying changes in the workforce partnership that result in it no longer meeting the criteria for State certification; and providing sufficient information, on request by the State agency, for the State agency to verify that the participant is fulfilling any applicable work requirement. State agencies operating a workforce partnership may report to the Department, at State agency option, relevant data to reflect the number of program participants served by the workforce partnership and, of those, how many were mandatory work registrants. This State agency option would be codified at new 7 CFR 273.7(c)(17)(x).

**Minimum Allocation of 100 Percent Funds**

Current regulations at 7 CFR 273.7(d)(1)(i)(C) provide that no State agency will receive less than $50,000 in Federal E&T grant funds and set forth the methodology to ensure an equitable allocation among the State agencies. The Act increased this baseline of Federal E&T funds to $100,000 in section 16(h)(1)(D) of the FNA. The Department implemented this provision in FY 2019. The Department now proposes to modify 7 CFR 273.7(d)(1)(i)(C) to reflect the change in the baseline.

**Prioritized Reallocation of Employment and Training Federal Grant Funds**

Current regulations at 7 CFR 273.7(d)(1)(i)(D) provide the process for the Department to reallocate unobligated and unexpended Federal E&T funds to other State agencies requesting additional E&T funds. The Act introduced priorities for the reallocation of these funds in section 16(h)(1)(C)(iv) of the FNA. Those priorities are: At least 50 percent shall be reallocated to requesting State agencies that were awarded grants to operate E&T pilots under the Agricultural Act of 2014 (Pub. L. 113–79) (also known as the 2014 Farm Bill), to conduct those E&T programs and activities from the pilots that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance; at least 30 percent should be available to State agencies requesting funds for E&T programs and activities authorized under section 6(d)(4)(B)(i) of the FNA that are targeted to individuals with high barriers to employment and that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance; and the remaining funds to other State agencies requesting additional funds for E&T programs and activities that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department implemented this provision in FY 2020 for the reallocation of FY 2019 funds. The Department proposes to add new 7 CFR 273.7(d)(1)(iii) to specify this priority for reallocation of funds, by enumerating the priorities and the process for reallocating funds. Additionally, the Department proposes to add new 7 CFR 273.7(c)(6)(xviii) to specify that State agencies requesting additional funds would need to submit those requests when their E&T State Plan is submitted for the upcoming Federal fiscal year.

As noted, the Act established three categories of priorities for reallocating funds. The Department proposes to remove current § 273.7(d)(1)(i)(D) that addresses the current reallocation process and add a new paragraph at § 273.7(d)(1)(iii) that would set forth these priorities and the process for reallocation.

As noted, the Act required that not less than 50 percent of all unobligated funds are to be reallocated to requesting State agencies that were awarded grants to operate SNAP E&T pilots under the Agricultural Act of 2014 (Pub. L. 113–79), to conduct E&T programs and activities authorized under the pilots that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(A). Additionally, the Act specified that the Secretary shall base the determination of demonstrable impact on the project results from the independent evaluations of the pilots or, if the project results from the independent evaluation are not yet available, then the determination may be based on the interim reports to Congress or other information relating to performance of the programs and activities. Until the project results from the independent evaluations of the pilots are available, the Department will use information from the interim reports, as well as other information deemed appropriate, to make its determinations.

For the not less than 30 percent of unobligated funds that shall be reallocated to State agencies requesting funds to implement or continue E&T programs and activities under section 6(d)(4)(B)(i) of the FNA that are targeted toward highly-barriered populations, the Act specified that the funds be used for E&T programs and activities that the Secretary determines have the most demonstrable impact on the ability of the participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Act specified that this 30 percent reallocation may include programs and activities targeted to: Individuals 50 years or older; formerly incarcerated individuals; individuals participating in a substance abuse treatment program; homeless individuals; people with disabilities seeking to enter the workforce; other individuals with substantial barriers to employment; or households facing multi-generational poverty, to support employment and workforce participation through an integrated and family-focused approach in providing supportive services. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(B) and proposes that, if a State agency chooses to provide services to veterans having one of the condition above under this

provision, it indicate this intention in their request for 30 percent reallocated funds.

The Act also specified that any State agency that receives reallocated funds under the 50 percent reallocation provision may also be considered for reallocated funds under the 30 percent reallocation provision. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(C).

As noted earlier, the Act specified that any remaining unobligated funds not reallocated under the 50 percent reallocation provision, or the 30 percent reallocation provision, be reallocated to State agencies requesting such funds to use for E&T programs and activities that the Secretary determines have the most demonstrable impact on the ability of the participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(D).

Existing provisions in section 16(h)(1) of the FNA make 100 percent E&T grant funding available for 24 months in order for the Department to obligate and reallocate funding to States. Further, the FNA requires the Department to reallocate unobligated and unexpended funds from one Federal fiscal year to another Federal fiscal year in a timeframe that would allow State agencies receiving additional funds at least 270 days to expend those reallocated funds. In light of these existing requirements, the Department proposes in new 7 CFR 273.7(d)(1)(iii)(E) the process for reallocating funds to allow State agencies the statutorily required amount of time to expend the reallocated funds. As proposed, State agencies requesting reallocated funds would submit those requests as part of their E&T State plan due by August 15th each year. To clearly articulate this expectation, the Department also proposes to add new 7 CFR 273.7(c)(6)(xviii) to instruct State agencies to incorporate any requests for additional 100 percent funds that may become available into their E&T State Plan. As a best practice, the Department has always encouraged State agencies to consider during the development of their annual E&T State Plan their need for additional funds. This change to the regulations would formalize this best practice. In addition, a new paragraph at 7 CFR 273.7(c)(6)(xviii) would make explicit that, while requests for additional funds are included with the annual E&T State Plan, the request for additional funds must be prepared in a separate budget and narrative from the general budget for the upcoming fiscal year. Approval or denial of the request for additional funds would occur separately from the E&T State Plan approval or denial.

The Department further proposes in new 7 CFR 273.7(d)(1)(iii)(E) that the Department, through the expenditure reporting process, would determine the total amount of funds available for reallocation, in accordance with the prioritized reallocation provisions, after State agencies have submitted fourth quarter expenditure reports. When making determinations about which State agencies would receive reallocated funds within the three categories of prioritized reallocated funds, the Department proposes to consider various factors. These factors would include, but are not limited to: The size of the request relative to the level of the State agency's E&T spending in prior years; the specificity of the State agency's plan for spending the reallocated funds; and the quality of the program and scope of impact for the State's E&T program. The Department would reallocate in a timeframe that allows State agencies at least 270 days to expend the reallocated funds.

Lastly, the Department proposes to reallocate any unobligated funds remaining after the reallocation process specified in new 7 CFR 273.7(d)(1)(iii)(E) to State agencies requesting additional funds for E&T programs and activities that the Secretary determines have the most demonstrable impact. When making these reallocations, the Department would consider factors including, but not limited to: the size of the request relative to the level of the State agency's E&T spending in prior years; the specificity of the State agency's plan for spending the reallocated funds; and the quality of the program and scope of impact for the State's E&T program. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(F).

**Advisement of Employment and Training Opportunities**

The Act added a requirement at section 11(w) of the FNA that State agencies advise SNAP household members subject to the requirements of section 6(d) of the FNA (the general work requirements) of available employment and training opportunities at the time of recertification if these individuals are members of households that contain at least one adult, with no elderly or disabled individuals, and with no earned income at their last certification or required report. There is no such current requirement in the regulations. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that this provision was considered self-implementing upon enactment. The Department now proposes to codify this requirement in a proposed paragraph at 7 CFR 273.14(b)(5). As a minimum standard for meeting this requirement, the Department proposes that State agencies provide the household a list of available employment and training services for household members subject to the general work requirements either electronically (*e.g.,* on a website or in an email) or in printed form. The Department would like to clarify that employment and training services are not limited to SNAP E&T. Rather, State agencies should also provide information about the availability of opportunities through the American Job Centers or local community-based organizations. This is particularly important in areas that do not operate SNAP E&T programs. The Department encourages States to consult with their Departments of Labor when developing information about available employment and training services. In meeting this requirement, State agencies should consider how to best target lists of employment and training opportunities to increase access to work opportunities for SNAP participants, including creating tailored lists for certain regions or municipalities, or for SNAP participants with particular career interests or barriers to employment.

**Work Programs for Fulfilling the ABAWD Work Requirement**

Current regulations at 7 CFR 273.24(a)(3) define the types of work programs in which ABAWDs may participate to meet the 20 hour per week ABAWD work requirement and thereby remain eligible beyond the 3 months in 36-month time limit. The Act added the following types of programs to that definition in section 6(o)(1) of the FNA: An employment and training program for veterans operated by the Department of Labor or the Department of Veterans Affairs, as approved by the Secretary; and workforce partnerships. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T to that this provision was considered self-implementing upon enactment. The Department now proposes to add these programs to the existing paragraph at 7 CFR 273.24(a)(3). As noted earlier, the Act also changed section 6(o)(1)(C) of the FNA by replacing the term ''job search program'' with ''supervised job search program.'' For the purposes of

ABAWD work requirements, the Department proposes to implement this change by revising 7 CFR 273.24(a)(3)(iii).

In accordance with the Act, the Department proposes to add employment and training programs for veterans operated by the Department of Labor or the Department of Veterans Affairs, as approved by the Secretary, and workforce partnerships, as defined in proposed in 7 CFR 273.7(n), to the definition of work programs in the existing paragraph at 7 CFR 273.24(a)(3). The Department proposes to consider any employment and training program of the Department of Labor or the Department of Veterans Affairs that serves veterans as approved by the Secretary, provided all other requirements in 7 CFR 273.24 are met. The Department also proposes to make conforming changes to the last sentences of paragraphs 7 CFR 273.7(e)(2)(i) and (ii), as redesignated, to add employment and training programs for veterans operated by the Department of Labor or the Department of Veterans Affairs to the list of work programs for which supervised job search and job search training programs may count for the purposes of fulfilling the ABAWD work requirement.

The Department also proposes to modify regulations at 7 CFR 273.24(a)(3)(iii) that ''a supervised job search program'' is a type of program that shall not count as an employment and training program for purposes of fulfilling the ABAWD work requirement. However, consistent with current regulations, the Department proposes that employment and training programs for ABAWDs under 7 CFR 273.24(a)(3)(iii) may include job search, supervised job search, or job search training activities as subsidiary activities in the program for the purposes of fulfilling the ABAWD work requirement so long as they make-up less than half of the work requirement. For example, an ABAWD can fulfill the ABAWD work requirement by participating in an employment and training program for 20 hours a week, or an average of 80 hours monthly. Over the month, less than half of these hours can include job search, supervised job search, or job search training activities. The Department believes that job search activities that are offered as part of an employment and training program can be effective at helping individuals transition from the program into paid employment. The Joint Explanatory Statement of the Committee of Conference issued with the Act reinforced that belief by stating that ''unsupervised job search'' may be a ''subsidiary component'' for the purposes of meeting a work requirement, so long as it is less than half of the requirement (Conf. Rept. 115–1072, p. 617). Additionally, the Department proposes to modify the paragraph to refer to job search, supervised job search, and job search training as ''subsidiary activities'' rather than ''subsidiary components'' for the purposes of fulfilling the ABAWD work requirement. This change will more closely align with the terminology used elsewhere in the regulations where ''activities'' are used to describe smaller or subsidiary pieces of an employment and training program that make up the larger ''component.''

The Department also proposes to make technical corrections to 7 CFR 273.24(a)(3)(i) to update the name of the referenced legislation from the Workforce Investment Act (Pub. L. 105–220), to its new name the Workforce Innovation and Opportunity Act (Pub. L. 113–128). The Department also proposes to add the reference to ''title 1'' of this law, as this reference was omitted in an earlier drafting of the regulation.

**Discretionary Exemptions for ABAWDs Subject to the Time Limit**

Current regulations at 7 CFR 273.24(g) establish that each State agency shall be allotted exemptions equal to an estimated 15 percent of ''covered individuals,'' which are the ABAWDs who are subject to the ABAWD time limit in the State in the fiscal year. States can use the exemptions available to them to extend SNAP eligibility for a limited number of ABAWDs subject to the time limit. When one of these exemptions is provided to an ABAWD, that one ABAWD is able to receive one additional month of SNAP benefits. States have discretion whether to use these exemptions and, as a result, some States use their available exemptions and others do not. Each Federal fiscal year, the Department estimates the number of exemptions that each State agency shall be allotted. The Act changed the number of exemptions allocated to State agencies each Federal fiscal year from 15 percent to 12 percent of the ''covered individuals'' in the State. Therefore, the Department proposes to make the change from 15 percent to 12 percent in the regulations, and also change the name of these exemptions from ''15 percent exemptions'' to ''discretionary exemptions.'' This will align the regulations with the requirements of the Act and with current operations, as these changes took effect for Fiscal Year 2020. Specifically, the Department proposes changes to the introductory 7 CFR 273.24(g) to change the title from ''15 percent exemptions'' to ''Discretionary exemptions'' in order to indicate the discretion that States have in terms of whether and how to use these exemptions as compared to the nondiscretionary, absolute exceptions from the time limit listed at 7 CFR 273.24(c). The remaining proposed changes would simply replace the number ''15'' with the number ''12'' in 7 CFR 273.24(g)(1) and (3).

**Informing SNAP Participants About Their Work Requirements**

The Department notes that many of the changes made by section 4005 of the Act emphasized State agency responsibility to assist SNAP participants in finding and retaining employment. The Department believes that foundational to this increased accountability for both the State agency and SNAP participants is improved communication between the State agency and SNAP participants regarding the nature of any work requirement that SNAP households may be subject to, consequences for not complying with work requirements, and how to find more information. Existing regulations at 7 CFR 273.7(c)(1) regarding the general work requirement require the State agency to both explain the general work requirement to work registrants, and provide a written statement to work registrants at the time of work registration regarding the general work requirements and the consequences of failing to comply. In addition, existing regulations at 7 CFR 273.7(c)(2) require the State agency to provide a written or oral explanation of the mandatory E&T requirement to individuals in mandatory E&T. And, with regard to the separate work requirement and time limit for ABAWDs, though the regulations do not explicitly require State agencies to inform ABAWDs of those requirements at certification, the Department has issued formal guidance [3] clarifying that State agencies must inform ABAWDs as part of the explanation of the household's rights and responsibilities, as generally required by 7 CFR 272.5(b)(1) and 273.2(a)(1). To summarize, State requirements to inform SNAP participants about their work requirements are fragmented and could be streamlined. The Department also notes that a single individual may be

[3] See FNS, ''State Agency Readiness to Apply the ABAWD Time Limit and Serve ABAWDs,'' issued December 4, 2019 (*https://fns-prod.azureedge.net/sites/default/files/media/file/StateAgencyReadinesstoApplytheABAWDTimeLimitandServeABAWDs.pdf*).

subject to multiple work requirements, which may be confusing for the household to decipher to ensure compliance, especially if these requirements are communicated to the individual at different times via different mediums. For instance, an ABAWD may be subject to mandatory E&T. Each of these work requirements may require different actions on the part of the SNAP participant to maintain eligibility, and each carry different, separate penalties for failure to comply.

In order to streamline and improve communication between the State agency and the household, and to improve the household's customer service experience, the Department proposes to consolidate the State requirement to inform individuals of their applicable work requirements (*i.e.,* the general work requirement, the mandatory E&T requirement, and the ABAWD work requirement). This consolidation would take two forms: A single written statement and a comprehensive oral explanation of all the work requirements that would pertain to individuals in a particular household. The consolidated requirement would merge two existing requirements to inform individuals about their work requirements (*i.e.,* the general work requirement and mandatory E&T) with a new more clearly delineated requirement to inform ABAWDs regarding their ABAWD work requirement and time limit at new 7 CFR 273.7(5)(a). The consolidated requirement to inform households of all applicable work requirements for individuals within the household would be added at new 7 CFR 273.7(c)(1)(ii). The new consolidated written statement must include all pertinent information related to each of the applicable work requirements for individuals in the household, including: An explanation of each applicable work requirement; exemptions from each applicable work requirement; the rights and responsibilities of each applicable work requirement for individuals subject to the work requirements; what is required to maintain eligibility under each applicable work requirement; pertinent dates by which an individual must take any actions to remain in compliance with each of the applicable work requirements; the consequences for failure to comply with each applicable work requirement; and any other information the State agency believes would assist the household members with compliance. If the individual is subject to mandatory E&T, the written statement must also explain the individual's right to receive participant reimbursements for allowable expenses related to participation in E&T, up to any applicable State cap, and the responsibility of the State agency to exempt the individual from the requirement to participate in E&T if the individual's allowable expenses exceed what the State agency will reimburse, as provided in 7 CFR 273.7(d)(4).

**Voluntary E&T Participation Time Limits**

Section 4108 of the Food, Conservation and Energy Act of 2008 (FCEA) modified section 6(d)(4) of the FNA to permit individuals voluntarily participating in an E&T program to participate beyond the maximum number of hours calculated as their benefit divided by the minimum wage. The FCEA also allowed the total amount of time spent each month by an individual voluntarily participating in an E&T work program, combined with hours worked in a workfare program and hours worked for compensation, to exceed 120 hours. The Department is proposing to revise 7 CFR 273.7(e)(5)(iii) from the final rule, *Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conversation and Energy Act of 2008,* published on January 6, 2017 (RIN 0584–AD87) (82 FR 2010), to correct a technical drafting error and to more accurately reflect the statutory language. The final rule only added language that voluntary E&T participants are not subject to the 120-hour monthly cap for participation. The final rule did not add that voluntary E&T participants are not subject to the hourly monthly maximum calculated as their benefit divided by the minimum wage, as was required by the changes made to the FNA by the FCEA. In order to meet the requirements laid out by the FCEA, the Department's proposed language would strike the current sentences in 7 CFR 273.7(e)(5)(iii), and replace them with language stating voluntary E&T participants are not subject to any of the limits in redesignated 7 CFR 273.7(e)(4). The changes proposed in this rulemaking would align the regulations with the statutory provision allowing voluntary participants to participate in E&T activities for more than the maximum number of hours calculated as their benefit divided by the minimum wage and for more than 120 hours in a month, as provided for in section 6(d)(4)(F)(iii) of the FNA.

**SNAP E&T Eligibility**

The Department is aware that the process to regularly verify SNAP eligibility for E&T participants is time-consuming, resource intensive, and can be a barrier to the growth of E&T programs. While some E&T participants' eligibility status may change over time, many E&T providers are adept at braiding funding from a variety of sources in order to provide a seamless continuation of services. However, this can be a complicated process. The Department is interested in better understanding ways States and other E&T stakeholders have streamlined and simplified the process of verifying E&T participants' eligibility for SNAP. The Department is particularly interested in how States are able to provide a seamless continuation of services to individuals whose eligibility status has changed. Therefore, the Department seeks comments on the experience of E&T stakeholders in verification of E&T participants' eligibility. The Department also asks for recommendations on how to reduce the burden on State agencies and E&T providers in order to better support individuals as they progress through training. In particular, the Department is interested in comments on the following questions:

- *The current process:* What processes are currently in place to verify SNAP eligibility for E&T participants? What processes, policies, or technical solutions has the State agency implemented to streamline or make the process of verifying eligibility more efficient? What happens to active E&T participants who are found no longer eligible for SNAP? Are they able to continue receiving services using other funding sources?
- *Concerns with the current process:* Has the process to verify eligibility for SNAP been an impediment to the growth of an E&T program? What are other concerns with the current process? What is working well with the current process?
- *Recommendations:* What would commenters recommend to reduce barriers associated with verifying eligibility? What policies or agreements might better support providers to serve enrolled E&T participants if the participants are no longer eligible for SNAP and what might the supporting arguments be for such policies or agreements? What systems or technical solutions would help streamline the process?

**Procedural Matters**

**Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

The table below presents the expected costs of the rule changes. Derivation of these costs, and the overall impact on Federal and State spending, are summarized in the discussion that follows.

TABLE 1— EXPECTED COSTS OF RULE CHANGES

[In millions of dollars]

| | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 | Total |
|---|---|---|---|---|---|---|
| *Impacts on Federal Transfers (nominal dollars):* | | | | | | |
| Increased 100% E&T grant funding** | 13 | 13 | 13 | 13 | 13 | 65 |
| *Impacts on Federal (50%) and State (50%) Administrative Costs (nominal dollars):* | | | | | | |
| Administrative costs/burden—case management+ | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 | 151.8 |
| Administrative costs/burden—additional notices+ | 1.6 | 1.5 | 1.5 | 1.5 | 1.5 | 7.6 |
| Administrative costs/burden—reporting of additional measures+ | (*) | (*) | (*) | (*) | (*) | (*) |
| Total | 32.0 | 31.9 | 31.9 | 31.9 | 31.9 | 159.4 |
| *Impacts on Burden of Participating Households (Costs in nominal dollars):* | | | | | | |
| Household Burden—case management | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 | 23.0 |
| Household Burden—Notification or E&T Participation Change | (*) | (*) | (*) | (*) | (*) | (*) |
| Household Burden—List of E&T Services | 0.8 | 0.8 | 0.8 | 0.8 | 0.8 | 4.0 |
| Household Burden—ABAWD Notification | 0.3 | 0.3 | 0.3 | 0.3 | 0.3 | 1.5 |
| Total | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 28.5 |

** The 2018 Farm Bill included an additional $13 million per year in 100 percent grant funding for E&T.
+ A portion of these costs are expected to be covered using existing 100 percent grant funding.

*Regulatory Impact Analysis:* A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any one year). The Department does not anticipate that this proposed rule will have economic impacts of $100 million or more in any one year, and therefore, it does not meet the definition of ''economically significant'' under Executive Order 12866. An analysis assessing the costs and benefits of this rule is presented below.

As explained above, this proposed rule codifies the 2018 Farm Bill changes related to E&T program operations, the ABAWD work requirement, and the allocation and reallocation of 100 percent grant funds. Those changes and their expected costs and benefits are summarized briefly below:

*Changes to SNAP E&T Programs, Components, and Activities*

Pursuant to the 2018 Farm Bill, the proposed rule makes several changes to E&T components and allowable activities, including:

- Replacing job search with supervised job search as an E&T component (although unsupervised job search would remain an allowable activity within an E&T component, subject to certain limitations);
- eliminating job finding clubs as an allowable activity;
- replacing job skills assessments with employability assessments;
- adding apprenticeships and subsidized employment as allowable activities;
- requiring a 30-day minimum for receipt of job retention services; and
- allowing activities from the 2014 Farm Bill E&T pilots to become allowable E&T components, if those activities had a demonstrable impact on the ability of participants to find and retain employment that leads to increased income and reduced reliance on public assistance.

The proposed rule would also implement the 2018 Farm Bill provision that requires all E&T programs to provide case management services to E&T participants, in addition to one or more E&T components. We expect the cost of the case management to be approximately $30.4 million per year. Consistent with the estimates used for the Paperwork Reduction Act section of the proposed rule, we assume approximately 460,000 annual E&T participants who participate on average for 3.27 months. We further assume each participant receives just over 1 hour total of case management services (30 minutes for the initial case management meeting and 15 minutes for subsequent monthly meetings). In addition, we expect caseworkers to spend approximately 15 minutes per case recording case notes and otherwise documenting the case management

interactions (for a total of 1.32 hours per case). Using a fully-loaded hourly rate (including benefits and indirect costs) of approximately $50 [4] results in an annual cost of about $30.4 million, shared equally. The Department believes that initially most States will use 100 percent grant funding, including the increased funding provided through the 2018 Farm Bill, to pay for the required case management services. In some States this may mean States reallocate funds from other activities in order to provide sufficient case management.

The case management requirement will also increase burden on individual SNAP participants as they will be required to participate in monthly discussions with their case manager regarding their E&T participation and plans for self-sufficiency. While the Department expects most of the conversations will be held by telephone, in some instances E&T participants may need to travel to meet their case manager in-person. Therefore, the average number of burden hours per participant is expected to be slightly larger to account for travel time (1.4 hours versus 1.32 hours).[5] The additional burden is expected to cost SNAP E&T participants approximately $4.6 million annually.

TABLE 2—ANNUAL COST OF BURDEN ASSOCIATED WITH CASE MANAGEMENT SERVICES

| | State agency burden | Household burden |
|---|---|---|
| E&T participants per year | 460,000 | 460,000 |
| Burden hours per participant | 1.32 | 1.4 |
| Hourly wage rate * | $50.00 | $7.25 |
| Total Annual Cost (Federal and State shares millions) | $30.4 | $4.6 |

* State Agency rate is a fully loaded rate. Household rate is equal to the Federal minimum wage. Totals may not sum due to rounding.

*Changes to Funding Allocation/ Reallocation*

The proposed rule would establish a funding formula for reallocated E&T funds, in accordance with statutory changes. It also would codify the increase to $100,000 in the minimum allocation of 100 percent funds to State agencies. While these changes may affect the amount of funds received by individual States, the Department does not expect these changes to affect overall spending on SNAP E&T. Prior to the 2018 Farm Bill, three States (Virgin Islands, Wyoming and North Dakota) received less than the $100,000 minimum allocation and now receive a larger grant. Over the past three years, less than $10 million per year in 100 percent grant funds have been reallocated, and the amount available for reallocation has been declining.

*Changes Affecting Work Requirements*

Pursuant to the 2018 Farm Bill, the proposed rule would make a number of changes affecting SNAP work requirements (both the ABAWD requirement and mandatory E&T). The proposed rule would:

- Add workforce partnerships to the list of programs that may be used to meet SNAP work requirements;
- add employment and training programs for veterans operated by the Department of Labor or the Department of Veterans Affairs to the list of work programs that may be used to meet the ABAWD work requirement;
- require State agencies to inform ABAWDs both orally and in writing of the ABAWD work requirement and time limit;
- codify the statutory change that reduces the number of ABAWD work exemptions from 15 percent to 12 percent and change their name to ''discretionary exemptions;''
- require State agencies to provide good cause for noncompliance with E&T if a suitable component or opening in an E&T program is not available;
- require State agencies to re-direct individuals who are determined ill-suited for an E&T program to other more suitable activities; and
- require that, at recertification, all State agencies advise certain types of households subject to the general work requirement of employment and training opportunities.

Most of these provisions are not expected to have cost impacts. Most States do not use all of their available discretionary exemptions and currently have a large bank of unused exemptions.[6] Therefore, the reduction in available exemptions is unlikely to impact individual ABAWDs. Permitting individuals to fulfill the ABAWD work requirement or mandatory E&T through workforce partnerships, which are operated by private employers or non-profit groups, may result in additional ABAWDs meeting the work requirement and retaining SNAP eligibility. However, such programs are not currently widespread. Given the lack of available data for such programs and the requirements for establishing a workforce partnership, the Department does not believe they will become commonplace and has, therefore, assumed there would be only negligible impacts of this change on the SNAP ABAWD population.

The requirement that State agencies inform ABAWDs both orally and in writing of the ABAWD work requirement and time limit is expected to result in additional burden for State agencies as this is a new requirement. However, having this information may mean that ABAWDs better understand the work requirement and how to meet it, and thus are better able to fulfill those requirements and retain SNAP eligibility. States agencies are already required to inform work registrants and mandatory E&T participants of their respective work requirements in existing regulations at 7 CFR 273.7(c) (OMB Control Number 0584–0064; Expiration date 7/31/2020). Similarly, the requirement that State agencies re-direct ill-suited individuals is expected to increase State agency burden as the State will need to generate a notice of E&T participation change that would be sent to the participant. Together, this additional burden is expected to cost approximately $1.5 million annually, with costs divided equally between

[4] Assumes an average hourly rate of $30.12 for a case worker, plus 30 percent for benefits and 20 percent for overhead, rounded to $50. Based on May 2018 BLS Occupational and Wage Statistics for ''Social Workers, All Other,'' available at *https://www.bls.gov/oes/tables.htm.* Overhead is included because this is a new activity and will likely result in hiring of additional staff or contractors.

[5] For more information on the derivation of these estimates, please see the Paperwork Reduction Act section of this proposed rule.

[6] Typically States use far fewer exemptions in a fiscal year than they earn. For example, during Fiscal Year 2018, only one State used as many exemptions as they earned for Fiscal Year 2018 and two States used more than 80 percent of their number of earned exemptions. As a result, most States have accumulated a bank of carryover exemptions (see FY 2019 Discretionary Exemptions with Carryover). Because of this carryover the reduction in earned exemptions would not have impacted the States' ability to provide exemptions to individual ABAWDs.

State agencies and the Federal Government. The table below shows how these estimates were derived.

Government. The table below shows how these estimates were derived.

TABLE 3—STATE AGENCY COST OF BURDEN RELATED TO SENDING NEW REQUIRED NOTICES

| | ABAWD written statement | Notice of E&T participation change |
|---|---|---|
| Occurrences per year [4] | 2,029,000 | 46,000 |
| Burden hours per occurrence [7] | .033 | .033 |
| Hourly wage rate [8] | $22.34 | $22.34 |
| Total Annual Cost (Federal and State shares, millions) | $1.5 | $0.03 |

The Department also anticipates a small ($0.02 million) one-time burden for State Agencies to develop the new ABAWD written statement, the notice of E&T Participation Change, and the list of employment and training services that will be provided to work registrant households at certification and recertification This assumes States spend on average 24 hours developing each new notice and an average wage of $18.02 per hour (24 * 18.02 * 53 State Agencies = $22,900).

Households will also face new burden associated with reviewing these documents when received. Households with work registrants, who will receive a list of E&T services at certification and recertification, will also face additional burden associated with reading that list. Each activity is expected to result in a minimal amount of administrative burden, about $1.1 million total over the three activities.

TABLE—HOUSEHOLD COST OF BURDEN RELATED TO READING NEW REQUIRED NOTICES

| | ABAWD written statement | Notice of E&T participation change | List of employment and training services |
|---|---|---|---|
| Occurrences per year [4] | 2,029,000 | 46,000 | 5,496,000 |
| Burden hours per occurrence [9] | .02 | .02 | 0.2 |
| Hourly wage rate [10] | $7.25 | $7.25 | $7.25 |
| Total Annual Cost (Federal and State shares, millions) | $0.3 | ( * ) | $0.8 |

* Minimal—less than $1 million.

While these changes are estimated to increase burden for State agencies, these changes are expected to provide important protections to individuals subject to the ABAWD time limit. The notice requirements will help ensure that these individuals are adequately informed of their responsibilities with respect to work requirements and of what steps they should take in order to comply with those requirements or if they believe they should be exempt from those requirements.

*Changes to Reporting Requirements*

The proposed rule would also modify the required reporting elements in the quarterly E&T Program Activity Report provided by State agencies to include the number of SNAP participants who are required to participate in E&T and, of those, the number who begin participation. Reporting on these additional elements is expected to increase reporting burden on 17 State agencies that currently operate mandatory E&T programs. The Department will add two reporting elements to form FNS–583, which State agencies must submit annually with the fourth quarter report. This additional burden is expected to be of minimal cost to State agencies.

TABLE 5—COST OF STATE AGENCY BURDEN, NEW REPORTING REQUIREMENTS

| | State agency burden |
|---|---|
| State agencies | 17 |
| Reports per year (2 additional elements) | 1 |

[7] Estimates of occurrences of ABAWD notifications are based on the expected number of SNAP ABAWD participants in FY 2021, adjusted to account for individuals expected to lose eligibility as a result of recently-finalized rules related to geographic waivers of the time limit. Estimates of notices of ill-suited determination assume 10 percent of E&T participants are found to be ill-suited for their assigned activity. For more information on these estimates, please see the Paperwork Reduction Act section of this proposed rule.

[8] Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics for ''eligibility interviewers, government programs,'' available at *https://www.bls.gov/oes/tables.htm.*

[9] Estimates of occurrences of ABAWD notifications are based on the expected number of SNAP ABAWD participants in FY 2021, adjusted to account for individuals expected to lose eligibility as a result of recently-finalized rules related to geographic waivers of the time limit. Estimates of notices of ill-suited determination assume 10 percent of E&T participants are found to be ill-suited for their assigned activity. For more information on these estimates, please see the Paperwork Reduction Act section of this proposed rule.

[10] Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics for ''eligibility interviewers, government programs,'' available at *https://www.bls.gov/oes/tables.htm.*

[11] Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics for ''Office and Administrative Support Workers, All other,'' available at *https://www.bls.gov/oes/tables.htm.*

TABLE 5—COST OF STATE AGENCY BURDEN, NEW REPORTING REQUIREMENTS—Continued

| | State agency burden |
|---|---|
| Hours per response | 516.9 |
| Hourly wage rate [11] | $18.02 |
| Total Annual Cost (Federal and State shares) | ( * ) |

* minimal—less than $1 million.

Overall Impact on E&T Spending

In addition to the 100 percent grant funding provided by the Federal Government, most States spend their own funds on SNAP E&T services. This additional State E&T spending is matched by the Federal Government and referred to as 50–50 spending.

While the rule provisions are expected to result in some additional cost to State agencies (primarily related to case management and administrative burden), it is the Department's belief that States will use the following strategies as they modify their E&T programs in accordance with the statutory and regulatory changes:

- In the first five years after implementation, the Department expects that most States will use 100 percent grant funding, including the increased funding provided through the 2018 Farm Bill, to pay for the required case management services.
- The Department anticipates that changes to allowable components and activities, which may result in a higher cost per E&T participant, will initially be managed by adjusting the number of participants served through various components/activities rather than through investment of additional 50–50 matching funds by State Agencies. State Agencies' budgets are often less flexible (for example, prohibitions on running a deficit or budgets that cover multiple years) and may not permit immediate increases in State E&T spending.
- Over the five year period covered by these estimates, the Department expects that some but not all States will increase their investment in 50–50 matching funds to cover both the costs of case management services and to permit greater participation in new allowable activities and components that may show more success in moving individuals toward greater self-sufficiency.

In total, we estimate that these provisions of the rule will increase spending on E&T by $4 million in Fiscal Year (FY) 2020, and by $52 million over the five FYs 2020–2024. Costs would be shared equally between the Federal Government and State agencies.

The estimates were derived as follows:

- Between FY 2016 and FY 2018, the Federal share of 50–50 spending increased by about $17 million, from $171 million to $188 million. Therefore, we assume that the Federal share of State 50–50 spending would have increased by about $8 million per year.
- In response to the changes in allowable components and activities as well as the case management requirement, we assume that each year a small number of States increase their 50–50 spending beyond current projected spending. In FY 2020, we assume 4 States spend about 10 percent more, and by FY 2024 17 States have increased their spending by about 10 percent overall.
- The per-State increase in 50–50 spending is approximately $0.5 million per State. The per-State increase is estimated as follows: A 10 percent increase in 50–50 spending equals $20.5 million in FY 2020. There are 53 State agencies (including the District of Columbia, Guam, and the US Virgin Islands), 43 of which currently spend 50–50 funding on E&T services, therefore $20.5 million is divided by 43 to calculate the average ($20.5 million/43 = $0.49 million).

TABLE 6—EXPECTED INCREASE IN STATE 50–50 SPENDING OVER TIME

[Dollars in millions]

| | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 | Total |
|---|---|---|---|---|---|---|
| Pre-Farm Bill projected 50–50 spending | 205 | 213 | 221 | 229 | 237 | ..... |
| 10% increase (amount per State) | .49 | .49 | .49 | .49 | .49 | ..... |
| Number of States increasing spending | 4 | 6 | 8 | 12 | 17 | ..... |
| State agency Cost | 2 | 3 | 4 | 7 | 9 | 26 |
| Total, Federal + State | 4 | 6 | 9 | 14 | 19 | 52 |

* Totals may not sum due to rounding.

Benefits of Proposed Rule

The Department believes the statutory changes made by Section 4005 of the 2018 Farm Bill are intended to strengthen E&T programs and improve SNAP participants' ability to gain and retain employment, thus reducing participant reliance on the social safety net. The changes contained in the proposed rule allow for more evidence-based activities, requiring more accountability on the part of both State agencies and E&T participants, while also retaining State flexibility. The requirement to inform ABAWDs of their work requirement will help ensure that these individuals are adequately informed of their responsibilities with respect to work requirements and of what steps they should take in order to comply with those requirements, or if they believe they should be exempt from those requirements.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule would not have a significant impact on a substantial number of small entities. This proposed rule would not have an impact on small entities because the

changes required by the regulations are directed toward State agencies operating SNAP programs and SNAP E&T programs.

**Executive Order 13771**

This proposed rule is expected to be an E.O. 13771 regulatory action.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 12372**

This Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.551 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) FNS Regional offices are in contact with State agencies, who provide feedback on policies and procedures for the E&T program and overall SNAP policy.

**Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

**Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

**Civil Rights Impact Analysis**

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

**Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation. FNS consulted with tribes on this issue at the USDA Farm Bill Implementation Consultation held on May 1, 2019 in Washington DC The tribes had no comment. If further consultation is requested, the Office of Tribal Relations will work with FNS to ensure quality consultation is provided.

**Paperwork Reduction Act**

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

In accordance with the Paperwork Reduction Act of 1995, this proposed rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments on this proposed rule must be received by May 18, 2020.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Fax: 202–395–7285, or email to *oira_submission@omb.eop.gov.* Please also send a copy of your comments to Leigh Gantner, Supplemental Nutrition Assistance Program (SNAP), 1320 Braddock Place, Alexandria, VA 22314. For further information, or for copies of the information collection requirements, please contact Leigh Gantner at the address indicated above. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* Employment and Training Opportunities in the Supplemental Nutrition Assistance Program.

*OMB Number:* 0584–NEW.

*Form Number:* FNS 583.

*Expiration Date:* N/A.

*Type of Request:* New request.

*Abstract:* This proposed rule would implement changes made by Section 4005 of the Act to the E&T program to strengthen State and Federal accountability to move SNAP participants toward self-sufficiency. FNS is requesting a new OMB Control

Number for the requirements in this proposed rule. Some of the proposed changes will modify current regulations resulting in an increase in the reporting burden for State agencies. Other requirements are new and will result in new mandatory reporting burden requirements for State agencies, as well as individuals participating in E&T. First, the Act requires that State agencies provide individuals participating in E&T with case management services. Many State agencies already provide case management activities to SNAP E&T participants; however, State agencies are not currently reporting this activity to the Department and the Department is not currently collecting case management activities from these State agencies. This regulatory change to require that State agencies provide these services as part of their E&T programs and include them in their E&T State plans will help ensure that E&T participants receive the guidance and support needed to move toward self-sufficiency. Second, the Act establishes that individuals participating in an E&T component who are determined ill-suited by the E&T provider for that component, must be engaged by the State agency to assess their mental or physical fitness or to identify another type of training or assistance. The Department proposes at 7 CFR 273.7(c)(18)(i) that individuals who have been determined ill-suited be sent a Notice of Employment and Training Participation Change (NETPC) by the State agency informing them of this determination. This notice will constitute a new burden for State agencies and for SNAP participants who must read the notice. Third, to increase State accountability for moving SNAP participants toward self-sufficiency, the Department proposes at 7 CFR 273.7(c)(11) to add two additional data elements to the final quarterly E&T Program Activity Report (FNS 583 reports) (SNAP Employment and Training Program activity Report; OMB Control Number: 0584–0594; Expiration Date: 09/30/2019; currently under renewal) to collect information on the number of SNAP participants who are required by the State agency to participate in an E&T program, and of those the number who actually begin to participate in an E&T program. Fourth, the Department proposes in new 7 CFR 273.24(b)(8) to add a State agency requirement to inform every ABAWD in writing about the ABAWD work requirement and time limit, thus creating a new burden to develop and provide this written statement, and to participants to read this statement. This proposed requirement to inform ABAWDs of their work requirement will be added to a proposed consolidate written statement that will consolidate the requirements to inform ABAWDs, work registrants, and mandatory E&T participants of their work requirements, as applicable. The requirements to inform work registrants and mandatory E&T participants of their work requirements are already covered by an existing burden (OMB Control number: 0584–0064; Expiration Date 7/31/2020; under renewal). And fifth, the Department proposes in new 7 CFR 273.14(b)(5) that, at a minimum, the State agency provide zero income households with no elderly or disabled members a list of available employment and training services for household members subject to the general work requirements either electronically (*e.g.,* on a website or in an email) or in printed form. This requirements creates a new burden on State agencies to develop the list of opportunities and for participants to read the list. The Department notes that the proposed rule would also create a new requirement for State agencies to consult with their workforce development boards, and to explain in their E&T State plans the extent to which they will coordinate with title I of WIOA. Based on the existing regulatory requirement to work with their State workforce development systems, this information is already collected by the Department through the E&T State plans and is included in an existing burden (OMB Control Number: 0584–0083; Expiration Date: 7/31/2020), as a result the new Farm Bill requirement is not expected to increase the existing burden.

The basic recordkeeping requirement for household case file documentation is part of OMB Control Number: 0584–0064; Expiration Date 07/312020. FNS will add additional burden to this collection to accommodate the increased burden resulting from providing case management to E&T participants. The recordkeeping burden for the FNS 583 is already sufficient as documented in OMB Control Number: 0584–0339; Expiration Date: 01/31/2021. FNS intends to merge this updated reporting burden estimates into 0584–0594 and 0584–0064, once the final rulemaking information collection request is approved. At that time, FNS will publish a separate notice in the **Federal Register** announcing OMB's approval.

*Respondents:* There are 53 State agencies with 159 SNAP State agencies employees who will participate in this data collection.

*Estimated Number of Respondents:* 159.

*Estimated Number of Responses per Respondent:* 31,972.107.

*Estimated Total Annual Responses:* 5,083,565.

*Estimated Time per Response:* 0.1362451 hours.

*Estimated Total Annual Burden on Respondents:* 692,611 hours.

*Respondents:* 8,030,999 (Individuals) SNAP E&T participants.

*Estimated Number of Respondents:* 8,030,999.

*Estimated Number of Responses per Respondent:* 1.130.

*Estimated Total Annual Responses:* 9,075,199.

*Estimated Time per Response:* 0.0872938 hours.

*Estimated Total Annual Burden on Respondents:* 792,209.

The total burden for this rulemaking is 1,484,820 burden hours and 14,158,764 total annual responses.

| Reg. section | Affected public | Respondent type | Description of activity | Estimated number of respondents | Estimated frequency of response | Total annual responses | Number of burden hours per response | Estimated total burden hours | Previous burden hours used | Differences due to program changes | Difference due to adjustment | Hourly wager rate * | Estimated cost to respondents |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 7 CFR 273.7(c)(1) .... | State Agencies ... | State Agency E&T Case Manager *. | Provide Case Management Services. | 53 | 28,381 | 1,504,193 | 0.326 | 490,367 | 0 | 0 | 0 | $30.12 | $14,769,852 |
| 7 CFR 273.7(c)(1) .... | | State Agency E&T Case Manager *. | Document Case Management Services. | 53 | 28,381 | 1,504,193 | 0.08 | 120,335 | 0 | 0 | 0 | 30.12 | 3,624,503 |
| 7 CFR 273.7(c)(18)(i) | | State Eligibility worker *. | Generate notice of ill-suited determination. | 53 | 868 | 46,004 | 0.0334 | 1,537 | 0 | 0 | 0 | 22.34 | 34,326 |
| 7 CFR 273.7(c)(11) .. | | State Agency Administrative Staff *. | Reporting FNS 583 data elements ** (OMB Control Number 0584–0594). | 53 | 4 | 212 | 98 | 20,776 | 21,889 | 0 | 1,113 | $18.02 | $374,384 |
| 7 CFR 273.7(c)(11) .. | | State Agency Administrative Staff *. | Reporting additional FNS 583 data elements. | 17 | 1 | 17 | 516.9 | 8,788 | 0 | 8,788 | 0 | 18.02 | 158,360 |

| Reg. section | Affected public | Respondent type | Description of activity | Estimated number of respondents | Estimated frequency of response | Total annual responses | Number of burden hours per response | Estimated total burden hours | Previous burden hours used | Differences due to program changes | Difference due to adjustment | Hourly wager rate * | Estimated cost to respondents |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 7 CFR 273.7(a)(5) ... | | State Eligibility worker *. | Inform ABAWDs of the ABAWD work requirement and time limit in writing. | 53 | 38,283 | 2,028,999 | 0.0334 | 67,769 | 0 | 0 | 0 | 22.34 | 1,513,950 |
| 7 CFR 273.7(a)(5) ... | | State Agency Administrative Staff *. | Develop ABAWD written statement. | 53 | 1 | 53 | 24 | 1,272 | 0 | 0 | 0 | 18.02 | 22,921 |
| Sub-Total State Agencies | | | | 159 | 95,915.00 | 5,083,459 | 0.135748 | 690,067 | | | | | 20,123,912 |
| 7 CFR 273.7(c)(1) .... | Individual & Household. | E&T Participants .... | Participate in Case Management. | 460,000 | 3.27 | 1,504,200 | 0.426 | 640,789 | 0 | 0 | 0 | 7.25 | 4,645,720 |
| 7 CFR 273.7(c)(18)(i) | Individual & Household. | E&T Participants .... | Read notice of ill-suited determination. | 46,000 | 1 | 46,000 | 0.02 | 920 | 0 | 0 | 0 | 7.25 | 6670 |
| Sub-Total Individual/Households | | | | 506,000 | 4.27 | 1,550,200 | 0.413952 | 641,709 | | | | | 4,652,390 |
| Grand Total Reporting Burden with both affected public and States | | | | 506,159 | 95,919.27 | 6,633,659 | 0.20076 | 1,331,776 | 21,858 | 8,788 | 1,113 | | 24,776,302 |
| 7 CFR 273.7(c)(1) .... | State Agencies ... | State Agency E&T Case Manager *. | Provide Case Management Services. | 53 | 28,381 | 1,504,193 | 0.326 | 490,367 | 0 | 0 | 0 | 30.12 | 14,769,852 |
| 7CFR 273.7(c)(1) ..... | | State Agency E&T Case Manager *. | Document Case Management Services. | 53 | 28,381 | 1,504,193 | 0.08 | 120,335 | 0 | 0 | 0 | 30.12 | 3,624,503 |
| 7 CFR 273.7(c)(18)(i) | | State Agency Administrative Staff *. | Develop Notice of Employment and Training Participation Change (NETPC). | 53 | 1 | 53 | 24 | 1,272 | 0 | 0 | 0 | 18.02 | 22,921 |
| 7 CFR 273.7(c)(18)(i) | | State Eligibility worker *. | Generate Notice of Employment and Training Participation Change (NETPC). | 53 | 868 | 46,004 | 0.0334 | 1,537 | 0 | 0 | 0 | 22.34 | 34,326 |
| 7 CFR 273.7(c)(11) .. | | State Agency Administrative Staff *. | Reporting FNS 583 data elements ** (OMB Control Number 0584–0594). | 53 | 4 | 212 | 98 | 20,776 | 21,889 | 0 | 1,113 | 18.02 | 374,384 |
| 7 CFR 273.7(c)(11) .. | | State Agency Administrative Staff *. | Reporting additional FNS 583 data elements. | 17 | 1 | 17 | 516.9 | 8,788 | 0 | 8,788 | 0 | 18.02 | 158,360 |
| 7 CFR 273.7(a)(5) ... | | State Agency Administrative Staff *. | Develop ABAWD written statement of work requirements. | 53 | 1 | 53 | 24 | 1,272 | 0 | 0 | 0 | 18.02 | 22,921 |
| 7 CFR 273.7(a)(5) ... | | State Eligibility worker *. | Inform ABAWDs of the ABAWD work requirement. | 53 | 38,283 | 2,028,999 | 0.0334 | 67,769 | 0 | 0 | 0 | 22.34 | 1,513,950 |
| 7 CFR 273.14(b)(5) | | State Agency Administrative Staff *. | Develop list of Employment and Training Services. | 53 | 1 | 53 | 24 | 1,272 | 0 | 0 | 0 | 18.02 | 22,921 |
| Sub-Total State Agencies | | | | 159 | 31,972.107 | 5,083,565 | 0.136245 | 692,611 | | | | | 20,169,755 |
| 7 CFR 273.7(c)(1) .... | Individual & Household. | E&T Participants .... | Participate in Case Management. | 460,000 | 3.27 | 1,504,200 | 0.426 | 640,789 | 0 | 0 | 0 | 7.25 | 4,645,720 |
| 7 CFR 273.7(c)(18)(i) | | E&T Participants .... | Read Notice of Employment and Training Participation Change. | 46,000 | 1 | 46,000 | 0.02 | 920 | 0 | 0 | 0 | 7.25 | 6,670 |
| 7 CFR 273.7(a)(5) ... | | E&T Participants .... | Read written statement of work requirements. | 2,028,999 | 1 | 2,028,999 | 0.02 | 40,580 | 0 | 0 | 0 | 7.25 | 294,205 |
| 7 CFR 273.14(b)(5) | | E&T Participants .... | Read list of Employment and Training Servvices. | 5,496,000 | 1 | 5,496,000 | 0.02 | 109,920 | 0 | 0 | 0 | 7.25 | 796,920 |
| Sub-Total Individual/Households | | | | 8,030,999 | 1.13002118 | 9,075,199 | 0.087294 | 792,209 | | | | | 5,743,515 |
| Grand Total Reporting Burden with both affected public and States | | | | 8,031,158 | 31,973.24 | 14,158,764 | 0.104869 | 1,484,820 | 21,858 | 8,788 | 1,113 | | 25,913,270 |

* **Note:** Each State Eligibility worker is counted once as all State Agency employees.
** **Note:** FNS has not included the burden already approved for the current 583 reporting elements w/additional funds in the grand total. The current FNS 583 reporting elements are undergoing a separate revision with OMB control number: 0584–0594; Expiration Date: 9/30/19 (currently going through agency revisions); FNS is not seeking approval for these burden estimates in the request. All burden hours associated with the FNS 583 will be merged into 0584–0594 when OMB approves the information collection request (ICR) associated with the Final Rule.
*** Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics (*http://www.bls.gov/oes/current/*)—the salaries of the case managers are considered to be ''Social Workers—other'' (21–1029) functions valued at $30.12 per staff hour. The salaries of the eligibility workers are considered to be ''Eligibility Interviewers, government programs'' (43–4061) functions valued at $22.34. The salaries of Office and Administrative Support Workers, All other (43–9199) is $18.02 per hour. The $7.25 used to calculate a cost to applicants is the Federal minimum wage.

## E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

## List of Subjects

*7 CFR Part 271*

Administrative practice and procedures, Food stamps, Grant programs—social programs.

*7 CFR Part 273*

Administrative practice and procedures, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping.

Accordingly, 7 CFR parts 271 and 273 are proposed to be amended as follows:

## PART 271 —GENERAL INFORMATION AND DEFINITIONS

■ 1. The authority citation for part 271 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 271.2:

■ a. Remove the definitions of ''Employment and training (E&T) component'' and ''Employment and training (E&T) mandatory participant'' and add in their places the definitions ''Employment and Training (E&T) component'' and ''Employment and Training (E&T) mandatory participant'', respectively;

■ b. Add the definition of ''Employment and Training (E&T) participant'' in alphabetical order;

■ c. Remove the definition of ''Employment and training (E&T) program'' and add in its place the definition of ''Employment and Training (E&T) program'';

■ d. Add the definition of ''Employment and Training (E&T) voluntary participant'' in alphabetical order; and

■ e. Remove the definition of ''Placed in an employment and training (E&T) program''.

The additions and revisions read as follows:

**§ 271.2 Definitions.**

* * * * *

*Employment and Training (E&T) component* a work experience, work training, supervised job search, or other program described in section 6(d)(4)(B)(i) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4)(B)(i)) designed to help SNAP participants move promptly into unsubsidized employment.

*Employment and Training (E&T) mandatory participant* a supplemental nutrition assistance program applicant or participant who is required to work register under 7 U.S.C. 2015(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program and is required to participate in E&T.

*Employment and Training (E&T) participant* means an individual who meets the definition of a mandatory or voluntary E&T participant.

*Employment and Training (E&T) program* means a program operated by each State agency consisting of case management and one or more E&T components.

*Employment and Training (E&T) voluntary participant* means a supplemental nutrition assistance program applicant or participant who volunteers to participate in an employment and training (E&T) program.

* * * * *

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 3. The authority citation for part 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 4. In § 273.7:

■ a. Revise paragraphs (c)(1) through (3) and the first sentence of paragraph (c)(4);

■ b. Amend paragraph (c)(5) by adding a sentence at the beginning of the paragraph;

■ c. Amend paragraph (c)(6)(i) by adding two sentences after the second sentence;

■ d. Redesignate paragraphs (c)(6)(ii) through (xvii) as paragraphs (c)(6)(iii) through (c)(6)(xviii), respectively, and add a new paragraph (c)(6)(ii);

■ e. Amend newly redesignated paragraph (c)(6)(xi) by removing the word ''components'' and adding in its place the word ''program'';

■ f. Amend newly redesignated paragraph (c)(6)(xii) by adding four sentences after the second sentence;

■ g. Add paragraph (c)(6)(xix);

■ h. Amend paragraph (c)(9)(iv) by removing the words ''15 percent exemption allowance'' and adding in their place the words ''discretionary exemptions'';

■ i. Amend paragraph (c)(11)(i) by removing the word ''and'' at the end of the paragraph;

■ j. Amend paragraph (c)(11)(ii) by removing the period at the end and adding in its place ''; and'';

■ k. Add paragraphs (c)(11)(iii), (c)(17)(x), and (c)(18);

■ l. Amend paragraph (d)(1)(i)(C) by removing the number ''$50,000'' in every place it appears and adding in its place the number ''$100,000'';

■ m. Remove paragraph (d)(1)(i)(D);

■ n. Amend paragraph (d)(1)(ii)(A) by removing the word ''component'' in every place it appears and adding in their place the word ''program'' and by removing the words ''to subsidize the wages of participants, or'';

■ o. Add paragraph (d)(1)(iii);

■ p. Revise the first sentence of paragraph (d)(4)(v) and paragraph (e) introductory text;

■ q. Redesignate paragraphs (e)(1) through (4) as paragraphs (e)(2) through (5) and add a new paragraph (e)(1);

■ r. Amend newly redesignated paragraph (e)(2) introductory text by revising sentences seven and eight;

■ s. Revise newly designated paragraphs (e)(2)(i), (ii), and (iv);

■ t. Amend newly redesignated paragraph (e)(2)(v) by removing the words '', or a WIA or State or local program'';

■ u. Amend newly redesignated paragraph (e)(2)(viii) by adding a sentence after the second sentence;

■ v. Add paragraph (e)(2)(ix);

■ w. Amend newly redesignated paragraph (e)(4)(i) by adding the words ''case management or'' after the words ''the length of time a participant spends in'';

■ x. Amend newly redesignated paragraph (e)(4)(ii) in the first sentence by removing the text ''(e)(1)(iii) and (e)(1)(iv)'' and adding in its place the text ''(e)(2)(iii) and (iv)'' and in the second sentence by removing the word ''component'' and adding in its place the word ''program'';

■ y. Amend newly redesignated paragraph (e)(5)(i) by removing the words ''program components'' and adding in its place the text ''an E&T program'';

■ z. Amend newly redesignated paragraph (e)(5)(ii) by removing the word ''component'' and adding in its place the word ''program'';

■ aa. Revise newly redesignated paragraph (e)(5)(iii);

■ bb. Amend paragraph (f)(1) introductory text by removing the text ''paragraphs (i)(2) and (i)(3)'' and adding in its place ''paragraphs (i)(2), (3), and (4)'';

■ cc. Amend paragraph (f)(6) in the third sentence by adding the words ''or service of the E&T program'' after the words ''relevant component'' and in the fifth sentence by removing the word ''component'' and adding its place the word ''program'';

■ dd. Redesignate paragraph (i)(4) as paragraph (i)(5) and add a new paragraph (i)(4);

■ ee. Remove the heading from newly redesignated paragraph (i)(5); and

■ ff. Add paragraph (n).

The revisions and additions read as follows:

**§ 273.7 Work provisions.**

* * * * *

(c) * * *

(1) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section.

(i) As part of the work registration process, the State agency must orally explain to the individual the pertinent work requirements, the rights and responsibilities of work-registered household members, and the consequences of failure to comply. This explanation must also be provided when a previously exempt individual or new household member becomes a work registrant, and at recertification.

(ii) The State agency must also provide the information in paragraph

(c)(1)(i) of this section in a written statement to each individual in the household who is registered for work explaining the work requirements. If the individual is an able-bodied adult without dependents (ABAWD) in accordance with § 273.24(a), required to participate in E&T in accordance with paragraph (c)(2) of this section, or both, the written statement must also consolidate and explain these applicable work requirements. The consolidated written statement must include all pertinent information related to each of the applicable work requirements, including: An explanation of each applicable work requirement; exemptions from each applicable work requirement; the rights and responsibilities of each applicable work requirement for individuals subject to the work requirements; what is required to maintain eligibility under each applicable work requirement; pertinent dates by which an individual must take any actions to remain in compliance with each of the applicable work requirements; the consequences for failure to comply with each applicable work requirement; and any other information the State agency believes would assist the household members with compliance. If the individual is subject to mandatory E&T, the consolidated written statement must also explain the individual's right to receive participant reimbursements for allowable expenses related to participation in E&T, up to any applicable State cap, and the responsibility of the State agency to exempt the individual from the requirement to participate in E&T if the individual's allowable expenses exceed what the State agency will reimburse, as provided in paragraph (d)(4) of this section. In addition, as stated in paragraphs (c)(1)(i) and (c)(2) of this section, and § 273.24(a)(5), the State agency must provide a comprehensive oral explanation to the household of each applicable work requirement pertaining to individuals in the household. Both the consolidated written statement and the comprehensive oral explanation must be provided at certification, recertification, and when a previously exempt individual or new household member becomes subject to a work requirement.

(iii) The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency's criteria, to require the individual to participate in an E&T program. Upon making this determination, the State agency must inform the participant orally of the requirements of the program, what will constitute noncompliance, and the sanctions for noncompliance. The State agency must also provide this information to the participant in writing, as specified in paragraph (c)(1)(ii) of this section. The State agency is also responsible for referring mandatory E&T participants, as defined in paragraph (e) of this section and § 272.1, required to participate in E&T to the E&T program. The State agency may establish their own procedures for this referral, which may vary from participant to participant, but in all cases, the E&T participant must receive both case management services and at least one E&T component while participating in E&T. The State agency must determine the order the participant will receive the elements of an E&T program (*e.g.,* case management followed by a component, case management embedded within a component, etc.) and explain what the participant must do next to access the E&T program. If there is not an appropriate and available opening in an E&T program, the State agency must determine the participant has good cause for failure to comply with the mandatory E&T requirement in accordance with paragraph (i)(4) of this section. The State agency may, with FNS approval, use intake and sanction systems that are compatible with its title IV–A work program. Such systems must be proposed and explained in the State agency's E&T State Plan.

(3) After learning of an individual's non-compliance with SNAP work requirements in paragraph (a) of this section, the State agency must issue a notice of adverse action to the individual, or to the household if appropriate, within 10 days of establishing that the noncompliance was without good cause. The notice of adverse action must meet the timeliness and adequacy requirements of § 273.13. If the individual complies before the end of the advance notice period, the State agency will cancel the adverse action. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period. Mandatory E&T participants who have been determined ill-suited for participation in an E&T component in accordance with paragraph (c)(18)(i) of this section shall not be subject to disqualification for refusal without good cause to participate in a mandatory E&T program until after the State has taken one of the four actions in paragraph (c)(18)(i)(B) of this section, and the individual subsequently refuses to participate without good cause.

(4) The State agency must design and operate an E&T program that consists of case management services in accordance with paragraph (e)(1) of this section and at least one or more, or a combination of, employment and/or training components as described in paragraph (e)(2) of this section. * * *

(5) The State agency must design its E&T program in consultation with the State workforce development board, or with private employers or employer organizations if the State agency determines the latter approach is more effective and efficient. * * *

(6) * * *

(i) * * * If a State agency plans to offer supervised job search in accordance with paragraph (e)(2)(i) of this section, the State agency must also include in the E&T plan a summary of the State guidelines implementing supervised job search. This summary of the State guidelines, at a minimum, must describe: The State-approved locations for supervised job search and how they were selected; and how the supervised job search component meets the requirements to directly supervise the activities of participants and track the timing and activities of participants;

(ii) A description of the case management services and models, the cost for providing the services, how participants will be referred to case management, how the participant's case will be managed, who will provide services, and how the service providers will coordinate with E&T providers, the State agency, and other community resources, as appropriate;

* * * * *

(xii) * * * The State agency must document how it consulted with the State workforce development board. If the State agency consulted with private employers or employer organizations in lieu of the State workforce development board, it must document this consultation and explain the determination that doing so was more effective or efficient. The State agency must include in its E&T State plan a description of any outcomes from the consultation with the State workforce development board or private employers

or employer organizations. The State agency must also address in the E&T State plan the extent to which E&T activities will be carried out in coordination with the activities under title I of WIOA;

* * * * *

(xix) Any State agency that will be requesting Federal funds that may become available for reallocation in accordance with paragraph (d)(1)(iii)(A), (B), or (D) of this section should include this request in the E&T State plan for the year the State agency would plan to use the reallocated funds. The request must include a separate budget and narrative explaining how the State agency intends to use the reallocated funds. FNS will review all State agency requests for reallocated funds and notify State agencies of the approval of any reallocated funds in accordance with regulations at paragraph (d)(1)(iii)(E) of this section. FNS' approval or denial of requests for reallocated funds will occur separately from the approval or denial of the rest of the E&T State plan.

* * * * *

(11) * * *

(iii) Number of SNAP participants required to participate in E&T by the State agency and of those the number who begin participation in an E&T program. An E&T participant begins to participate in an E&T program when the participant commences at least one part of an E&T program including an orientation, assessment, case management, or a component.

* * * * *

(17) * * *

(x) State agencies certifying workforce partnerships for operation in their State in accordance with paragraph (n) of this section may report relevant data to demonstrate the number of program participants served by the workforce partnership, and of those how many were mandatory E&T participants.

* * * * *

(18)(i) The State agency must ensure E&T providers are informed of their authority to determine if an individual is ill-suited for a particular E&T component. For purposes of this paragraph (c)(18), an E&T provider is the provider of an E&T component. The E&T provider must notify the State agency of an ill-suited determination as soon as possible after the determination is made and inform the State agency of the reason for the ill-suited determination. If the State agency is unable to obtain the reason for the ill-suited determination from the E&T provider, the State agency must continue to act on the ill-suited determination in accordance with this section. The E&T provider has the authority to determine if an individual is ill-suited for the E&T component from the time an individual is referred to an E&T component until completion of the component. When a State agency receives notification that an individual has been determined ill-suited, and the individual is not exempt from the work requirements as specified in paragraph (b) of this section, the State agency must:

(A) Send a Notice of E&T Participation Change (NETPC) to the household, as soon as possible. The notice must inform the household of the ill-suited determination. In the case of an ABAWD who has been determined ill-suited for an E&T component, the notice must notify the ABAWD that regardless of the ill-suited determination, the ABAWD will begin to accrue countable months toward their 3-month participation time limit as of the date of the notice unless the ABAWD fulfills the work requirements in accordance with § 273.24. The notice must also provide contact information for the State E&T program; and

(B) Take the most suitable action from among the following options:

(*1*) Refer the individual to an appropriate E&T program component in accordance with paragraph (e)(1) of this section. Before making this referral, the State agency must ensure the individual meets State agency criteria for the E&T program in accordance with paragraph (c)(2) of this section, and that it is appropriate to refer the individual to an E&T component, considering the suitability of the individual for any available E&T components. Any individual referred to an E&T component must also receive case management services in accordance with paragraph (e)(1) of this section;

(*2*) Refer the individual to an appropriate workforce partnership as defined in paragraph (n) of this section, if available. Before making this referral, the State agency must provide information about workforce partnerships to assist the individual in making an informed decision about whether to voluntarily participate in the workforce partnership, in accordance with paragraph (n)(10) of this section;

(*3*) Reassess the physical and mental fitness of the individual. If the individual is not found to be physically or mentally fit, the individual is exempt from the work requirements in paragraph (a) of this section. If the individual is found to be physically or mentally fit, and the State agency determines the individual is not otherwise exempt from the general work requirements in paragraph (a) of this section, the State agency must consider if one of the other available actions in paragraph (c)(18)(i)(B) of this section would be appropriate for the individual; or

(*4*) Coordinate, to the maximum extent practicable, with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual.

(ii) From the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the actions in paragraph (c)(18)(i)(B) of this section, the individual shall not be found to have refused without good cause to participate in mandatory E&T. From the time an E&T provider determines an ABAWD is ill-suited for an E&T component, the ABAWD will begin to accrue countable months toward their 3-month participation time limit unless the ABAWD fulfills the work requirement in accordance with § 273.24.

* * * * *

(d) * * *

(1) * * *

(iii) *Additional allocations.* If a State agency will not obligate and expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i) of this section, FNS will reallocate the unobligated, unexpended funds to other State agencies during the fiscal year or subsequent fiscal year. FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable in accordance with the following process:

(A) Not less than 50 percent shall be reallocated to State agencies requesting funding to conduct employment and training programs and activities for which the State agency had previously received funding under the pilots authorized by the Agricultural Act of 2014 (Pub. L. 113–79) that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

(B) Not less than 30 percent shall be reallocated to State agencies requesting funding for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance, including activities targeted to:

(*1*) Individuals 50 years of age or older;

(*2*) Formerly incarcerated individuals;

(*3*) Individuals participating in a substance abuse treatment program;

(*4*) Homeless individuals;

(*5*) People with disabilities seeking to enter the workforce;

(*6*) Other individuals with substantial barriers to employment, including disabled veterans; or

(*7*) Households facing multi-generational poverty, to support employment and workforce participation through an integrated and family-focused approach in providing supportive services.

(C) State agencies who receive reallocated funds under paragraph (d)(1)(iii)(A) of this section may also be considered to receive reallocated funds under paragraph (d)(1)(iii)(B) of this section.

(D) The remaining funds not accounted for with the reallocations specified in paragraph (d)(1)(iii)(A) or (B) of this section shall be reallocated to State agencies requesting such funds for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

(E) State agencies requesting the reallocated funds specified in paragraph (d)(1)(iii)(A), (B), or (D) of this section shall make their request for those funds in their E&T State plans submitted for the upcoming fiscal year. FNS will determine the amount of reallocated funds each requesting State agency shall receive and provide the reallocated funds to those State agencies within a timeframe that allows each State agency to which funds are reallocated at least 270 days to expend the reallocated funds. When making the reallocations, FNS will also consider the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program.

(F) Unobligated, unexpended funds not reallocated in the process specified in paragraph (d)(1)(iii)(E) of this section, shall be reallocated to State agencies upon request for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. In making these reallocations FNS will also consider the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program.

* * * * *

(4) * * *

(v) The State agency must inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program, including participation in case management services and E&T components, exceed the allowable reimbursement amount. * * *

(e) *Employment and training programs.* Work registrants not otherwise exempted by the State agency are subject to the E&T program participation requirements imposed by the State agency. Such individuals are referred to in this section as E&T mandatory participants or mandatory E&T participants. Mandatory E&T participants who have been determined ill-suited for participation in an E&T component in accordance with paragraph (c)(18)(i) of this section shall not be subject to disqualification for refusal without good cause to participate in mandatory E&T during the time specified in paragraph (c)(18)(ii) of this section. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency will result in disqualification as specified in paragraph (f)(2) of this section.

(1) *Case management.* The State E&T program must provide case management services such as comprehensive intake assessments, individualized service plans, progress monitoring, or coordination with service providers which are provided to all E&T participants. The purpose of case management services shall be to guide the participant towards appropriate E&T components and activities based on the participant's needs and interests, support the participant through the E&T program, and to provide services that help the participant achieve program goals. The provision of case management services must not be an impediment to the participant's successful participation in E&T. In addition, if the case manager determines a mandatory E&T participant may meet an exemption from the requirement to participate in an E&T program, the case manager must inform the appropriate State agency staff. Also, if the case manager is unable to identify an appropriate and available opening in an E&T component for a mandatory E&T participant, the case manager must inform the appropriate State agency staff.

(2) * * * In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, supervised job search and job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to fulfill the ABAWD work requirement under § 273.24. However, job search, including supervised job search, or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components. * * *

(i) A supervised job search program. Supervised job search programs are those that occur at State-approved locations at which the activities of participants shall be directly supervised and the timing and activities of participants tracked in accordance with guidelines issued by the State agency and summarized in their E&T State plan in accordance with paragraph (c)(6)(i) of this section. Job search that does not meet the definition of supervised job search in the previous sentence is allowed as a subsidiary activity of another E&T component, so long as the job search activity comprises less than half of the total required time spent in the component. The State agency may require an individual to participate in supervised job search from the time an application is filed for an initial period established by the State agency. Following this initial period (which may extend beyond the date when eligibility is determined) the State agency may require an additional supervised job search period in any period of 12 consecutive months. The first such period of 12 consecutive months will begin at any time following the close of the initial period. The State agency may establish a supervised job search period that, in its estimation, will provide participants a reasonable opportunity to find suitable employment. The State agency should not, however, establish a continuous, year-round supervised job search requirement. If a reasonable period of supervised job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, a supervised job search program is not a qualifying E&T activity relating to the participation

requirements necessary to maintain SNAP eligibility for ABAWDs. However, a job search program, supervised or otherwise, when operated under title I of the Workforce Innovation and Opportunity Act (WIOA), under section 236 of the Trade Act, or a program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs, is considered a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of employability assessments, training in techniques to increase employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, a job search training program is not a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs. However, such a program, when operated under title I of WIOA, under section 236 of the Trade Act, or a program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs, is considered a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.

* * * * *

(iv) A work experience program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate and consistent with other laws such as the Fair Labor Standards Act. Work experience may be arranged within the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.

(A) A work experience program may include:

(*1*) A work activity performed in exchange for SNAP benefits that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose of work activity is to improve the employability of those who cannot find unsubsidized full-time employment.

(*2*) A work-based learning program, which, for the purposes of SNAP E&T, are sustained interactions with industry or community professionals in real world settings to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction. Work-based learning emphasizes employer engagement, includes specific training objectives, and leads to regular employment. Work-based learning can include internships, pre-apprenticeships, apprenticeships, customized training, transitional jobs, incumbent worker training, and on-the-job training as defined under WIOA. Work-based learning can include both subsidized and unsubsidized employment models.

(B) A work experience program must:

(*1*) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(*2*) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

* * * * *

(viii) * * * State agencies must make a good faith effort to provide job retention services for at least 30 days.

***

(ix) Programs and activities conducted under the pilots authorized by the Agricultural Act of 2014 (Pub. L. 113–79) that the Secretary determines, based on the results from the independent evaluations conducted for those pilots, have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

* * * * *

(5) * * *

(iii) Voluntary participants are not subject to the limitations specified in paragraph (e)(4) of this section.

* * * * *

(i) * * *

(4) Good cause includes the good cause provisions in paragraph (i)(2) of this section as well as circumstances where the State agency determines that there is not an appropriate and available opening within the E&T program to accommodate the mandatory participant. Good cause for circumstances where there is not an appropriate or available opening within the E&T program shall extend until the State agency identifies an appropriate and available E&T opening, and the State agency informs the SNAP participant. In addition, good cause for circumstances where there is not an appropriate and available opening within the E&T program shall only apply to the requirement to participate in E&T and shall not provide good cause to ABAWDs who fail to fulfill their ABAWD work requirements in accordance with § 273.24.

* * * * *

(n) *Workforce partnerships.* Workforce partnerships must meet the following requirements:

(1) Workforce partnerships are programs operated by:

(i) A private employer, an organization representing private employers, or a nonprofit organization providing services relating to workforce development; or

(ii) An entity identified as an eligible provider of training services under section 122(d) of WIOA (29 U.S.C. 3152(d)).

(2) Workforce partnerships may include multi-State programs.

(3) Workforce partnerships must be in compliance with the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), as applicable.

(4) All workforce partnerships must be certified by the Secretary or by the State agency to the Secretary to indicate all of the elements in paragraphs (n)(4)(i) through (v) of this section. The workforce partnership must:

(i) Assist SNAP households in gaining high-quality, work-relevant skills, training, work, or experience that will increase the ability of the participants to obtain regular employment;

(ii) Provide participants with not less than 20 hours per week, averaged monthly of training, work, or experience; for the purposes of this paragraph (n)(4)(ii), 20 hours a week averaged monthly means 80 hours a month;

(iii) Not use any funds authorized to be appropriated under the Food and Nutrition Act of 2008;

(iv) Provide sufficient information to the State agency, on request, to determine whether members of SNAP

households who are subject to the work requirement in paragraph (a) of this section, the ABAWD work requirements in § 273.24, or both are fulfilling the work requirement through the workforce partnership; and

(v) Be willing to serve as a reference for participants who are members of SNAP households for future employment or work-related programs.

(5) In certifying that a workforce partnership meets the criteria in paragraphs (n)(4)(i) and (ii) of this section to be certified as a workforce partnership, the Secretary or the State agency shall require that the program submit to the Secretary or the State agency sufficient information that describes both:

(i) The services and activities of the program that would provide participants with not less than 20 hours per week of training, work, or experience; and

(ii) How the workforce partnership would provide services and activities described in paragraph (n)(5)(i) of this section that would directly enhance the employability or job readiness of the participant.

(6)(i) Workforce partnerships may not use any funds authorized to be appropriated by the Food and Nutrition Act of 2008.

(ii) If a member of a SNAP household is required to participate in an employment and training program in accordance with paragraph (a)(1)(ii) of this section, the State shall consider an individual participating in a workforce partnership certified in accordance with paragraph (n)(4) of this section to be in compliance with the employment and training requirements. The State agency cannot disqualify an individual for no longer participating in a workforce partnership. When a State agency learns that an individual is no longer participating in a workforce partnership, and the individual had been subject to mandatory E&T in accordance with paragraph (a)(1)(ii) of this section, the State agency must re-screen the individual to determine if the individual qualifies for an exemption from the work requirements in accordance with paragraph (b) of this section, and re-screen the individual to determine if the individual meets State criteria for referral to an E&T program or component in accordance with paragraph (c)(2) of this section. After this re-screening, if it is appropriate to require the individual to participate in an E&T program, the State agency may refer the individual to an E&T program or workforce partnership, as applicable.

(7) A state agency may use a workforce partnership to supplement, not to supplant, the employment and training program of the State agency.

(8) Workforce partnerships certified in accordance with paragraph (n)(4) of this section are included in the definition of a work program under § 273.24(a)(3) for the purposes of fulfilling the ABAWD work requirement.

(9) The State agency shall not require any member of a household participating in SNAP to participate in a workforce partnership.

(10) A State agency shall maintain a list of workforce partnerships certified in accordance with paragraph (n)(4) of this section, and provide this list not less frequently than at certification and recertification to a household member subject to the work requirements in paragraph (a) of this section or § 273.24. The State agency must provide the list electronically or by other means. The list should include information that would assist the household member to make an informed decision about participating in a workforce partnership, including the following information, if available: Contact information for the workforce partnership, the types of activities the participant would be engaged in through the workforce partnership, screening criteria used by the workforce partnership to select individuals, the location of the workforce partnership, the work schedule or schedules, any special skills required to participate, and wage and benefit information, if applicable.

(11) Participation in a workforce partnership shall not replace the employment or training of an individual not participating in a workforce partnership.

(12) A workforce partnership may select individuals for participation in the workforce partnership who may or may not meet the criteria for the general work requirement at paragraph (a) of this section, including participation in E&T, or the ABAWD work requirement at § 273.24(a)(1).

(13) Workforce partnership reporting requirements to the State agency are limited to the following:

(i) On notification that an individual participating in the workforce partnership is receiving SNAP benefits, notifying the State agency that the individual is participating in a workforce partnership;

(ii) Identifying participants who have completed or are no longer participating in the workforce partnership;

(iii) Identifying changes to the workforce partnership that result in the workforce partnership no longer meeting the certification requirements in accordance with paragraph (n)(4) of this section; and

(iv) Providing sufficient information, on request by the State agency, for the State agency to verify that a participant is fulfilling the applicable work requirements in paragraph (a) of this section or § 273.24.

■ 5. In § 273.14, add paragraph (b)(5) to read as follows:

**§ 273.14 Recertification.**

* * * * *

(b) * * *

(5) *Advisement.* (i) At the time of recertification, the State agency shall advise household members subject to the work requirements of § 273.7(a) who reside in households meeting the criteria in paragraph (b)(5)(ii) of this section of available employment and training services. This shall include, at a minimum, providing a list of available employment and training services electronically or in printed form to the household.

(ii) The State agency requirement in paragraph (b)(5)(i) of this section only applies to households that meet all of the following criteria, as most recently reported by the household:

(A) Contain a household member subject to the work requirements of § 273.7(a);

(B) Contain at least one adult;

(C) Contain no elderly or disabled individuals; and

(D) Have no earned income.

* * * * *

■ 6. In § 273.24:

■ a. Revise paragraph (a)(3)(i);

■ b. Amend paragraph (a)(3)(ii) by removing the word ''or'' at the end of the paragraph;

■ c. Revise paragraph (a)(3)(iii);

■ d. Add paragraphs (a)(3)(iv) and (v);

■ e. Revise paragraph (b)(2);

■ f. Add paragraph (b)(8);

■ g. Amend paragraph (g) heading by removing the text ''15 percent'' and adding in its place the word ''Discretionary'';

■ h. Amend paragraph (g)(1) by removing the text ''15 percent exemption'' and adding in its place the words ''discretionary exemptions''; and

■ i. Amend paragraph (g)(3) by removing the number ''15'' and adding in its place the number ''12''.

The revisions and additions read as follows:

**§ 273.24 Time limit for able-bodied adults.**

(a) * * *

(3) * * *

(i) A program under title I of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L.113–128);

* * * * *

(iii) An employment and training program operated or supervised by a

State or political subdivision of a State agency that meets standards approved by the Chief Executive Office, including a SNAP E&T program under § 273.7(e) excluding any job search, supervised job search, or job search training program. However, a program under this paragraph (a)(3)(iii) may contain job search, supervised job search, or job search training as subsidiary activities as long as such activity is less than half the requirement. Participation in job search, supervised job search, or job search training as subsidiary activities that make up less than half the requirement count for purposes of fulfilling the work requirement under § 273.35(a)(1)(ii);

(iv) A program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs. For the purpose of this paragraph (a)(3)(iv), any employment and training program of the Department of Labor or Veterans Affairs that serves veterans shall be an approved work program; or

(v) A workforce partnership under § 273.7(n).

* * * * *

(b) * * *

(2) *Good cause.* As determined by the State agency, if an individual would have fulfilled the work requirement as defined in paragraph (a)(1) of this section, but missed some hours for good cause, the individual shall be considered to have fulfilled the work requirement if the absence from work, the work program, or the workfare program is temporary and the individual retains his or her job, training or workfare slot. Good cause shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. In addition, if the State agency grants an individual good cause under § 273.7(i) for failure or refusal to meet the mandatory E&T requirement in § 273.7, that good cause determination confers good cause under this paragraph (b)(2), except in the case of § 273.7(i)(4), without the need for a separate good cause determination under this paragraph (b)(2). Good cause granted under § 273.7(i)(4) only provides good cause to ABAWDs for failure or refusal to participate in a mandatory SNAP E&T program, and does not confer good cause for failure to fulfill the work requirement as defined in paragraph (a)(1) of this section.

* * * * *

(8) *Advisement.* The State agency shall inform all ABAWDs of the ABAWD work requirement and time limit both in writing and orally in accordance with § 273.7(c)(1)(ii).

* * * * *

Dated: March 3, 2020.

**Sonny Perdue,**

*Secretary of Agriculture, United States Department of Agriculture.*

[FR Doc. 2020–04821 Filed 3–16–20; 8:45 am]

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