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

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Docket No. R–1722 and RIN 7100–AF93]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Regulation O

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for comments.

SUMMARY: On April 17, 2020, the Board issued an interim final rule to except certain loans made by June 30, 2020, that are guaranteed under the Small Business Administration's Paycheck Protection Program from the requirements of the Federal Reserve Act and the corresponding provisions of the Board's Regulation O. The Board is issuing this interim final rule to expand the exception to apply to PPP loans made through August 8, 2020.

DATES: This interim final rule is effective on July 16, 2020. Comments on the interim final rule must be received no later than August 31, 2020.

ADDRESSES: You may submit comments, identified by Docket No. R–1722 and RIN 7100 AF93, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Deputy General Counsel, (202) 452–2272, Alison Thro, Deputy Associate General Counsel, (202) 452–3236, Benjamin McDonough, Assistant General Counsel, (202) 452–2036, Dan Hickman, Senior Counsel, (202) 973–7432, Josh Strazanac, Senior Attorney, (202) 452–2457, Jasmin Keskinen, Legal Assistant, (202) 475–6650, Legal Division; or Anna Lee Hewko, Associate Director, (202) 530–6360, Constance Horsley, Deputy Associate Director, Juan Climent, Assistant Director, (202) 872–7526, (202) 452–5239, Kathryn Ballintine, Manager, (202) 452–2555, Rebecca Zak, Lead Financial Institution Policy Analyst, (202) 912–7995, Eusebius Luk, Senior Financial Policy Analyst I, (202) 452–2874, Division of Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

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F. Use of Plain Language

I. Background

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act which, among other things, created the Paycheck Protection Program (PPP) to facilitate lending to small businesses affected by COVID–19. The CARES Act specified that the PPP would end on June 30, 2020. On July 4, 2020, the President signed into law the Prioritized Paycheck Protection Program Act (PPPP Act), which extends the PPP to August 8, 2020.[1]

On April 17, 2020, the Board issued an exception to section 22(h) and the corresponding provisions of Regulation O for PPP loans made to insiders that would not be prohibited from receiving a PPP loan under the Small Business Administration (SBA) lending restrictions (original IFR).[2] The exception was intended to facilitate lending by banks to a broad range of small businesses within their communities, consistent with applicable law and safe and sound banking practices. The exception applied only to PPP loans made by June 30, 2020, the original date on which the PPP was set to expire.

The Board is issuing this interim final rule to extend the exception in the original IFR to August 8, 2020, the new date on which the PPP will expire.

II. The Interim Final Rule

Section 22(h) authorizes the Board to adopt, by regulation, exceptions to the definition of ''extension of credit'' in section 22(h) for transactions that ''pose minimal risk.'' [3] Therefore, the Board may except PPP loans from the restrictions imposed by section 22(h) and the corresponding provisions of Regulation O upon a determination that such loans pose minimal risk.

The Board determined in the original IFR that PPP loans pose minimal risk.[4] The PPPP Act does not change any of the features of PPP loans on which the Board relied in the original IFR to determine that PPP loans pose minimal risk. Accordingly, the Board has determined that PPP loans continue to pose minimal risk for the reasons cited in the original IFR.

SBA lending restrictions continue to apply to certain PPP loans that also would be subject to section 22(h) and the corresponding provisions of Regulation O.[5] Excepting PPP loans that

[1] Prioritized Paycheck Protection Program Act, S. 4116, 116th Cong. section 1 (2020).

[2] ''Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks,'' 85 FR 22345 (April 22, 2020), *https://www.govinfo.gov/content/pkg/FR-2020-04-22/pdf/2020-08574.pdf.*

[3] 12 U.S.C. 375b(9)(D)(ii).

[4] 85 FR 22346.

[5] SBA regulations normally would prohibit a PPP lender from making a PPP loan to ''[b]usinesses in

Continued

would be prohibited by the SBA lending restrictions from the requirements of section 22(h) and the corresponding provisions in Regulation O would not achieve any meaningful regulatory purpose. Excepting these loans from one regime and not the other also may create confusion because some lenders may mistakenly interpret an exception under one regime to extend to both regimes. Accordingly, the exception continues to apply only for insiders that would not be prohibited from receiving a PPP loan by the SBA lending restrictions.

This interim final rule does not except a PPP loan from other restrictions that may apply to the loan, including section 22(g) of the Federal Reserve Act or section 215.5 of Regulation O.[6] This determination also does not affect application of SBA lending restrictions to a PPP loan. The SBA has stated that ''[f]avoritism by [a PPP] [l]ender in processing time or prioritization of [a] director's or equity holder's PPP application is prohibited.'' [7] The Board will administer the interim final rule accordingly.

Question 1: What are the advantages and disadvantages of extending the exception to PPP loans made through August 8, 2020?

Question 2: Are there any additional terms or conditions that should apply? Why?

Question 3: The Board may want to extend the exception again to match any further extension of the PPP by Congress and the President, if the material terms of PPP loans do not change. What are the advantages and disadvantages of doing so?

III. Administrative Law Matters

A. Administrative Procedure Act

The Board is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[8] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [9]

The Board believes that the public interest is best served by implementing the interim final rule immediately. As discussed in the original IFR, the spread of COVID–19 has disrupted economic activity in the United States and other countries. In addition, U.S. financial markets have featured substantial levels of volatility. The magnitude and persistence of COVID–19 on the economy remain uncertain. In light of the substantial disruptions in the economy, and the likelihood that this interim final rule would help ameliorate those disruptions by promoting lending to small businesses, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[10]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[11] Because the rules relieve a restriction by providing an exception to the definition of ''extension of credit'' in section 22(h) and Regulation O, the interim final rule is exempt from the APA's delayed effective date requirement.[12]

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[13] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[14]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[15]

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[16] In light of disruption in economic activity due to COVID–19, the Board believes that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB

which the [PPP lender] or any of its Associates owns an equity interest.'' 13 CFR 120.110(o). SBA regulations define an ''Associate'' of a PPP lender to be ''[a]n officer, director, key employee, or holder of 20 percent or more of the value of the [PPP] [l]ender's . . . stock or debt instruments'' and any entity in which one of these individuals or certain relatives ''own or controls at least 20 percent.'' 13 CFR 120.10. On April 14, 2020, the SBA issued an interim final rule stating, among other things, that SBA lending restrictions ''shall not apply to prohibit an otherwise eligible business owned (in whole or part) by an outside director or holder of less than 30 percent equity interest in a PPP [l]ender from obtaining a PPP loan from the PPP [l]ender on whose board the director serves or in which the equity owner holders an interest, provided that the eligible business owned by the director or equity holder follows the same process as similarly situated customer or account holder of the [l]ender.'' The interim final rule also stated that SBA lending restrictions would continue to apply to officers and key employees of a PPP lender. Interim Final Rule: ''Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans'' (April 14, 2020), *https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf.*

[6] 12 U.S.C. 375a; 12 CFR 215.5.

[7] *Id.* at 14–15.

[8] 5 U.S.C. 553.

[9] 5 U.S.C. 553(b)(B).

[10] 5 U.S.C. 553(b)(B); 553(d)(3).

[11] 5 U.S.C. 553(d).

[12] 5 U.S.C. 553(d)(1).

[13] 5 U.S.C. 801 *et seq.*

[14] 5 U.S.C. 801(a)(3).

[15] 5 U.S.C. 804(2).

[16] 5 U.S.C. 808.

control numbers to collections of information conducted or sponsored by the Board, as well as the authority to temporarily approve a new collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

This interim final rule does not contain any collections of information subject to the PRA.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [17] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[18] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment are unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the Board seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[19] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the federal banking agencies must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[20] For the reasons described above, the Board finds good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the final rule will be effective immediately on publication. Nevertheless, the Board seeks comment on RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [21] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; Pub. L. 102–242, 105 Stat. 2236 (1991) (12 U.S.C. 1811 note) and Pub. L. 116–136, 134 Stat. 281.

■ 2. In § 215.3, revise paragraphs (b)(8) introductory text and (b)(8)(ii) to read as follows:

§ 215.3 Extension of credit.

* * * * *

(b) * * *

(8) Except for purposes of § 215.5 of this part, a loan:

* * * * *

(ii) That is made during the period beginning on February 15, 2020, and ending on August 8, 2020; and

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 13, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–15367 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0295]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce certain safety zones located in the federal regulations for Annual Events in the Captain of the Port Buffalo. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after these events. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES:

The regulations in 33 CFR 165.939(b)(22) as listed in Table 165.939 will be enforced from 9:30 p.m. through 10:30 p.m. on July 03, 2020.

The regulations in 33 CFR 165.939(b)(27) as listed in Table 165.939

[17] 5 U.S.C. 601 *et seq.*

[18] Under regulations issued by the SBA, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[19] 12 U.S.C. 4802(a).

[20] 12 U.S.C. 4802.

[21] 12 U.S.C. 4809.

will be enforced from 9:45 p.m. through 10:45 p.m. on July 03, 2020.

The regulations in 33 CFR 165.939(b)(28) as listed in Table 165.939 will be enforced from 9 p.m. until 10 p.m. on July 25, 2020 and 9 p.m. until 10 p.m. on July 26, 2020.

The regulations in 33 CFR 165.939(c)(5) as listed in Table 165.939 will be enforced from 10:45 a.m. until 8:15 p.m. on August 09, 2020.

The regulations in 33 CFR 165.939(b)(29) as listed in Table 165.939 will be enforced from 9 p.m. through 10:15 p.m. on July 05, 2020 with a rain date of July 06, 2020.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, contact LT Sean Dolan, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo via telephone 716–843–9322 or email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939 for the following events:

1. *Village Fireworks, Sodus Point, NY;* The safety zone listed in Table 165.939 as (b)(22) will be enforced within a 560-foot radius of position 43°16′33″ N, 076°58′27″ W, from 9:30 p.m. until 10:30 p.m. on July 03, 2020.

2. *Tom Graves Memorial Fireworks, Port Bay, NY;* The safety zone listed in Table 165.939 as (b)(27) will be enforced within a 420-foot radius of position 43°17′54.2″ N, 076°49′50.9″ W from 9:45 p.m. through 10:45 p.m. on July 03, 2020.

3. *Oswego Harborfest, Oswego, NY;* The safety zone listed in Table 165.939 as (b)(28) will be enforced from 9:00 p.m. until 10:00 p.m. on July 25, 2020 and 9:00 p.m. until 10:00 p.m. on July 26, 2020.

4. *Ski Show Sylvan Beach, Sylvan Beach, NY;* The safety zone listed in Table 165.939 as (c)(5) will be enforced from 10:45 a.m. until 8:15 p.m. on August 09, 2020.

5. *Oswego Independence Day Celebration Fireworks, Oswego, NY;* The safety zone listed in Table 165.939 as (b)(29) will be enforced from 9 p.m. through 10:15 p.m. on July 05, 2020 with a rain date of July 06, 2019.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or her designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or her designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: June 25, 2020.

L.M. Littlejohn,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2020–15090 Filed 7–15–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0384]

RIN 1625–AA00

Safety Zone; Tiburon Wedding Fireworks Display, Richardson Bay, Tiburon, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Richarson Bay offshore from Belvedere Island in support of the Tiburon Wedding Fireworks Display on July 17, 2020. This safety zone is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 9 a.m. to 10 p.m. on July 17, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0384 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 LT Emily K. Rowan, Waterways Management, U.S. Coast Guard; telephone (415) 399–7443, 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
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until June 22, 2020. The Coast Guard must establish this safety zone by July 17, 2020 and lacks sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** It is contrary to the public interest to delay the effective date of this rule because we need to have the safety zone in place to protect vessels and persons in the proximity from the dangers associated with the fireworks barge that will be in place on July 17, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the Tiburon Wedding Fireworks Display on July 17, 2020, will be a safety concern for anyone within a 100-foot radius of the fireworks barge

during loading and staging, and anyone within a 560-foot radius of the fireworks barge starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, a safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks barge during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 a.m. until 10 p.m. on July 17, 2020, during the loading, staging, and transit of the fireworks barge in Richardson Bay near Belvedere Island, CA, until 30 minutes after completion of the fireworks display. Between 9 a.m. and 10 p.m. on July 17, 2020, during the loading, staging, and transit of the fireworks barge until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge. Loading the pyrotechnics onto the fireworks barge is scheduled from 9 a.m. to 3 p.m. on July 17, 2020, at Pier 50 in San Francisco, CA.

The fireworks barge will remain at Pier 50 until the start of its transit to the display location. Towing of the barge from Pier 50 to the display location is scheduled to take place from 7 p.m. to 8:30 p.m. on July 17, 2020, where it will remain until the conclusion of the fireworks display.

At 8:45 p.m. on July 17, 2020, 30 minutes prior to the commencement of the 15-minute Tiburon Wedding Fireworks Display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a circle formed by connecting all points 560 feet from the circle center at approximate position 37°51′42.93″ N, 122°27′48.53″ W (NAD 83). The safety zone will terminate at 10 p.m. on July 17, 2020.

The effect of the safety zone is to restrict navigation in the vicinity of the fireworks loading, staging, transit, and firing site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. ''Designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone. This regulation is needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing site to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. This safety zone impacts a 560-foot-radius area of Richardson Bay in Tiburon, CA for a limited duration of less than 24 hours. Vessels desiring to transit through the safety zone may do so upon express permission from the COPT or the COTP's designated representative.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 24 hours, which prevents entry to a 560-foot radius area of Richardson Bay. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of Department of Homeland Security Directive 023–01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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 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. Add § 165.T11–030 to read as follows:

§ 165.T11–030 Safety Zone; Tiburon Wedding Fireworks Display, Richardson Bay, Tiburon, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of Richardson Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading and staging at Pier 50 in San Francisco, as well as transit and arrival to Tiburon, CA. Between 8:45 p.m. and 10 p.m. on July 17, 2020, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connecting all points 560 feet out from the fireworks barge in approximate position 37°51′42.93″ N, 122°27′48.53″ W (NAD 83).

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 9 a.m. until 10 p.m. on July 17, 2020.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Howard H. Wright,

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

[FR Doc. 2020–15431 Filed 7–15–20; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 20, 27, and 90

[WT Docket No. 17–200; FCC 20–67; FRS 16788]

Review of the Commission's Rules Governing 896–901/935–940 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules for broadband license operations in the 897.5–900.5/936.5–939.5 MHz segment of the 900 MHz band (896–901/935–940 MHz). The new rules are necessary because many 900 MHz licensees, including utilities and other industrial users, will require additional coverage and capacity to keep pace with the expanding need for enhanced connectivity. The intended effect of adopting rules for 900 MHz broadband license operations is to address many 900 MHz licensees' current and future needs because broadband can offer next generation services not typically associated with narrowband systems. In this document, the Commission also proposes to modify the 900 MHz nationwide ribbon license held by the Association of American Railroads, which would clear a prominent nationwide incumbent from the new broadband segment and enable significant advancements to railroad safety. The Commission denies a petition for rulemaking requested by the Enterprise Wireless Association. Lastly, the Commission adopts a partial lifting of the 900 MHz application freeze.

DATES:

Effective date: August 17, 2020.

Compliance date: Compliance will not be required for §§ 27.1503 and 27.1505 until the Commission publishes a document in the **Federal Register** announcing that compliance date.

ADDRESSES: 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jessica Quinley, Wireless Telecommunications Bureau, Mobility Division, 202–418–1991 or *Jessica.Quinley@fcc.gov.* For information regarding the PRA

information collection requirements, contact Cathy Williams, Office of Managing Director, at 202–418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order, Order of Proposed Modification, and Orders* in WT Docket No. 17–200, FCC 20–67, adopted May 13, 2020, and released May 14, 2020, as modified by an Erratum released July 1, 2020. The full text of the *Report and Order, Order of Proposed Modification, and Orders* is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-20-67A1.pdf.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. As required by the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) released in March 2019 in this proceeding (84 FR 12987, April 3, 2019; 84 FR 14641, April 11, 2019). The Commission sought written public comment on the proposals in the *NPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. This FRFA conforms to the RFA. The Commission will send a copy of the *Report and Order, Order of Proposed Modification, and Orders,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

The requirements in §§ 27.1503 and 27.1505 constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission will submit a request for approval of the information collections to the Office of Management and Budget (OMB) under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes business with fewer than 25 employees, in the FRFA.

Congressional Review Act

The Commission will send a copy of the *Report and Order, Order of Proposed Modification, and Orders* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

1. In the *Report and Order,* the Commission realigns the 900 MHz band to make available six of the band's ten megahertz for the deployment of broadband services and technologies on a county-by-county basis, while reserving the band's remaining four megahertz for continued narrowband operations. Band realignment is necessary to meet the ever-increasing spectrum capacity demands of a wide range of industries, such as utilities and railroads, and other private land mobile radio services. The Report and Order adopts a primarily negotiation-based transition mechanism, establishes eligibility criteria for new broadband licenses, allows for mandatory relocation in narrow circumstances, and establishes anti-windfall payment obligations, application requirements, transition procedures, and operating and technical rules.

2. In the *Order of Proposed Modification,* the Commission proposes to modify the 900 MHz nationwide ribbon license held by the Association of American Railroads. The item includes two additional *Orders.* In the first *Order,* the Commission denies a petition for rulemaking, which requested that the Commission designate part of the 800 MHz guard band for relocation of 900 MHz narrowband channels. In the second *Order,* the Commission partially lifts the freeze on 900 MHz applications for the limited purpose of permitting licensees to relocate their narrowband operations to facilitate the transition to broadband.

II. Background

3. The 900 MHz band (896–901/935–940 MHz) consists of 399 narrowband 12.5 kilohertz frequency pairs grouped into 10-channel blocks that alternate between Business/Industrial/Land Transportation licensees and Specialized Mobile Radio providers. While some 900 MHz licensees will continue to rely on narrowband deployments, many 900 MHz licensees, including utilities and other industrial users, will require additional coverage and capacity to keep pace with the expanding need for enhanced connectivity. Broadband is an effective tool for addressing many 900 MHz licensees' current and future needs, and it can offer next generation services not typically associated with narrowband systems.

III. Report and Order

A. Transition of 900 MHz Band To Enable Broadband Deployment

1. Band Realignment To Create a 3/3 Megahertz Broadband Segment

4. The Commission creates a broadband segment consisting of paired three megahertz channels (3/3 megahertz) in the 897.5–900.5/936.5–939.5 MHz portion of the 900 MHz band. The Commission reserves two narrowband segments—896–897.5/935–936.5 MHz and 900.5–901/939.5–940 MHz—on either side of the broadband segment. The band realignment will result in one paired three megahertz broadband segment that is compliant with 3rd Generation Partnership Project standards and two narrowband segments consisting of a paired 1.5 megahertz block and a paired .5 megahertz block, respectively. The new band plan maintains the operational status quo of licensees within the 900 MHz band and provides substantial spectral separation to reduce the potential for interference to adjacent band services.

2. Transition Process

5. The Commission relies primarily on a negotiation-based transition mechanism that enables prospective broadband licensees to acquire, relocate, or protect covered incumbents in the broadband segment. The Commission defines covered incumbent as any 900 MHz site-based licensee in the broadband segment that under § 90.621(b) is required to be protected by a broadband licensee that locates a base station anywhere within the county, or any geographic-based 900

MHz Specialized Mobile Radio licensee in the broadband segment whose license area completely or partially overlaps the county.

6. The Commission establishes two eligibility criteria for new broadband licenses. First, the applicant must hold more than 50% of the total amount of licensed 900 MHz spectrum in the county where it seeks a license. Second, the applicant must hold spectrum in the broadband segment or reach an agreement to clear through acquisition or relocation, or demonstrate how it will provide interference protection to, covered incumbent licensees collectively holding licensees in the broadband segment for at least 90% of the site-channels in the county and within 70 miles of the county boundary and geographically licensed channels where the license area completely or partially overlaps the county.

7. To determine whether an applicant has satisfied the requisite more-than-50% spectrum threshold for a given county, an applicant may demonstrate it holds spectrum associated with: (1) 900 MHz geographic licenses completely or partially overlapping the county, (2) 900 MHz site-based stations with service contours that intersect that county's boundary, and (3) credit for 900 MHz spectrum used to facilitate acquisitions or relocations of covered incumbents on or after March 14, 2019.

8. The 90% eligibility prong includes the applicant's own 900 MHz spectrum holdings and the acquisition, relocation, or protection of covered incumbent licenses. It includes credit for 900 MHz spectrum included in an application to acquire or relocate covered incumbents filed with the Commission on or after March 14, 2019. The spectrum must be in the 897.5–900.5/936.5–939.5 MHz broadband segment and in and within 70 miles of the county where the applicant seeks a license. A prospective broadband licensee may offer to a covered incumbent for the purposes of relocation no more spectrum than the incumbent currently holds, except where doing so is necessary to achieve equivalent coverage and/or capacity. A prospective broadband licensee may also elect to provide interference protection to covered incumbents through compliance with minimum spacing criteria, letters of concurrence, or private contractual agreements. If any site of a complex system is located within the county and/or within 70 miles of the county boundary, an applicant must either hold the license for the site or reach an agreement to acquire, relocate, or protect it to demonstrate eligibility.

9. After license grant, the Commission allows a 900 MHz broadband licensee to relocate mandatorily from the broadband segment, in a given county and within 70 miles of the county, covered incumbents' remaining site-channels, and geographically licensed channels where the license area completely or partially overlaps the county, that were not covered by the broadband licensee's agreements to reach the 90% eligibility prong. Complex systems, comprised of 45 or more functionally integrated sites, are exempt from mandatory relocation. A broadband licensee that chooses to invoke mandatory relocation must pay all reasonable relocation costs, including providing the mandatorily-relocated covered incumbent with comparable facilities. A comparable facility is a replacement system that is at least equivalent to the covered incumbent's existing 900 MHz system following four factors: (1) System, (2) capacity, (3) quality of service, and (4) operating costs.

10. A broadband licensee seeking to trigger the mandatory relocation process must serve notice on a covered incumbent that it plans to relocate mandatorily. Following the service of notice, the broadband licensee may request information from the covered incumbent that is reasonably required for the licensee to develop its offer of comparable facilities. The Commission directs the Wireless Telecommunications Bureau to resolve disputes arising between parties to mandatory relocation and requires both the licensee and the incumbents to negotiate in good faith.

11. To mitigate a potential windfall to a 900 MHz broadband licensee, the Commission requires an applicant to relinquish all of its licensed 900 MHz spectrum, up to six megahertz, for any county in which it seeks a license. If an applicant relinquishes less than six megahertz of spectrum in exchange for its broadband license, then the applicant must make an anti-windfall payment, prior to the grant of the 900 MHz broadband license, to the U.S. Treasury to account for the difference in spectrum provided from the Commission's inventory.

3. Preventing Disruption to Railways and Order Proposing Modification

12. The Association of American Railroads holds a nationwide ribbon license surrounding railroad rights-of-way in six paired 12.5 kilohertz wide channels of the 900 MHz band, totaling 150 kilohertz. Three if the paired channels fall within the new narrowband segment. In the *Order of Proposed Modification,* the Commission proposes to modify the Association of American Railroads' nationwide ribbon license to provide contiguous spectrum in one of the new narrowband segments. The proposed modification would clear a prominent nationwide incumbent from the new broadband segment and enable significant enhancements to railroad safety.

B. Obtaining a 900 MHz Broadband License in a County

1. License Application

13. In the *Report and Order,* the Commission establishes rules requiring an applicant to file 900 MHz broadband license applications in accordance with part 1, subpart F, of this chapter. The Commission also establishes rules requiring an applicant to file an Eligibility Certification and Transition Plan as part of its application.

14. In its Eligibility Certification, an applicant must list the licenses the applicant holds in the 900 MHz band to demonstrate that it holds licenses for more than 50% of the total licensed 900 MHz spectrum for the county, including credit for spectrum included in an application to acquire or relocate any covered incumbents filed on or after March 14, 2019. The Eligibility Certification must also include a statement that the applicant's Transition Plan details how it holds spectrum in the broadband segment and/or has reached an agreement to clear through acquisition or relocation, or demonstrate how it will provide interference protection to, covered incumbent licensees collectively holding licenses in the broadband segment for at least 90% of the site-channels in the county, and within 70 miles of the county boundary and geographically licensed channels where the license area completely or partially overlaps the county.

15. In its Transition Plan, an applicant must demonstrate one or more of the following for at least 90% of the site-channels in the county and within 70 miles of the county boundary, and geographically licensed channels where the license area completely or partially overlaps the county: (1) Agreement by covered incumbents to relocate from the broadband segment; (2) protection of site-based covered incumbents through compliance with minimum spacing criteria; (3) protection of site-based covered incumbents through new or existing letters of concurrence agreeing to lesser base station separations; (4) protection of geographically-based covered incumbents through private contractual agreements; and/or (5)

evidence that it holds licenses for the site channels in the county and within 70 miles of the county boundary and geographically licensed channels where the license area completely or partially overlaps the county. The Transition Plan must describe in detail: (1) Descriptions of the agreements reached with covered incumbents to relocate and the applications that the parties to the agreements will file for spectrum in the narrowband segment in order to relocate or repack licensees; (2) descriptions of how the applicant will provide interference protection to, and/or acquire or relocate from the broadband segment, covered incumbents collectively holding licenses for at least 90% of the site-channels in the county and within 70 miles of the county boundary, and geographically licensed channels where the license area completely or partially overlaps the county, and/or evidence that it holds licenses for the site-channels and/or geographically licensed channels; (3) any rule waivers or other actions necessary to implement an agreement with a covered incumbent; and (4) such additional information as may be required. The Commission requires the applicant to include in a Transition Plan a certification from a frequency coordinator that the Transition Plan can be implemented consistent with the Commission's rules. The Commission allows an applicant seeking to transition multiple counties simultaneously to file a single Transition Plan that covers all of its county-based applications.

2. Implementation Procedures

16. In the *Report and Order,* the Commission directs the Wireless Telecommunications Bureau to issue a Public Notice opening a filing window to accept applications for 900 MHz broadband licenses. In 2021, the Commission will evaluate the success of the transition to determine whether an alternative approach is necessary to achieve a more complete transition of the band.

17. Consistent with part 1, applications accepted for filing will be placed on Public Notice for 30 days. The broadband license applicant would be required to file, within 15 days of filing its broadband license application, an application(s) to cancel all of its 900 MHz spectrum, up to six megahertz, conditioned upon Commission grant of its application. A 900 MHz broadband license grant triggers the licensee's right to operate, its ability to compel mandatory relocation, and its timeline for compliance with the performance requirements.

C. Licensing and Operating Rules

1. Broadband Segment

18. In the *Report and Order,* the Commission replaces the Land Mobile Service allocation in the 897.5–900.5/936.5–939.5 MHz portion of the 900 MHz band with a Mobile Except Aeronautical Mobile Service allocation on a co-primary basis with the Fixed Service.

19. The Commission designates the 900 MHz broadband allocation as a Miscellaneous Wireless Communication Service governed by part 27 of the Commission's rules. A 900 MHz broadband license applicant must designate its regulatory status and abide by service-specific rules in part 27.

20. The Commission adopts counties as the geographic area for 900 MHz broadband licenses. For purpose of 900 MHz broadband licenses, the Commission will use the United States Census Bureau data reflecting county legal boundaries and names valid through January 1, 2017.

21. The Commission adopts an initial term of 15 years for 900 MHz broadband licensees, with a term of 10 years for any subsequent license renewal terms.

22. The Commission adopts performance requirements for 900 MHz broadband licenses. A licensee can satisfy its performance requirement through population or geographic coverage. Under the population metric, a 900 MHz broadband licensee would be required to provide reliable signal coverage and offer broadband service to at least 45% of the population in its license area within six years of license grant and to at least 80% of the population in its license area within twelve years of license grant. Under the geographic coverage metric, a 900 MHz broadband licensee would be required to provide reliable signal coverage and offer broadband service to at least 25% of the geographic license area within six years of license grant and to at least 50% of the geographic license area within twelve years of license grant. To meet the broadband service obligation, the Commission expects licensees to deploy technologies that make intensive use of the entire 3/3 megahertz band segment and yield high uplink and downlink data rates and minimal latency sufficient to provide for real-time, two-way communications.

23. In the *Report and Order,* the Commission adopts a safe harbor on which a 900 MHz broadband licensee may rely to comply with the broadband service requirement. The Commission will find that a 900 MHz broadband licensee is offering broadband service if the service has the following minimum features: Provide 3/3 megahertz 3rd Generation Partnership Project standard Long Term Evolution service offering for advanced services.

24. The Commission adopts penalties for 900 MHz broadband licensees that fail to meet the performance requirements. If a 900 MHz broadband licensee fails to meet the first performance benchmark, we require the licensee to meet the final performance benchmark two years sooner. If a 900 MHz broadband licensee fails to meet the final performance benchmark, its authorization for that license area will terminate automatically without Commission action.

25. In the *Report and Order,* the Commission declines to adopt specific renewal term construction obligations and declines to include the 900 MHz broadband segment in the Commission's spectrum aggregation screen.

2. Narrowband Segments

26. The two narrowband segments—896–897.5/935–936.5 MHz and 900.5–901/939.5–940 MHz—consist of 158 paired 12.5 kilohertz channels. In markets that have transitioned to broadband, the Commission will no longer distinguish between the Business/Industrial/Land Transportation and Specialized Mobile Radio blocks in the narrowband segments. The narrowband segments are designated for applicants eligible in the Industrial/Business Pool of subpart C, part 90; Business/Industrial/Land Transportation and Specialized Mobile Radio licensees authorized as of September 13, 2018, for continuing operations; and Business/Industrial/Land Transportation Pool and Specialized Mobile Radio licensees authorized as of September 13, 2018, for relocation to the narrowband segments from the broadband segment pursuant to subpart P, part 27. If the Commission were to lift the freeze on 900 MHz applications, applications for new authorizations in the narrowband segments would be accepted from applicants eligible in the Industrial/Business Pool of subpart C, part 90.

D. Technical Rules

1. Broadband Segment

27. The Commission adopts an effective radiated power for base and repeater stations in the 900 MHz broadband segment not to exceed 400 watts/megahertz in non-rural areas and 800 watts/megahertz in rural areas, with maximum permissible power decreasing as the antenna height above average terrain rises above 304 meters. The Commission allows 900 MHz broadband

licensees to operate at higher powers provided they sufficiently mitigate the risk of interference. The Commission also adopts an effective radiated power for mobile, control, and auxiliary test stations in the broadband segment not to exceed 10 watts and effective radiated power of portables not to exceed 3 watts.

28. The Commission establishes an out of band emission (OOBE) limit outside a licensee's frequency band of operation to be attenuated by at least 43 + 10 log (P) dB for uplink operations in the 897.5–900.5 MHz band and by at least 50 + 10 log (p) dB for downlink operations in the 936.5–939.5 MHz band.

29. In the *Report and Order,* the Commission declines to adopt a guard band between narrowband and broadband operations in the realigned 900 MHz band and finds it unnecessary to adopt additional limits on Long Term Evolution transmitter power and transmitter filtering requirements.

30. The Commission requires broadband licensees to prevent harmful interference and resolve any unacceptable interference to narrowband operations in the shortest time practicable. The Commission deems unacceptable interference to 900 MHz narrowband licensees as occurring when the applicable median desired signal level is measured to be −104 dBm or higher at the RF input of narrowband licensees' mobile receivers and −101 dBm or higher at the RF input of narrowband licensees' portable receivers.

31. In the *Report and Order,* the Commission establishes that 900 MHz broadband licensees with operations in the United States/Mexico and United States/Canada border regions are subject to, and shall be in accordance with international agreements between the United States and Mexico and the United States and Canada.

32. The Commission establishes a median field strength limit not to exceed 40 dBμV/m at any point along the geographic license boundary in the broadband segment, unless the affected licensee agrees to a different field strength limit.

2. Narrowband Segments

33. In the *Report and Order,* the Commission declined to adopt additional or modified interference protections for the new narrowband segments.

E. Cost-Benefit Analysis

34. In the *Report and Order,* the Commission described three cost-benefit analyses filed in this proceeding. The Commission concluded that where negotiations to transition the 900 MHz band to broadband are successful, deploying broadband using 900 MHz spectrum are likely to be substantially higher than the costs imposed, and where negotiations are unsuccessful, the net cost will be zero.

IV. Order Denying EWA Petition for Rulemaking

35. In the *Order,* the Commission denies a petition for rulemaking requested by the Enterprise Wireless Alliance. Enterprise Wireless Alliance had requested that the Commission designate part of the 800 MHz guard band for relocation of 900 MHz narrowband channels.

V. Order Announcing Partial Lifting of Freeze

36. In the *Order,* the Commission announces a partial lifting of the freeze on 900 MHz applications. The Commission will allow applications for the limited purposes of permitting 900 MHz licensees to relocate their narrowband operations to facilitate the transition to broadband, *e.g.,* if the application were needed to implement a Transition Plan or a mandatory relocation agreement.

VI. Ordering Clauses

37. Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 4(i), 4(j), 5(c), 302, 303, 304, 307, 308, 309, 310, 316, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302, 303, 304, 307, 308, 309, 310, 316, 319, 324, 332, and 333, this *Report and Order, Order of Proposed Modification, and Orders,* in WT Docket No. 17–200 *is hereby adopted*.

38. *It is further ordered* that the rules and requirements adopted herein *will become effective* thirty (30) days after publication in the **Federal Register**, with the exception of sections 27.1503 and 27.1505. Sections 27.1503 and 27.1505 contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission directs the Wireless Telecommunications Bureau to announce the effective date of those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and directs the Wireless Telecommunications Bureau to cause Sections 27.1503 and 27.1505 to be revised accordingly.

39. *It is further proposed* that, pursuant to sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 316(a), and § 1.87(a) of the Commission's rules, 47 CFR 1.87(a), in the *Order of Proposed Modification* the Commission proposes that Association of American Railroads' 900 MHz nationwide ribbon license *be modified* pursuant to the conditions in this *Report and Order, Order of Proposed Modification, and Orders.* Pursuant to section 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. 316(a), and § 1.87(a) of the Commission's rules, 47 CFR 1.87(a), publication of this *Report and Order, Order of Proposed Modification, and Orders* in the **Federal Register** shall constitute notification in writing of the proposed action and the grounds and reasons therefor. AAR and any other party seeking to file a protest pursuant to Section 316 shall have 30 days from publication to protest such *Order of Proposed Modification.*

40. *It is further ordered* that, pursuant to sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 316(a), and section 1.87(a) of the Commission's rules, 47 CFR 1.87(a), the proposed modification of the Association of American Railroads' 900 MHz nationwide ribbon license will be final and effective 60 days after publication of this *Report and Order, Order of Proposed Modification, and Orders* in the **Federal Register**, provided Anterix has voluntarily cancelled the Specialized Mobile Radio licenses listed in Appendix E by filing Form 601 in accordance with section 1.953(f). Further, in the event the Association of American Railroads or any other licensee or permittee who believes that its license or permit would be modified by this proposed action seeks to protest this proposed modification, the proposed license modification specified in this *Report and Order, Order of Proposed Modification, and Orders* and contested by the licensee shall not be made final as to such licensee unless and until the Commission orders otherwise.

41. *It is further ordered* that the license modification proceeding commenced by the Order of Proposed Modification be treated as a permit-but-disclose proceeding under the Commission's ex parte rules. See 47 CFR 1.1200 *et seq.*

42. *It is further ordered* that, pursuant to section 1.425 of the Commission's rules, 47 CFR 1.425, the Enterprise Wireless Alliance (EWA) Petition for Rulemaking is *denied*.

43. *It is further ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and section 1.925 of the Commission's rules, 47 CFR 1.925, the *Order* announcing a partial lifting of the 900 MHz application freeze is *adopted* and *subject to* the conditions specified herein.

44. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this *Report and Order, Order of Proposed Modification, and Orders* will commence on the date that a summary of this *Report and Order, Order of Proposed Modification, and Orders* is published in the **Federal Register**.

45. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order, Order of Proposed Modification, and Orders* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order, Order of Proposed Modification, and Orders,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

47. It is our intention in adopting these rules that, if any provision of the *Report and Order, Order of Proposed Modification, and Orders* or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such *Report and Order, Order of Proposed Modification, and Orders* and the rules not deemed unlawful, and the application of the *Report and Order, Order of Proposed Modification, and Orders* and the rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

Lists of Subjects in 47 CFR Parts 1, 2, 20, 27, and 90

Administrative practice and procedure, Common carriers, Communications common carriers, Environmental impact statements, Radio, Telecommunications.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 27, and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

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

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

■ 2. Section 1.907 is amended by revising the definition of ''covered geographic licenses'' to read as follows:

§ 1.907 Definitions.

* * * * *

Covered geographic licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G of this chapter); 218–219 MHz Service (part 95, subpart F, of this chapter); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T, of this chapter); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Broadband Service (part 27, subpart P); 3.7 GHz Service (part 27, subpart O); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G, of this chapter); Broadband Personal Communications Service (part 24, subpart E, of this chapter); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Citizens Broadband Radio Service (part 96, subpart C, of this chapter); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); Educational Broadband Service (part 27, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J, of this chapter); Upper Microwave Flexible Use Service (part 30 of this chapter); and Wireless Communications Service (part 27, subpart D of this chapter).

* * * * *

■ 3. In § 1.9005 add paragraph (nn) to read as follows:

§ 1.9005 Included services.

* * * * *

(nn) The 900 MHz Broadband Service (part 27 of this chapter).

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

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

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

■ 5. Section 2.106 is amended by revising pages 31 and 32 to read as follows:

■ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation 5.318 5.325	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902 US116 US268 G2	(See previous page)	
				894-896 AERONAUTICAL MOBILE US116 US268	Public Mobile (22)
				896-897.5 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				897.5-900.5 FIXED MOBILE except aeronautical mobile US116 US268	Wireless Communications (27) Private Land Mobile (90)
				900.5-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				901-902 FIXED MOBILE US116 US268	Personal Communications (24)
	902-928 FIXED Amateur Mobile except aeronautical mobile 5.325A Radiolocation 5.150 5.325 5.326		902-928 RADIOLOCATION G59 5.150 US218 US267 US275 G11	902-928 5.150 US218 US267 US275	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
	928-942 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation		928-932	928-929 FIXED US116 US268 NG35	Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101)
				929-930 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)

			930-931 FIXED MOBILE US116 US268	Personal Communications (24)
			931-932 FIXED LAND MOBILE US116 US268	Public Mobile (22)
		US116 US268 G2	932-935 FIXED US268 G2	Public Mobile (22) Fixed Microwave (101)
			935-941	Private Land Mobile (90)
			936.5-939.5 FIXED MOBILE except aeronautical mobile US116 US268	Wireless Communications (27) Private Land Mobile (90)
			939.5-940 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
			940-941	Personal Communications (24)
			FIXED MOBILE	
		US116 US268 G2	US116 US268	
		5.327	941-944	Public Mobile (22)
	942-960		FIXED	Aural Broadcast Auxiliary (74E)
	FIXED		US84 US268 US301 G2	Low Power Auxiliary (74H)
	MOBILE 5.317A		944-960	Fixed Microwave (101)
	BROADCASTING		FIXED	
			NG35	
		5.320	960-1164	
5.323	5.325			
942-960 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 5.323	942-960 FIXED MOBILE 5.317A			
960-1164				

AERONAUTICAL MOBILE (R) 5.327A AERONAUTICAL RADIONAVIGATION 5.328 5.328AA		AERONAUTICAL MOBILE (R) 5.327A AERONAUTICAL RADIONAVIGATION 5.328 US224		Aviation (87)
1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.328A		1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328A US224		
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) 5.330 5.331 5.332		1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) G132 SPACE RESEARCH (active) 5.332	1215-1240 Earth exploration-satellite (active) Space research (active)	
1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) Amateur 5.282 5.330 5.331 5.332 5.335 5.335A		1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active) AERONAUTICAL RADIONAVIGATION 5.332 5.335	1240-1300 AERONAUTICAL RADIONAVIGATION Amateur Earth exploration-satellite (active) Space research (active) 5.282	Amateur Radio (97)
1300-1350 RADIOLOCATION AERONAUTICAL RADIONAVIGATION 5.337 RADIONAVIGATION-SATELLITE (Earth-to-space) 5.149 5.337A		1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation G2 US342	1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 US342	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION 5.338A	1350-1390 FIXED MOBILE RADIOLOCATION G2 5.334 5.339 US342 US385 G27 G114	1350-1390 5.334 5.339 US342 US385	

	1390-1395 5.339 US79 US342 US385	1390-1395 FIXED MOBILE except aeronautical mobile 5.339 US79 US342 US385 NG338A	Wireless Communications (27)
	1395-1400 LAND MOBILE (medical telemetry and medical telecommand) 5.339 US79 US342 US385		Personal Radio (95)
5.149 5.338 5.338A 5.339	5.149 5.334 5.339		Page 32

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PART 20—COMMERCIAL MOBILE SERVICES

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

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

■ 7. Section 20.12 is amended by revising paragraph (a)(1) to read as follows:

§ 20.12 Resale and roaming.

(a)(1) Scope of manual roaming and resale. Paragraph (c) of this section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter), and 900 MHz Broadband Service (included in part 27, subpart P of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to re-use frequencies and accomplish seamless hand-offs of subscriber calls. The scope of paragraph (b) of this section, concerning the resale rule, is further limited so as to exclude from the requirements of that paragraph those Broadband Personal Communications Services C, D, E, and F block licensees that do not own and control and are not owned and controlled by firms also holding cellular A or B block licenses.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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

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

■ 9. Section 27.1 is amended by adding paragraph (b)(16) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(16) 897.5–900.5 MHz and 936.5–939.5 MHz.

* * * * *

■ 10. Section 27.5 is amended by adding paragraph (n) to read as follows:

§ 27.5 Frequencies.

* * * * *

(n) *900 MHz broadband.* The paired 897.5–900.5 MHz and 936.5–939.5 MHz bands are available for assignment on a geographic basis. For operations in the 897.5–900.5 MHz and 936.5–939.5 MHz bands (designated as Channels 120–360 in section 90.613 of this chapter), no new applications will be accepted in transitioned markets for narrowband systems under part 90, subpart S of this chapter.

■ 11. Section 27.12 is amended by revising paragraph (a) to read as follows:

§ 27.12 Eligibility.

(a) Except as provided in paragraph (b) of this section and in §§ 27.604, 27.1201, 27.1202, and 27.1503, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

* * * * *

■ 12. Section 27.13 is amended by adding paragraph (n) to read as follows:

§ 27.13 License period.

* * * * *

(n) *900 MHz broadband.* Authorizations for broadband licenses in the 897.5–900.5 MHz and 936.5–939.5 MHz bands will have a term not to exceed 15 years from the date of initial issuance and ten (10) years from the date of any subsequent renewal.

■ 13. Add subpart P to read as follows:

Subpart P—Regulations Governing Licensing and Use of 900 MHz Broadband Service in the 897.5–900.5 MHz and 936.5–939.5 MHz Bands

Sec.

27.1500 Scope.
27.1501 Definitions.
27.1502 Permanent discontinuance of 900 MHz broadband licenses.
27.1503 Broadband license eligibility and application requirements.
27.1504 Mandatory relocation.
27.1505 Performance requirements.
27.1506 Frequencies.
27.1507 Effective radiated power limits for 900 MHz broadband systems.
27.1508 Field strength limit.
27.1509 Emission limits.
27.1510 Unacceptable interference to narrowband 900 MHz licensees from 900 MHz broadband licensees.

§ 27.1500 Scope.

This subpart sets out the regulations governing the licensing and operations of 900 MHz broadband systems operating in the 897.5–900.5/936.5–939.5 MHz band. It includes eligibility requirements and operational and technical standards for stations licensed in this band. It also supplements the rules regarding application procedures contained in part 1, subpart F of this chapter. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this frequency band.

§ 27.1501 Definitions.

Terms used in this subpart shall have the following meanings:

900 MHz broadband. The 900 MHz broadband systems in the 897.5–900.5/936.5–939.5 MHz band licensed by the Commission pursuant to the provisions of this subpart.

900 MHz broadband licensee. An entity that holds a 900 MHz broadband license issued pursuant to this subpart.

900 MHz broadband segment. The segment of realigned 900 MHz spectrum (*i.e.,* the 897.5–900.5/936.5–939.5 MHz band) licensed by the Commission pursuant to the provisions of this subpart.

900 MHz narrowband segment. The segments of realigned 900 MHz spectrum (*i.e.,* the 896–897.5/935–936.5 MHz and 900.5–901/939.5–940 MHz bands (Paired channels 1–119 and 361–399)) designated for narrowband operations and licensed pursuant to 47 CFR part 90, subpart S.

Complex system. A covered incumbent's system that consists of 45 or more functionally integrated sites.

County. For purposes of this part, counties shall be defined using the United States Census Bureau's data reflecting county legal boundaries and names valid through January 1, 2017.

Covered incumbent. Any 900 MHz site-based licensee in the broadband segment that is required under § 90.621(b) to be protected by a broadband licensee with a base station at any location within the county, or any 900 MHz geographic-based SMR licensee in the broadband segment whose license area completely or partially overlaps the county.

Eligibility Certification. A filing made to the Commission as part of the prospective broadband licensee's application for a 900 MHz broadband license that demonstrates satisfaction of the eligibility restrictions.

License area. The geographic component of a 900 MHz broadband license. A license area consists of one county.

Power spectral density (PSD). The power of an emission in the frequency domain, such as in terms of ERP or EIRP, stated per unit bandwidth, *e.g.,* watts/MHz.

Site-channel. A channel licensed at a particular location.

Transition plan. A filing made to the Commission as part of the prospective

broadband licensee's application for a 900 MHz broadband license that includes a plan for transitioning the band in the particular county.

Transitioned market. See section 90.7 of part 90 of this chapter.

§ 27.1502 Permanent discontinuance of 900 MHz broadband licenses.

A 900 MHz broadband licensee that permanently discontinues service as defined in § 1.953 must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 requesting license cancelation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this chapter, even if a licensee fails to file the required form requesting license cancelation.

§ 27.1503 Broadband license eligibility and application requirements.

(a) *Eligibility.* For an applicant to be eligible for a broadband license in a county, it must:

(1) Hold the licenses for more than 50% of the total amount of licensed 900 MHz SMR (site-based or geographically licensed) and B/ILT (site-based) spectrum for the relevant county including credit for spectrum included in an application to acquire or relocate covered incumbents filed with the Commission on or after March 14, 2019;

(2) Hold spectrum in the broadband segment or reach an agreement to clear through acquisition or relocation, including credit for spectrum included in an application to acquire or relocate covered incumbents filed with the Commission on or after March 14, 2019, or demonstrate how it will provide interference protection to, covered incumbent licensees collectively holding licenses in the broadband segment for at least 90% of the site-channels in the county and within 70 miles of the county boundary, and geographically licensed channels where the license area completely or partially overlaps the county. To provide interference protection, an applicant may:

(i) Protect site-based covered incumbent(s) through compliance with minimum spacing criteria set forth in § 90.621(b) of this chapter;

(ii) Protect site-based covered incumbent(s) through new or existing letters of concurrence agreeing to lesser base station separations as set forth in § 90.621(b); and/or

(iii) Protect geographically based covered incumbent(s) through a private contractual agreement.

(3) If any site of a complex system is located within the county and/or within 70 miles of the county boundary, an applicant must either hold the license for that site or reach an agreement to acquire, relocate, or protect it in order to demonstrate eligibility.

(4) The applicant may use its current 900 MHz holdings in the narrowband segment to relocate covered incumbents. Spectrum used for the purpose of relocating incumbent(s) may not exceed the incumbent's current spectrum holdings in the relevant county, unless additional channels are necessary to achieve equivalent coverage and/or capacity.

(b) *Application.* (1) Applications must be filed in accordance with part 1, subpart F of this chapter.

(2) An applicant for a 900 MHz broadband license must submit with its application an Eligibility Certification that:

(i) Lists the licenses the applicant holds in the 900 MHz band to demonstrate that it holds the licenses for more than 50% of the total licensed 900 MHz spectrum, whether SMR or B/ILT, for the relevant county including credit for spectrum included in an application to acquire or relocate any covered incumbents filed on or after March 14, 2019;

(ii) A statement that it has filed a Transition Plan detailing how it holds spectrum in the broadband segment and/or has reached an agreement to clear through acquisition or relocation (including credit for spectrum included in an application to acquire or relocate covered incumbents filed with the Commission on or after March 14, 2019), or demonstrate how it will provide interference protection to, covered incumbent licensees collectively holding licenses in the broadband segment for at least 90% of the site-channels in the county and within 70 miles of the county boundary, and geographically licensed channels where the license area completely or partially overlaps the county.

(3) An applicant for a 900 MHz broadband license must submit with its application a Transition Plan that provides:

(i) A showing of one or more of the following:

(A) Agreement by covered incumbents to relocate from the broadband segment;

(B) Protection of site-based covered incumbents through compliance with minimum spacing criteria;

(C) Protection of site-based covered incumbents through new or existing letters of concurrence agreeing to lesser base station separations;

(D) Protection of geographically-based covered incumbents through private contractual agreements; and/or

(E) Evidence that it holds licenses for the site-channels and/or geographically licensed channels.

(ii) Descriptions of the agreements between the prospective broadband licensee and all covered incumbents collectively holding licenses for at least 90% of site-channels within the county and within 70 miles of the county boundary, and geographically licensed channels where the license area completely or partially overlaps the county.

(iii) Descriptions in detail of all information and actions necessary to accomplish the realignment, as follows:

(A) The applications that the parties to the agreements will file for spectrum in the narrowband segment in order to relocate or repack licensees;

(B) A description of how the applicant will provide interference protection to, and/or acquire or relocate from the broadband segment covered incumbents collectively holding licenses for at least 90% of site-channels within 70 miles of the county and within 70 miles of the county boundary and/or evidence that it holds licenses for the site-channels and/or geographically licensed channels.

(C) Any rule waivers or other actions necessary to implement an agreement with a covered incumbent; and

(D) Such additional information as may be required.

(iv) A certification from an FCC-certified frequency coordinator that the Transition Plan's representations can be implemented consistent with Commission rules. The certification must establish that the relocations proposed therein take into consideration all relevant covered incumbents and are consistent with the existing part 90 interference protection criteria if the covered incumbent is site-based, and include any private contractual agreements between the prospective broadband licensee and a geographically-licensed covered incumbent.

(4) Applicants seeking to transition multiple counties may simultaneously file a single Transition Plan with each of its county-based applications.

(c) *Anti-windfall provisions.* (1) The applicant must return to the Commission all of its licensed 900 MHz SMR and B/ILT spectrum, up to six megahertz, for the county in which it seeks a broadband license. The applicant will be required to file, within 15 days of filing its broadband license application, an application(s) to cancel all of its 900 MHz SMR and B/ILT spectrum, up to six megahertz, conditioned upon Commission grant of its application.

(2) If the applicant relinquishes less than six megahertz of spectrum in accordance with paragraph (c)(1) of this section, then the applicant must remit an anti-windfall payment prior to the grant of the 900 MHz broadband license. Payment must be made through a monetary payment to the U.S. Treasury.

§ 27.1504 Mandatory relocation.

(a) Subject to paragraph (b) of this section, broadband licensees may require mandatory relocation from the broadband segment covered incumbents' remaining site-channels in a given county and within 70 miles of the county boundary, and geographically licensed channels where the license area completely or partially overlaps the county, that were not covered by § 27.1503(a)(2).

(b) Complex systems are exempt from mandatory relocation. To qualify as exempt from mandatory relocation, a complex system must have at least one site (of its 45 or more functionally integrated sites) located within the county license area or within 70 miles of the county boundary.

(c) A broadband licensee seeking to relocate a covered incumbent pursuant to this section is required to pay all reasonable relocation costs, including providing the relocated covered incumbent with comparable facilities. To be comparable, the replacement system provided to a covered incumbent during a mandatory relocation must be at least equivalent to the existing 900 MHz system with respect to the following four factors:

(1) System;

(2) Capacity;

(3) Quality of service; and

(4) Operating costs.

(d) Having met the 90% success threshold, a 900 MHz broadband licensee seeking to trigger the mandatory relocation process shall serve notice on applicable covered incumbent(s).

(e) Following the service of notice, a 900 MHz broadband licensee may request information from the covered incumbent reasonably required to craft its offer of comparable facilities.

(f) We expect all parties to negotiate with the utmost ''good faith'' in the negotiation process. Factors relevant to a ''good-faith'' determination include:

(1) Whether the party responsible for paying the cost of band reconfiguration has made a *bona fide* offer to relocate the incumbent to comparable facilities;

(2) The steps the parties have taken to determine the actual cost of relocation to comparable facilities; and

(3) Whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party.

(g) A party seeking Commission resolution of a dispute must submit in writing to the Chief, Wireless Telecommunications Bureau:

(1) The name, address, telephone number, and email address of the 900 MHz broadband licensee or covered incumbent making the allegation;

(2) The name of the 900 MHz broadband licensee or covered incumbent about which the allegation is made;

(3) A complete statement of the facts supporting the broadband licensee's or incumbent's claim; and

(4) The specific relief sought.

(h) If an incumbent fails to negotiate in good faith, its facilities may be mandatorily relocated, and its license modified accordingly by the Commission pursuant to section 316 of the Act. If the Wireless Telecommunications Bureau finds bad faith on the part of the broadband licensee, the broadband licensee may lose the right to relocate the incumbent or the Wireless Telecommunications Bureau may refer the matter to the Enforcement Bureau for action (which could include a range of sanctions, such as imposition of forfeitures).

§ 27.1505 Performance requirements.

(a) 900 MHz broadband licensees shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter.

(1) The licensee must certify whether it has met the applicable performance requirements. The licensee must file a description and certification of the areas for which it is providing service. The construction notifications must include electronic coverage maps and supporting technical documentation regarding the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service, and certify the accuracy of such documentation. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

(2) To demonstrate compliance with the population coverage requirement, licensees shall use the most recently available decennial U.S. Census Bureau data at the time of measurement and shall base their measurements of population served on areas no larger than the Census Tract level. The population within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license.

(b) A 900 MHz broadband licensee must meet either a population coverage requirement or geographic coverage as follows:

(1) *Population metric.* (i) A 900 MHz broadband licensee shall provide reliable signal coverage and offer broadband service to at least 45% of the population in its license area within six years of license grant.

(ii) A 900 MHz broadband licensee shall provide reliable signal coverage and offer broadband service to at least 80% of the population in its license area within 12 years of license grant.

(2) *Geographic coverage.* Alternatively, a 900 MHz broadband licensee may:

(i) Demonstrate it provides reliable signal coverage and offers broadband service covering at least 25% of the geographic license area within six years of license grant.

(ii) Demonstrate it provides reliable signal coverage and offers broadband service covering at least 50% of the geographic license area within twelve years of license grant.

(c) *Penalties.* (1) If a 900 MHz broadband licensee fails to meet the first performance benchmark, we require the licensee to meet the final performance benchmark two years sooner (*i.e.,* at 10 years into the license term) and reduce the license term from 15 years to 13 years.

(2) If a 900 MHz broadband licensee fails to meet the final performance benchmark, its authorization for that license area will terminate automatically without Commission action.

(d) *License renewal.* After satisfying the 12-year, final performance benchmark, a licensee must continue to provide coverage and offer broadband service at or above that level for the remaining three years of the 15-year license term in order to warrant license renewal.

§ 27.1506 Frequencies.

The 897.5–900.5 MHz and 936.5–939.5 MHz band segments are available for licensing with an authorized bandwidth up to 3 megahertz paired channels. The 897.5–900.5 MHz segment must only be used for uplink transmissions. The 936.5–939.5 MHz segments must only be used for downlink transmissions.

§ 27.1507 Effective radiated power limits for 900 MHz broadband systems.

(a) *Maximum ERP.* The power limits specified in this section are applicable to operations in areas more than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canada border.

(1) *General limit.* (i) The ERP for base and repeater stations must not exceed 400 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304 m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 400 watts/megahertz ERP in accordance with Table 1 of this section.

(ii) Provided that they also comply with paragraphs (b) and (c) of this section, licensees are permitted to operate base and repeater stations with up to a maximum ERP of 1000 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304 m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 1000 watts/megahertz ERP in accordance with Table 2 of this section.

(2) *Rural areas.* For systems that are located in counties with population densities of 100 persons or fewer per square mile, based upon the most recently available population statistics from the Bureau of the Census:

(i) The ERP for base and repeater stations must not exceed 800 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304 m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 800 watts/megahertz ERP in accordance with Table 3 of this section.

(ii) Provided that they also comply with paragraphs (b) and (c) of this section, base and repeater stations may operate with up to a maximum ERP of 2000 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304 m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 2000 watts/megahertz ERP in accordance with Table 4 of this section.

(3) *Mobile, control and auxiliary test stations.* Mobile, control and auxiliary test stations must not exceed 10 watts ERP.

(4) *Portable stations.* Portable stations must not exceed 3 watts ERP.

(b) *Power flux density (PFD).* Each 900 MHz broadband base or repeater station that exceeds the ERP limit of paragraph (a)(1)(i) or (a)(2)(i) of this section must be designed and deployed so as not to exceed a modeled PFD of 3000 microwatts/m^2/MHz over at least 98% of the area within 1 km of the base or repeater station antenna, at 1.6 meters above ground level. To ensure compliance with this requirement, the licensee must perform predictive modeling of the PFD values within at least 1 km of each base or repeater station antenna prior to commencing such operations and, thereafter, prior to making any site modifications that may increase the PFD levels around the base or repeater station. The modeling must take into consideration terrain and other local conditions and must use good engineering practices for the 900 MHz band.

(c) *Power measurement.* Measurement of 900 MHz broadband base transmitter and repeater ERP must be made using an average power measurement technique. Power measurements for base transmitters and repeaters must be made in accordance with either of the following:

(1) A Commission-approved average power technique (see FCC Laboratory's Knowledge Database); or

(2) For purposes of this section, peak transmit power must be measured over an interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

(d) *PAR limit.* The peak-to-average ratio (PAR) of the transmission must not exceed 13 dB.

(e) *Height-power limit.* As specified in paragraph (a) of this section, the following tables specify the maximum base station power for antenna heights above average terrain (HAAT) that exceed 304 meters.

TABLE 1 TO § 27.1507—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS AND REPEATERS PERMITTED TO TRANSMIT WITH UP TO 400 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	26
Above 1220 (4000) To 1372 (4500)	28
Above 1067 (3500) To 1220 (4000)	30
Above 915 (3000) To 1067 (3500)	40
Above 763 (2500) To 915 (3000)	56
Above 610 (2000) To 763 (2500)	80
Above 458 (1500) To 610 (2000)	140
Above 305 (1000) To 458 (1500)	240
Up to 305 (1000)	400

TABLE 2 TO § 27.1507—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS AND REPEATERS PERMITTED TO TRANSMIT WITH UP TO 1000 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

TABLE 3 TO § 27.1507—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS AND REPEATERS PERMITTED TO TRANSMIT WITH UP TO 800 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	52
Above 1220 (4000) To 1372 (4500)	56
Above 1067 (3500) To 1220 (4000)	60
Above 915 (3000) To 1067 (3500)	80
Above 763 (2500) To 915 (3000)	112
Above 610 (2000) To 763 (2500)	160
Above 458 (1500) To 610 (2000)	280
Above 305 (1000) To 458 (1500)	480

TABLE 3 TO § 27.1507—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS AND REPEATERS PERMITTED TO TRANSMIT WITH UP TO 800 WATTS/MEGAHERTZ—Continued

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Up to 305 (1000)	800

TABLE 4 TO § 27.1507—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS AND REPEATERS PERMITTED TO TRANSMIT WITH UP TO 2000 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

§ 27.1508 Field strength limit.

The predicted or measured median field strength must not exceed 40 dBμV/m at any given point along the geographic license boundary, unless the affected licensee agrees to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

§ 27.1509 Emission limits.

The power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) in watts by at least the following amounts:

(a) For 900 MHz broadband operations in 897.5–900.5 MHz band by at least 43 + 10 log (P) dB.

(b) For 900 MHz broadband operations in the 936.5–939.5 MHz band, by at least 50 + 10 log (P) dB.

(c) Compliance with the provisions of paragraphs (a) and (b) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the licensee's band, a resolution bandwidth of at least 1 percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(d) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 27.1510 Unacceptable interference to narrowband 900 MHz licensees from 900 MHz broadband licensees.

See 47 CFR 90.672.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

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

■ 15. Section 90.7 is amended by adding definitions for ''900 MHz broadband,'' ''900 MHz broadband licensee,'' ''900 MHz broadband segment,'' ''900 MHz narrowband segment,'' and ''Transitioned market'' in alphanumerical order to read as follows:

§ 90.7 Definitions.

* * * * *

900 MHz broadband. See 47 CFR 27.1501.

900 MHz broadband licensee. See 47 CFR 27.1501.

900 MHz broadband segment. See 47 CFR 27.1501.

900 MHz narrowband segment. See 47 CFR 27.1501.

* * * * *

Transitioned market. A geographic area in which the 900 MHz band has been reconfigured to consist of a 900 MHz broadband license in the 900 MHz broadband segment and two 900 MHz narrowband segments pursuant to part 27 of this chapter.

* * * * *

■ 16. Section 90.35 is amended by revising paragraph (c)(71) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(c) * * *

(71) Subpart S of this part contains rules for assignment of frequencies in the 806–824/851–869 MHz band and for narrowband operations in the 896–901/935–940 MHz band.

* * * * *

■ 17. Section 90.205 is amended by revising paragraph (k) to read as follows:

§ 90.205 Power and antenna height limits.

* * * * *

(k) *806–824 MHz, 851–869 MHz, 896–901 MHz and 935–940 MHz.* Power and height limitations for frequencies in the 806–824 MHz and 851–869 MHz bands and for narrowband operations in the 896–901/935–940 MHz band are specified in § 90.635.

* * * * *

■ 18. Section 90.209 is amended by revising the heading to the table in paragraph (b)(5) and adding an entry in numerical order for ''896–901/935–940'' to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

TABLE 1 TO § 90.209(b)(5)—STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* * * * *	*	*
896–901/935–940 [7]	12.5	13.6
* * * * *	*	*
* * * * *	*	*

[7] 900 MHz broadband systems may operate on channels and with bandwidths pursuant to the rules specified in subpart P of part 27 of this chapter.

* * * * *

■ 19. Section 90.210 is amended by revising the heading to the table, relocating it to the end of the section, and adding an entry in numerical order for ''896–901/935–940'' to read as follows:

§ 90.210 Emission masks.

* * * * *

TABLE 1 TO § 90.210—APPLICABLE EMISSION MASKS

Frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * * * *	*	*
896–901/935–940 [7]	I	J
* * * * *	*	*
* * * * *	*	*

[7] Equipment used with 900 MHz broadband systems operating under subpart P of part 27 of this chapter is subject to the emission limitations in § 27.1509 of this chapter.

■ 20. Section 90.213 is amended by revising the heading to the table in paragraph (a) and adding entries in numerical order for ''896–901'' and ''935–940'' to read as follows:

§ 90.213 Frequency stability.

(a) * * *

TABLE 1 TO § 90.213(a)—MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2 watts output power	2 watts or less output power
* * * * *	*	*	*
896–901 [15]	[14] 0.1	1.5	1.5
* * * * *	*	*	*
935–940 [15]	0.1	1.5	1.5
* * * * *	*	*	*
* * * * *	*	*	*

[15] Equipment used with 900 MHz broadband systems operating under subpart P of part 27 of this chapter is exempt from the frequency stability requirements of this section. Instead, the frequency stability shall be sufficient to ensure that the fundamental emissions stay within the authorized bands of operation.

* * * * *

■ 21. Section 90.601 is revised to read as follows:

§ 90.601 Scope.

This subpart sets out the regulations governing the licensing and operations of all systems operating in the 806–824/851–869 MHz and the narrowband operations in the 896–901/935–940 MHz bands. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands. It also supplements the rules regarding application procedures contained in part 1, subpart F of this chapter. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

■ 22. Section 90.603 is amended by revising the introductory text to read as follows:

§ 90.603 Eligibility.

Except as specified in § 90.616, the following persons are eligible for licensing in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz bands.

* * * * *

■ 23. Section 90.613 is amended by revising the introductory text to read as follows:

§ 90.613 Frequencies available.

The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station transmitting frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. For operations in the 897.5–900.5 MHz and 936.5–939.5 MHz bands (Channels 120–360), no new applications will be accepted in a transitioned market for a narrowband system under part 90, subpart S of this chapter. Only the base station transmitting frequency of each pair is listed in the following table.

* * * * *

■ 24. Add § 90.616 to read as follows:

§ 90.616 896–897.5/935–936.5 MHz and 900.5–901/939.5–940 MHz narrowband segments.

(a) In a transitioned market, the narrowband segments of realigned 900 MHz spectrum (*i.e.,* the 896–897.5/935–

936.5 MHz and 900.5–901/939.5–940 MHz bands (Paired channels 1–119 and 361–399 as specified in § 90.613)) are designated for the following entities:

(1) Applicants eligible in the Industrial/Business Pool of subpart C of this part;

(2) Business/Industrial/Land Transportation Pool and Specialized Mobile Radio licensees authorized as of September 13, 2018, for continuing operations; and

(3) Business/Industrial/Land Transportation Pool and Specialized Mobile Radio licensees authorized as of September 13, 2018, for relocation to the new narrowband segments from the broadband segment pursuant to part 27, subpart P, of this chapter.

(b) Applications for new authorizations will only be accepted from applicants specified in paragraph (a)(1) of this section.

(c) Table 1 to § 90.616(c) indicates the channels available in transitioned markets to the entities set forth in paragraph (a) of this section. These frequencies are available in transitioned markets in non-border areas and the U.S./Mexico border area. For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table.

TABLE 1 TO § 90.616(c)—CHANNELS IN THE 896–897.5/935–936.5 MHz AND 900.5–901/939.5–940 MHz FREQUENCY BANDS IN TRANSITIONED MARKETS

[In non-border areas and in the United States/Mexico border area]

1–2–3–4–5	81–82–83–84–85.
6–7–8–9–10	86–87–88–89–90.
11–12–13–14–15	91–92–93–94–95.
16–17–18–19–20	96–97–98–99–100.
21–22–23–24–25	101–102–103–104–105.
26–27–28–29–30	106–107–108–109–110.
31–32–33–34–35	111–112–113–114–115.
36–37–38–39–40	116–117–118–119.
41–42–43–44–45	361–362–363–364–365.
46–47–48–49–50	366–367–368–369–370.
51–52–53–54–55	371–372–373–374–375.
56–57–58–59–60	376–377–378–379–380.
61–62–63–64–65	381–382–383–384–385.
66–67–68–69–70	386–387–388–389–390.
71–72–73–74–75	391–392–393–394–395.
76–77–78–79–80	396–397–398–399.

(d) Table 2 to § 90.616(d) indicates the channels available in transitioned markets to the entities set forth in paragraph (a) of this section, available for use in the U.S./Canada border area.

TABLE 2 TO § 90.616(d)—CHANNELS IN THE 896–897.5/935–936.5 AND 900.5–901/939.5–940 MHz FREQUENCY BANDS IN TRANSITIONED MARKETS AVAILABLE IN THE U.S./CANADA BORDER AREA

Region	Location (longitude)	Channels
1	66° W–71° W (0–100 km from border).	1–119, 398, 399.
2	71° W–80°30′ W (0–100 km from border).	1–119.
3	80°30′ W–85° W (0–100 km from border).	1–119.
4	85° W–121°30′ W (0–100 km from border).	1–119, 398, 399.
5	121°30′ W–127° W (0–140 km from border).	1–119, 398, 399.
6	127° W–143° W (0–100 km from border).	1–119, 398, 399.
7	66° W–121°30′ W (100–140 km from border).	1–119, 361–399.
8	127° W–143° W (100–140 km from border).	1–119, 361–399.

(e) Table 3 to § 90.616(e) indicates additional channels available in transitioned markets to the entities set forth in paragraph (a) of this section, available for use in the U.S./Canada border area. The channels listed in Table 3 are available for assignment in Regions 1–6 if the maximum power flux density (PFD) of the station's transmitted signal does not exceed the limits specified in tables 29 and 30 of § 90.619 of this chapter.

TABLE 3 TO § 90.616(e)—ADDITIONAL CHANNELS AVAILABLE IN TRANSITIONED MARKETS IN THE U.S./CANADA BORDER AREA

[Regions 1–6]

Region	Channel No.'s	Effective radiated power
1	361–397	See Table 29 of section 90.619.
2	361–399	See Table 29 of section 90.619.
3	361–399	See Table 29 of section 90.619.
4	361–397	See Table 29 of section 90.619.
5	361–397	See Table 30 of section 90.619.
6	361–397	See Table 29 of section 90.619.

■ 25. Section 90.617 is amended by revising the introductory text of paragraphs (c) and (f) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(c) Except as specified in § 90.616, the channels listed in Table 3 of this section are available to applicants eligible in the Industrial Business Pool of subpart C of this part but exclude Specialized Mobile Radio Systems as defined in § 90.603(c). These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for intercategory sharing as indicated in § 90.621(e).

* * * * *

(f) Except as specified in § 90.616, the channels listed in Table 6 of this section are available for operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in non-border areas. The spectrum blocks listed below are available for EA-based services according to § 90.681.

* * * * *

■ 26. Section 90.619 is amended by revising paragraphs (b)(1) introductory text, (b)(2) introductory text, (d)(1) introductory text, (d)(3) introductory text, (d)(4) and (5), and (d)(6) introductory text to read as follows:

§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.

* * * * *

(b) * * *

(1) Except as specified in § 90.616, the channels listed in Table 1 of this section are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Specialized Mobile Radio Systems as defined in § 90.603(c). These frequencies are available within the Mexico border region. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table. Channels numbered above 200 may be used only subject to the power flux density limits stated in paragraph (a)(2) of this section:

* * * * *

(2) Except as specified in § 90.616, the channels listed in Table 2 of this section are available for operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in the Mexico border region. The spectrum blocks listed in the table below are

available for EA-based services according to § 90.681.

* * * * *

(d) * * *

(1) Except as specified in § 90.616, channels 1–399, as listed in § 90.613 table of 896–901/935–940 MHz Channel Designations, are available to eligible applicants for use in the U.S./Canada border area as shown in table 27.

* * * * *

(3) In Region 5, except as specified in § 90.616, channels 201–397 may be authorized in the United States under the following conditions:

* * * * *

(4) Except as specified in § 90.616, channel assignments for stations to be located in the geographical area in Region 1 enclosed by the United States-Canada border, the meridian 71° W and the line beginning at the intersection of 44°25′ N, 71° W, then running by great circle arc to the intersection of 45° N, 70° W, then North along meridian 70° W to the intersection of 45°45′ N, then running West along 45°45′ N to the intersection of the United States-Canada border, will be only for channels 121 through 160, inclusive, and will be limited to assignments with 11 kHz or less necessary bandwidth. Coordination with Canada will be required for these channels.

(5) Except as specified in § 90.616, channel assignments for stations to be located in the geographical area in Region 3 enclosed by the meridian of 81° W longitude, the arc of a circle of 100 km radius centered at 42°39′30″ N latitude and 81° W longitude at the northern shore of Lake Erie and drawn clockwise from the southerly intersection with 80°30′ W longitude to intersect the United States-Canada border West of 81° W, and the United States-Canada border, will be only for channels 121 through 230, inclusive, and will be limited to assignments with 11 kHz or less necessary bandwidth. Coordination with Canada will be required for these channels. U.S. stations must protect Canadian stations operating on channels 121 through 230 within an area of 30 km radius from the center city coordinates (referenced to North American Datum 1983 (NAD83)) of London, Ontario (42°59′00.1″ N, 81°13′59.5″ W).

(6) Additional channels available: Except as specified in § 90.616, the channels listed in table 28 are available for assignment in Regions 1–6 if the maximum power flux density (PFD) of the station's transmitted signal does not exceed the limits specified in tables 29 and 30 in this section. The spreading loss shall be calculated using the free space formula taking into account any antenna discrimination in the direction of the border.

* * * * *

■ 27. Section 90.672 is revised to read as follows:

§ 90.672 Unacceptable interference to non-cellular 800 MHz licensees from 800 MHz cellular systems or part 22 Cellular Radiotelephone systems, and within the 900 MHz narrowband segments, and to narrowband 900 MHz licensees from 900 MHz broadband licensees.

(a) *Definition.* Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular licensees in the 800 MHz band from 800 MHz cellular systems or part 22 of this chapter, Cellular Radiotelephone systems; unacceptable interference within the 900 MHz narrowband segment; and unacceptable interference to narrowband 900 MHz licensees from 900 MHz broadband licensees, will be deemed to occur when the below conditions are met:

(1) A transceiver at a site at which interference is encountered:

(i) Is in good repair and operating condition, and is receiving:

(A) From the 800 MHz band, a median desired signal strength of −104 dBm or higher if operating in the 800 MHz band, or a median desired signal strength of −88 dBm if operating in the 900 MHz narrowband segment, as measured at the R.F. input of the receiver of a mobile unit; or

(B) From the 800 MHz band, a median desired signal strength of −101 dBm or higher if operating in the 800 MHz band, or a median desired signal strength of −85 dBm if operating in the 900 MHz narrowband segment; or, as measured at the R.F. input of the receiver of a portable *i.e.,* hand-held unit;

(C) From the 900 MHz broadband segment, a median desired signal strength of −104 dBm or higher if operating in the 900 MHz narrowband segment, as measured at the R.F. input of the receiver of a mobile unit; or

(D) From the 900 MHz broadband segment, median desired signal strength of −101 dBm or higher if operating in the 900 MHz narrowband segment, as measured at the R.F. input of the receiver of a portable, *i.e.,* hand-held unit; and either

(ii) Is a voice transceiver:

(A) With manufacturer published performance specifications for the receiver section of the transceiver equal to, or exceeding, the minimum standards set out in paragraph (b) of this section, and;

(B) Receiving an undesired signal or signals which cause the measured Carrier to Noise plus Interference (C/(I + N)) ratio of the receiver section of said transceiver to be less than 20 dB if operating in the 800 MHz band, or less than 17 dB if operating in the 900 MHz narrowband segment, or;

(iii) Is a non-voice transceiver receiving an undesired signal or signals which cause the measured bit error rate (BER) (or some comparable specification) of the receiver section of said transceiver to be more than the value reasonably designated by the manufacturer.

(2) Provided, however, that if the receiver section of the mobile or portable voice transceiver does not conform to the standards set out in paragraph (b) of this section, then that transceiver shall be deemed subject to unacceptable interference only at sites where the median desired signal satisfies the applicable threshold measured signal power in paragraph (a)(1)(i) of this section after an upward adjustment to account for the difference in receiver section performance. The upward adjustment shall be equal to the increase in the desired signal required to restore the receiver section of the subject transceiver to the 20 dB C/(I + N) ratio of paragraph (a)(1)(ii)(B) of this section. The adjusted threshold levels shall then define the minimum measured signal power(s) in lieu of paragraph (a)(1)(i) of this section at which the licensee using such non-compliant transceiver is entitled to interference protection.

(b) *Minimum receiver requirements.* Voice transceivers capable of operating in the 806–824 MHz portion of the 800 MHz band, or in the 900 MHz narrowband segment, shall have the following minimum performance specifications in order for the system in which such transceivers are used to claim entitlement to full protection against unacceptable interference. (See paragraph (a)(2) of this section.)

(1) Voice units intended for mobile use: 75 dB intermodulation rejection ratio; 75 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

(2) Voice units intended for portable use: 70 dB intermodulation rejection ratio; 70 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

(3) Voice units intended for mobile or portable use in the 900 MHz narrowband segment: 60 dB intermodulation rejection ratio; 60 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 20–145; FCC 20–73; FRS 16852]

Promoting Broadcast Internet Innovation Through ATSC 3.0

AGENCY: Federal Communications Commission

ACTION: Declaratory Ruling.

SUMMARY: In this document, the Commission removes regulatory uncertainty that could hinder the development of the new, innovative uses of broadcast spectrum that the ATSC 3.0 standard enables. Specifically, we clarify that long-standing television station ownership restrictions do not apply to the lease of spectrum to provide Broadcast internet services. By taking this step today, we help ensure that market forces, and not television station ownership rules that were written for different services, are brought to bear on and determine the success of the nascent Broadcast internet segment. This step will also help ensure that broadcasters and other innovators have the flexibility to generate the scale—both locally and nationally—that may be necessary to support certain Broadcast internet services without being subject to regulations unrelated to the provision of such services. A Notice of Proposed Rulemaking relating to the broadcast ancillary and supplementary service rules is published elsewhere in this issue of the **Federal Register**.

DATES: This *Declaratory Ruling* took effect June 9, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact John Cobb, *John.Cobb@fcc.gov* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling,* MB Docket Nos. 20–145; FCC 20–73, adopted and released on June 9, 2020. A summary of the *Notice of Proposed Rulemaking* adopted concurrently concerning the broadcast ancillary and supplementary service rules is published elsewhere in this issue of the **Federal Register**. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. The full text of this document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

The United States is transitioning to a new era of connectivity. From innovative 5G offerings to high-capacity fixed services and an entirely new generation of low-earth orbit satellites, providers from previously distinct sectors are competing like never before to offer high-speed internet services through a mix of different technologies. The Commission has been executing on a plan to identify and remove the overhang of unnecessary government regulations that might otherwise hold back the introduction and growth of new competitive offerings. We want the marketplace—not outdated rules—to determine whether new services and technologies will succeed. Broadcasters, as well as a range of other entities, now have the potential to use broadcast spectrum to enter the converged market for connectivity in ways not possible only a few short years ago.

With this item, we take important steps to further unlock the potential of broadcast spectrum, empower innovation, and create significant value for broadcasters and the American public alike by removing the uncertainty cast by legacy regulations. More than twenty years ago, during the transition from analog to digital broadcast television, the Commission adopted rules allowing digital television (DTV) licensees to provide ancillary or supplementary services on their excess spectrum capacity and authorized licensees to enter into leases with other entities that would provide such services. Flash forward to today, and the conversion of digital television from the first-generation technologies associated with the ATSC 1.0 standard to the next-generation of ancillary services that will be enabled by ATSC 3.0 is now underway. This new technology promises to expand the universe of potential uses of broadcast spectrum capacity for new and innovative services beyond traditional over-the-air video in ways that will complement the nation's burgeoning 5G network and usher in a new wave of innovation and opportunity. These new offerings over broadcast spectrum can be referred to collectively as ''Broadcast internet'' services to distinguish them from traditional over-the-air video services. Broadcasters will not only be able to better serve the information and entertainment needs of their communities, but they will have the opportunity to play a part in addressing the digital divide and supporting the proliferation of new, IP-based consumer applications or voluntarily entering into arrangements to allow others to invest in achieving those goals. We undertake this proceeding to ensure that our rules help to foster the introduction of new services and the efficient use of spectrum.

By our Declaratory Ruling, we remove regulatory uncertainty that could hinder the development of the new, innovative uses of broadcast spectrum that the ATSC 3.0 standard enables. Specifically, we clarify that long-standing television station ownership restrictions do not apply to the lease of spectrum to provide Broadcast internet services. This means that a broadcast television licensee can lease spectrum to another broadcaster (including one operating in the same geographic market) or to a third party for the provision of ancillary and supplementary services without triggering the Commission's attribution or ownership rules for television stations. Those television station rules, which identify the specific kinds of ''cognizable interests'' that allow a party to ''own, operate or control'' a television station or ''otherwise provid[e] an attributable interest, . . . pursuant to [specified] criteria,'' regulate traditional broadcast television service and therefore have no application to innovative Broadcast internet services. By taking this step today, we help ensure that market forces, and not television station ownership rules that were written for different services, are brought to bear on and determine the success of the nascent Broadcast internet segment. This step will also help ensure that broadcasters and other innovators have the flexibility to generate the scale—both locally and nationally—that may be necessary to support certain Broadcast internet services without being subject to regulations unrelated to the provision of such services. For instance, a single entity could use this leasing mechanism to acquire the rights to offer Broadcast internet services on multiple broadcast channels in the same market. And that same entity could put together a nationwide footprint for the provision of

Broadcast internet services. Combined, this can help create an even more attractive market for the deployment of competitive Broadcast internet services.

As noted, the Commission last addressed these issues over twenty years ago, well before the ongoing transition to ATSC 3.0 dramatically increased the scope of innovative new services that can be provided and expanded the types of leasing arrangements that will help facilitate greater access to broadcast spectrum by third parties. Therefore, questions have been raised about the application of our prior ancillary services regime to these new offerings. Our decision today will help provide the stable and predictable regulatory environment that is critical if parties are to invest heavily in new Broadcast internet services and thus aid in their proliferation.

Background. Commission Regulations Applicable to Ancillary and Supplementary Services. Pursuant to section 336 of the Telecommunications Act of 1996 (the 1996 Act), Congress established the framework for licensing DTV spectrum to television broadcasters and permitted them to offer ancillary and supplementary services consistent with the public interest. Congress recognized that the transition from analog to digital broadcast technology would enable DTV licensees to provide new and innovative services, including various forms of data services, over their additional spectrum capacity and wanted to provide licensees with the flexibility necessary to utilize fully that new potential. Accordingly, section 336 directed the Commission to adopt regulations that would allow DTV licensees to make use of excess spectrum capacity, so long as the ancillary or supplementary services carried on DTV capacity do not derogate any advanced television services (*i.e.,* free over-the-air broadcast service) that the Commission may require. Such ancillary or supplemental services are also subject to any Commission regulations that are applicable to analogous services. The statute also directed the Commission to impose a fee on ancillary or supplementary services for which the DTV licensee charges a subscription fee or receives compensation from a third party other than commercial advertisements used to support non-subscription broadcasting.

The Commission adopted the initial rules governing the provision of ancillary or supplementary broadcast services in 1997 as part of the *DTV Fifth Report and Order.* Consistent with the Act, the rules obligate DTV licensees to ''transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel.'' This means that regardless of whatever other services a broadcaster may provide over its spectrum, it must continue to provide one free stream of programming to viewers. As long as DTV licensees satisfy that obligation, the rules permit them to ''offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis'' provided the services do not derogate the licensee's obligation to provide one free stream of programming to viewers and are subject to any regulations on services analogous to the ancillary or supplementary service. These rules reflect the Commission's intent to promote the public interest by maximizing ''broadcasters' flexibility to provide a digital service to meet the audience's needs and desires.''

The Commission initiated a separate proceeding to determine how best to assess and collect the statutorily required fee for ancillary or supplementary services. The statute directed the Commission to adopt a fee structure that would ''recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and . . . avoid unjust enrichment through the method employed to permit such uses of that resources.'' It also specifically instructed the Commission to set the fee at a value that, ''to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of [the Act] and the Commission's regulations thereunder.'' Ultimately, the Commission determined that a fee based on a percentage of the gross revenues generated by feeable ancillary or supplementary services was the best option to satisfy the statutory directive and achieve the goal of incentivizing innovation to maximize spectrum efficiency. The Commission set the fee at five percent of gross revenues received from any feeable ancillary or supplementary services.

Subsequently, the Commission clarified the ancillary or supplementary service rules as applied to noncommercial educational (NCE) television licensees. The Commission concluded that § 73.621 of the rules, which requires public NCE stations to provide a nonprofit and noncommercial broadcast service, would apply to the provision of ancillary or supplementary services by NCE licensees. However, the Commission also decided to allow NCE licensees to offer subscription services on their excess capacity and to advertise on ancillary or supplementary services that do not constitute broadcasting. Finally, the Commission concluded that section 336(e) of the Act does not exempt NCE licensees ''from the requirement to pay fees on revenues generated by the remunerative use of their excess digital capacity, even when those revenues are used to support their mission-related activities.''

Pursuant to section 336(e)(4) of the Act, the Commission originally adopted rules requiring all DTV licensees and permittees annually to file a form (currently Form 2100, Schedule G), reporting information about their use of the DTV bitstream to provide feeable ancillary and supplementary services. In 2017, as a part of the *Modernization of Media Regulation Initiative,* the Commission revised these filing requirements. The Commission concluded that requiring every DTV licensee to file the form was an unnecessary regulatory burden, as very few licensees offered any feeable service, and instead changed the rules to require only those licensees who had provided feeable ancillary or supplementary services during the applicable reporting period to file the form. As the Commission observed, at that time only a fraction of all television broadcast stations provided feeable ancillary or supplementary services despite expectations in the wake of the digital transition.

Next Generation Broadcast Standard (ATSC 3.0). ATSC 3.0 is the ''Next Generation'' broadcast television (Next Gen TV) transmission standard developed by the Advanced Television Systems Committee as the world's first IP-based broadcast transmission platform, which ''merges the capabilities of over-the-air broadcasting with the broadband viewing and information delivery methods of the internet, using the same 6 MHz channels presently allocated for DTV service.'' As stated in the *Next Gen TV Report and Order,* the ATSC 3.0 standard will allow broadcasters to ''offer exciting and innovative services,'' including superior reception, mobile viewing capabilities, enhanced public safety capabilities (such as advanced emergency alerting capable of waking up sleeping devices to warn consumers of imminent emergencies), enhanced accessibility features, localized and/or personalized content, interactive educational children's content, and other enhanced features. In 2017, the Commission authorized broadcasters to begin the transition to ATSC 3.0 voluntarily and established standards to minimize the impact on, and costs to, consumers and other industry

stakeholders. The Media Bureau began accepting applications for Next Gen TV licenses on May 28, 2019. Earlier this year, the Commission adopted a Notice of Proposed Rulemaking seeking comment on proposed changes to the rules governing the use of distributed transmission systems (DTS) by broadcast television stations. Proponents of the changes assert that they will facilitate the use of new and innovative technologies that will improve traditional broadcast service and mobile reception of broadcast signals, as well as allow the more efficient use of broadcast spectrum, which they claim would enable broadcasters to exploit more fully the new capabilities resulting from ATSC 3.0.

ATSC 3.0 provides greater spectral capacity than the current digital broadcast television standard, allowing broadcasters to innovate, improve service, and use their spectrum more efficiently. Although today many broadcasters are focused solely on deploying traditional broadcast television services using the ATSC 3.0 standard, some broadcasters and third-party groups are looking to the future and examining ways broadcasters can become part of the 5G ecosystem and provide myriad other services using the enhanced capabilities of ATSC 3.0 technologies. Specifically, these groups hope to utilize television spectrum to provide non-traditional broadcast video services such as video-on-demand or subscription video services and new, innovative non-broadcast services in such areas as the automotive industry, agriculture, distance learning, telehealth, public safety, utility automation, and the ''Internet of Things'' (IoT). Providing a regulatory environment to enable a thriving secondary market is key to unlocking the potential for such Broadcast internet services via ATSC 3.0.

Declaratory Ruling. The Communications Act and the Commission's rules provide clear authority for the provision of ancillary and supplementary services by broadcast television stations, including through spectrum lease agreements, yet few such services have been offered over the past two decades and none appear to have been offered extensively or systematically across the television industry. Accordingly, the Commission has had little occasion to opine on these rules since their adoption over twenty years ago. With the advent of ATSC 3.0, however, broadcasters may be better positioned to realize the potential long envisioned by Congress and the Commission when they were granted the flexibility to use their spectrum in new and novel ways to benefit their local communities and the American people. We expect that our clarification today will help promote increased investment in broadcast television stations, thereby enabling them to better serve their local markets.

As the Commission has noted, some licensees may find it useful to develop partnerships with other broadcasters or third parties to help make the most productive and efficient use of their spectrum, and the Commission has stated that it would ''look with favor on such arrangements.'' In some cases, a broadcaster may lease a portion of its spectrum to a separate and unrelated entity that, instead of the broadcaster, would provide ancillary and supplementary services to the consumer. Conversion of broadcast television to the ATSC 3.0 transmission standard has the potential to increase the attractiveness of ancillary and supplementary services and correspondingly the prevalence of spectrum leases to third parties (including other broadcasters) that can provide such services. As an IP-based standard designed for compatibility with wireless broadband networks, ATSC 3.0 broadcast signals can connect to 5G wireless networks to provide enhanced consumer experiences in ways that ATSC 1.0 cannot. Wireless networks are becoming more dynamic, relying on various spectrum bands for inbound and outbound data paths. Though ATSC 3.0 transmissions presently lack a return path, the technology is well positioned to support a host of next-generation applications, both on its own or as part of a hybrid wireless network. For example, third parties may wish to lease excess broadcast spectrum for such uses as supporting autonomous vehicle operation through system updates; pre-positioning popular content (*e.g.,* movies or video games) to help reduce network congestion; distributing educational or job certification materials; providing supplemental information to telemedicine patients; issuing advanced emergency alerts for first responders and the public; and providing operational support for IoT devices and smart meters. We expect that these types of next-generation services will come to define Americans' lives over the coming years and decades, and broadcast spectrum will be in a position to support their growth and proliferation. Furthermore, an ATSC 3.0 signal can offer broadband-speed downloads, which may help reduce consumer costs for internet services, and its propagation characteristics make it well suited for underserved rural communities. In addition, the nature of ATSC 3.0 transmissions, as compared to ATSC 1.0, could lead to novel and creative leasing arrangements that could involve multiple, short-term spectrum users, arrangements that were not feasible when the Commission last issued guidance on these issues more than twenty years ago.

In issuing this declaratory ruling, we seek to clarify the regulatory treatment of such leasing arrangements and to remove any uncertainty that might chill the introduction of new and innovative services under ATSC 3.0. Specifically, we clarify that the lease of excess broadcast television spectrum to a third party, including another broadcaster, for the provision of ancillary and supplementary services does not result in attribution under our broadcast television station ownership rules or for any other requirements related to television station attribution (*e.g.,* filing ownership reports). That is, our attribution rules do not confer a ''cognizable interest'' solely by the existence of a lease agreement to provide ancillary and supplementary services over the station's spectrum. The Commission's broadcast television station attribution rules seek to identify interests that confer influence or control such that those interests should be counted for purposes of the media ownership limits. Influence or control over programming, personnel, and finances is considered in making an attribution determination. The Commission's media ownership limits are intended to promote viewpoint diversity, localism, and competition in broadcast services, yet ancillary and supplementary services are defined to exclude broadcast services. We thus find no basis to deem a lease pertaining to such non-broadcast services as implicating our media ownership limits. Similarly, the Commission stated in its order authorizing the voluntary use of the ATSC 3.0 transmission standard that it would not apply the broadcast ownership rules in any situation where airing an ATSC 3.0 signal or an ATSC 1.0 simulcast on a temporary host station's facility would have otherwise resulted in a potential violation of those rules. Pursuant to that order, such temporary simulcasting arrangements do not constitute a cognizable interest under our attribution rules.

This ruling applies regardless of whether the station is broadcasting in ATSC 1.0 or 3.0 and only in those circumstances where the lessee uses the spectrum for services that qualify as

ancillary and supplementary under § 73.624(c) of the Commission's rules, which is the limited focus of our action today. Consistent with our rules, licensees entering into such leases still bear the responsibility to retain ultimate control over their spectrum and to ensure compliance with our broadcast regulations. Also consistent with existing Commission rules and policies, the term of any spectrum lease should be for no greater than the duration of the station's broadcast license, with renewal of the leasing arrangement permitted. Furthermore, the broadcaster must continue to provide at least one over-the-air video program signal at no charge to viewers in accordance with § 73.624(b) of the Commission's rules and remain in compliance with all other applicable Commission rules. By extension, the broadcaster is responsible for any misuse of its spectrum by a lessee in violation of applicable statutes or Commission rules.

By this declaratory ruling, we seek to provide additional clarity in order to encourage the investment in and deployment of potentially beneficial Broadcast internet services and to eliminate any possibility of unnecessary regulatory obstructions, either real or perceived. The Commission's rules for ancillary and supplementary services were intended to afford broadcasters the flexibility to use spectrum capacity in entrepreneurial and innovative ways. In recognizing ''the benefit of permitting broadcasters the opportunity to develop additional revenue streams from innovative digital services,'' the Commission has chosen ''to impose few restrictions on broadcasters and to allow them to make decisions that will further their ability to respond to the marketplace.'' As the industry transitions to a next-generation broadcast television standard, we seek to ensure that our rules help facilitate innovative arrangements that can result in the efficient use of spectrum. In doing so, it is our hope that the marketplace, not rules designed for different services, will ultimately decide which Broadcast internet services are developed and supported.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that, this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Declaratory Ruling* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

It is ordered that, pursuant to sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, and section 1.2 of the Commission's Rules, 47 CFR 1.2, this Declaratory Ruling in MB Docket No. 20–145 *is adopted. It is further ordered* that, pursuant to § 1.103 of the Commission's rules, 47 CFR 1.103, this Declaratory Ruling *shall be effective* upon release. *It is further ordered* that the Commission *shall send* a copy of the Declaratory Ruling in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–13202 Filed 7–15–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200707–0183]

RIN 0648–BJ67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Abbreviated Framework Amendment 3

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

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Abbreviated Framework Amendment 3 (Abbreviated Framework 3) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council). This final rule increases the commercial and recreational annual catch limits (ACLs) and Abbreviated Framework 3 increases the recreational annual catch target (ACT) for blueline tilefish in the South Atlantic exclusive economic zone (EEZ). The purpose of this final rule is to ensure that these measures for South Atlantic blueline tilefish are based on the best scientific information available, to achieve and maintain optimum yield (OY), and to prevent overfishing while minimizing to the extent practicable, adverse social and economic effects.

DATES: This final rule is effective on August 17, 2020.

ADDRESSES: Electronic copies of Abbreviated Framework 3 may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/abbreviated-framework-amendment-3-blueline-tilefish.* Abbreviated Framework 3 includes a Regulatory Flexibility Act (RFA) analysis and regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes blueline tilefish, along with other snapper-grouper species. The FMP was prepared by the South Atlantic Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 15, 2020, NMFS published a proposed rule for Abbreviated Framework 3 in the **Federal Register** and requested public comment (85 FR 20970, April 15, 2020). Abbreviated Framework 3 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of the management measures described in Abbreviated Framework 3 and implemented by this final rule is provided below. All weights described in this final rule are in round weight.

Management Measure Contained in This Final Rule

This final rule revises the commercial and recreational ACLs for South Atlantic blueline tilefish based on updated information from a Southeast Data, Assessment, and Review (SEDAR) benchmark assessment that was completed for the Atlantic stock of blueline tilefish, using data through 2015 (SEDAR 50).

Prior to this final rule, the blueline tilefish commercial ACL was 87,521 lb (39,699 kg) and the recreational ACL was 87,277 lb (39,588 kg).

Consistent with the results of SEDAR 50 and the acceptable biological catch (ABC) recommendation from the South Atlantic Council's Scientific and Statistical Committee (SSC) that was accepted by the South Atlantic Council, this final rule increases the commercial

and recreational ACLs for blueline tilefish in the South Atlantic EEZ.

The total ACL for South Atlantic blueline tilefish will equal the total South Atlantic ABC of 233,968 lb (106,126 kg). The commercial ACL will be set at 117,148 lb (53,137 kg) and the recreational ACL will be set at 116,820 lb (52,989 kg).

The revised ACLs are consistent with the South Atlantic Council SSC's ABC recommendation, and this final rule does not change the sector allocation percentages in the FMP. The sector ACLs for blueline tilefish are based on an allocation of 50.07 percent of the total ACL to the commercial sector and 49.93 percent of the total ACL to the recreational sector.

Since 2014, the blueline tilefish commercial sector has experienced in-season fishing closures every year between April and August, regardless of the amount of the commercial ACL. If the catch rates of blueline tilefish in the commercial sector continue as expected in the future, the revised commercial ACL is still expected to result in an in-season closure during the commercial season as a result of the ACL being reached. However, the increase to the commercial ACL in this final rule is expected to extend the commercial fishing season further into the fishing year. Because of recent changes to blueline tilefish management measures and in-season closures, a reliable estimate of future commercial season lengths is not available.

Blueline tilefish is closed to recreational harvest in the South Atlantic each year from January 1 through April 30, and from September 1 through December 31. Each year since 2016, recreational landings of blueline tilefish have exceeded the current recreational ACL. However, a recreational closure during the May through August fishing season as a result of landings being projected to reach the recreational ACL prior to the end of August has not occurred, because in-season recreational landings are typically not available until after the May through August fishing season concludes. When compared to recent trends in estimated recreational landings, the increase in the recreational ACL through this final rule could reduce the likelihood that the ACL would be met during the fixed May through August fishing season.

Management Measure Contained in Abbreviated Framework 3 Not Codified Through This Final Rule

In addition to the ACL changes in this final rule, Abbreviated Framework 3 will update the recreational ACT for blueline tilefish in the South Atlantic EEZ. The recreational ACT is based on an ACT equation in the FMP, unchanged by Abbreviated Framework 3 or this final rule, where the recreational ACT is equal to the recreational ACL multiplied by (1 minus the Percent Standard Error) or the recreational ACL multiplied by 0.5, whichever is greater. Abbreviated Framework 3 increases the recreational ACT from 54,653 lb (24,790 kg) to 70,886 lb (32,153 kg).

Comments and Responses

NMFS received six comments from individuals during the public comment period on the proposed rule for Abbreviated Framework 3. One of the comments was in general support of the actions in the proposed rule. NMFS acknowledges the comment in favor of the actions in the proposed rule and agrees with it. NMFS did not respond to comments that were beyond the scope of the proposed rule in this final rule. The public comment that opposed an action contained in Abbreviated Framework 3 and the proposed rule is summarized below, as well as NMFS' response.

Comment 1: To improve catch levels, the blueline tilefish ACLs should not be increased until the population is more abundant.

Response: NMFS disagrees that the blueline tilefish ACLs in the South Atlantic EEZ should not be increased. Abbreviated Framework 3 and this final rule respond to the latest stock assessment for Atlantic blueline tilefish (SEDAR 50) completed in October 2017. SEDAR 50 included blueline tilefish data from the South Atlantic Council and the Mid-Atlantic Fishery Management Councils' (Mid-Atlantic Council) jurisdictions. The South Atlantic Council's SSC reviewed the assessment, determined that the assessment represented the best scientific information available, and provided the South Atlantic Council with an overfishing limit and updated ABC recommendation for blueline tilefish in the EEZ south of Cape Hatteras, North Carolina. Abbreviated Framework 3 and this final rule are increasing the harvest levels for blueline tilefish in the South Atlantic EEZ based on SEDAR 50. These harvest levels are considered by the SSC to be sustainable and will not negatively impact the health of the stock. Additionally, NMFS has determined that blueline tilefish south of Cape Hatteras, North Carolina, is not currently overfished or undergoing overfishing.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Abbreviated Framework 3, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this rule. Accordingly, the Paperwork Reduction Act does not apply to this rule.

A description of this final rule, why it is being implemented, and the purposes of this rule are contained in the preamble and in the **SUMMARY** section. The objectives of this rule are to ensure that these measures for South Atlantic blueline tilefish are based on the best scientific information available, to achieve and maintain OY, and to prevent overfishing while minimizing adverse social and economic effects to the extent practicable.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from the SBA Office of Advocacy or the public regarding the economic analysis of Abbreviated Framework 3 or the certification contained in the proposed rule. No changes to this final rule were made in response to public comments.

The analysis included in the abbreviated framework action concluded that no charter vessels or headboats (for-hire) would be directly regulated by this rule. However, NMFS subsequently determined that some for-hire fishing businesses would be directly regulated by this rule. The rationale for that determination and the factual basis for the certification were published in the proposed rule and are repeated here for clarity.

This rule increases the total ACL and consequently the commercial and recreational ACLs for South Atlantic blueline tilefish. Thus, this rule applies to entities that harvest South Atlantic blueline tilefish. Recreational anglers

fishing for South Atlantic blueline tilefish will be directly affected by the rule. However, anglers are not considered entities under the RFA and thus will not be directly regulated by this rule.

This rule is expected to directly regulate commercial and for-hire businesses (vessels) that harvest or have the ability to harvest South Atlantic blueline tilefish. In 2018, there were 549 vessels with valid or renewable Federal South Atlantic snapper-grouper unlimited permits and 110 vessels with valid or renewable 225-lb (102-kg) trip limited permits. Any vessel with a valid Federal South Atlantic snapper-grouper unlimited permit or 225-lb (102-kg) trip limited permit may commercially harvest blueline tilefish. In 2018, there were 2,176 for-hire vessels that possessed a valid or renewable Federal charter vessel/headboat permit for South Atlantic snapper-grouper. Any for-hire vessel with a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper may harvest South Atlantic blueline tilefish. The number of charter vessels with a valid Federal permit that harvest South Atlantic blueline tilefish cannot be determined with available data. Based on the information above, NMFS determined that this rule may directly regulate 659 commercial fishing businesses and 2,176 for-hire fishing businesses.

From 2014 through 2018, an average of 143 commercial vessels per year landed blueline tilefish in the South Atlantic. Taken together, these vessels averaged 716 trips per year in the South Atlantic on which blueline tilefish were landed, and an additional 4,400 trips in the South Atlantic that did not land any blueline tilefish or were taken outside the South Atlantic regardless of the species caught. In 2018 dollars, the average annual total revenues were approximately $0.03 million from blueline tilefish, $1.89 million from other species co-harvested with blueline tilefish on the same trips, and $8.95 million from trips in the South Atlantic on which no blueline tilefish were harvested or trips that occurred outside the South Atlantic. Average annual gross revenue from all species landed by vessels harvesting blueline tilefish in the South Atlantic was approximately $11.15 million. Thus, average annual gross revenue per commercial vessel was about $78,000 per vessel. For comparison, average annual gross revenue of federally permitted charter vessels and headboats in the South Atlantic is $123,064 per charter vessel and $267,067 per headboat in 2018 dollars.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in it field of operations (including its affiliates). From 2014 through 2018, the maximum average annual gross revenue for a single vessel in the commercial snapper-grouper fishing industry was about $1.6 million in 2018 dollars. Based on this information, all directly regulated commercial fishing businesses are determined, for the purpose of this analysis, to be small entities.

The SBA has established size standards for all other major industry sectors in the U.S., including for-hire fishing businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of $8 million for all its affiliated operations worldwide. In 2017, the maximum annual gross revenue for a single headboat in the South Atlantic was about $765,200 in 2018 dollars. On average, annual gross revenue for headboats is more than double the annual gross revenue for charter vessels. Thus, it is assumed the maximum annual gross revenue for charter vessels is less than $765,200. Based on this information, all directly regulated for-hire fishing businesses are determined, for the purpose of this analysis, to be small entities.

For South Atlantic blueline tilefish, this rule increases the total ACL from 174,798 lb to 233,968 lb (79,287 kg to 106,126 kg), the commercial ACL from 87,521 lb to 117,148 lb (39,699 kg to 53,137 kg), the recreational ACL from 87,277 lb to 116,820 lb (39,588 kg to 52,989 kg). In addition, Abbreviated Framework 3 increases the recreational ACT from 54,653 lb to 70,886 lb (24,790 kg to 32,153 kg). The recreational ACT does not constrain harvest in the recreational sector and therefore is not relevant with respect to determining effects on small entities.

The increase in the commercial ACL is expected to increase annual gross revenue for commercial snapper-grouper fishing entities harvesting blueline tilefish by a total of $96,979, or by about $678 per active vessel, while profits for all commercial snapper-grouper fishing entities harvesting blueline tilefish are expected to increase by $23,134, or about $162 per vessel, in 2018 dollars. Because the recreational ACL is shared between private anglers and for-hire vessels, but without an established allocation among those components, it is not possible to determine how much of the increase in the recreational ACL will accrue to the for-hire snapper-grouper vessels that harvest blueline tilefish. However, the higher recreational ACL would be expected to at least minimally increase the number of for-hire trips harvesting blueline tilefish, which in turn would be expected to minimally increase the for-hire vessels' profits.

Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Blueline tilefish, Fisheries, Fishing, South Atlantic.

Dated: July 7, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.193, revise the first sentence in paragraphs (z)(1)(i), (2)(i), and (3) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(z) * * * (1) * * * (i) If commercial landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 117,148 lb (53,137 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) * * * (i) If recreational landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the

recreational ACL of 116,820 lb (52,989 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year, unless the RA determines that no closure is necessary based on the best scientific information available. * * * * * * * * * *

(3) The combined commercial and recreational sector ACL (total ACL) is 233,968 lb (106,126 kg), round weight.

[FR Doc. 2020–14945 Filed 7–15–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RTID 0648–XA263

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 30 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Harpoon category. With this transfer, the adjusted Harpoon category quota for the 2020 fishing season is 76 mt. The 2020 Harpoon category fishery is open until November 15, 2020, or until the Harpoon category quota is reached, whichever comes first. The action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas Harpoon category (commercial) permitted vessels.

DATES: Effective July 13, 2020, through November 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260, Nicholas Velseboer, 978–675–2168, or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline quotas for the Harpoon and Reserve categories are 46 mt and 29.5 mt, respectively. See § 635.27(a). To date for 2020, NMFS has published one action that has augmented the available 2020 Reserve category quota and transferred quota from the Reserve to the General category for the January 2020 Fishery. This resulted in the current available Reserve quota of 143 mt (85 FR 6828, February 6, 2020). Regulations provide that the Harpoon category fishery opens June 1 and closes on November 15 of each year, or until the Harpoon category quota is reached, whichever comes first.

Transfer of 30 mt From the Reserve Category to the Harpoon Category

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

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

NMFS also considered the catches of the Harpoon category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As of July 13, 2020, the Harpoon category has landed 42.1 mt. Commercial-size BFT are currently readily available to vessels fishing under the Harpoon category quota. Without a quota transfer at this time, Harpoon category participants would have to stop BFT fishing activities with very short notice, while commercial-sized BFT remain available on the fishing grounds in the areas Harpoon category permitted vessels operate. Transferring 30 mt of BFT quota from the Reserve category would result in a total of 76 mt being available for the Harpoon category for the 2020 Harpoon category fishing season.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the Harpoon category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered Harpoon category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that the Harpoon category could harvest the transferred 30 mt prior to the end of the Harpoon category fishing season, subject to weather conditions and BFT availability. NMFS may transfer unused Harpoon category quota to other quota categories, as appropriate. NMFS also anticipates that some underharvest of the 2019 adjusted U.S. BFT quota will be carried forward to 2020 and placed in the Reserve category, in accordance with the regulations. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the bluefin tuna fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2019 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final

rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

Based on the considerations above, NMFS is transferring 30 mt of the available 143 mt of Reserve category quota to the Harpoon category. Therefore, NMFS adjusts the Harpoon category quota to 76 mt for the 2020 Harpoon category fishing season (*i.e.,* through November 15, 2020, or until the Harpoon category quota is reached, whichever comes first), and adjusts the Reserve category quota to 113 mt.

Monitoring and Reporting

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

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

Classification

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

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2020 is also contrary to the public interest as such a delay would likely result in closure of the Harpoon fishery when the baseline quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the Harpoon category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

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

Dated: July 13, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–15409 Filed 7–13–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200706–0178]

RIN 0648–BJ38

Fisheries of the Northeastern United States; Permitting and Reporting for Private Recreational Tilefish Vessels

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

ACTION: Final rule.

SUMMARY: This action establishes permitting and reporting requirements for privately owned and operated recreational vessels fishing for tilefish north of the Virginia/North Carolina border. This action is necessary to implement technical measures for the conceptual permitting and reporting requirements previously approved as part of Amendment 6 to the Tilefish Fishery Management Plan. The intended effect of this action is to monitor recreational tilefish effort and catch for this periodic offshore fishery.

DATES: This rule is effective August 17, 2020.

ADDRESSES: Copies of Amendment 6 and the Environmental Assessment (EA), with its associated Finding of No Significant Impact (FONSI) and the Regulatory Impact Review (RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The Amendment 6 EA/FONSI/RIR is also accessible online at: *www.mafmc.org.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Greater Atlantic Regional Fisheries Office and by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225.

SUPPLEMENTARY INFORMATION:

Background

This rule implements the technical components for the previously approved private recreational tilefish permitting and reporting requirements in Amendment 6 to the Tilefish Fishery Management Plan (FMP) (82 FR 52851;

November 15, 2017). The Mid-Atlantic Fishery Management Council developed these measures for the tilefish fishery in Federal waters north of the Virginia/North Carolina border, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). On January 29, 2020, we published a proposed rule (85 FR 5186) and solicited comments on the proposed measures for a 30-day period that ended on February 28, 2020.

We reviewed all comments received during this comment period. See Comments and Responses section for more information.

Permitting and Reporting Requirements

With this rule, private recreational vessel owners are required to obtain a Federal vessel permit to fish for and/or retain golden or blueline tilefish in the mid-Atlantic, as recommended by the Council and approved as part of Amendment 6.

Any vessel that intends to fish for golden and/or blueline tilefish must obtain a Federal private recreational tilefish vessel permit before taking a trip. Tilefish retained on recreational trips may only be kept for personal consumption and may not be sold or bartered. Private recreational tilefish anglers may apply for the permit on the Greater Atlantic Regional Fisheries Office (GARFO) website (*https://www.fisheries.noaa.gov/about/greater-atlantic-regional-fisheries-office*). The GARFO website has a link to the Fish Online system, where applicants will create a username and password, fill out the required information, and submit their application. Applicants will be required to provide the following information: Vessel name; owner name or name of the owner's authorized representative; mailing address and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; and any other information required by the Regional Administrator. Once the application has been processed, the permit will be available to print from the computer and/or a paper copy can be mailed to the applicant. There will be no cost to obtain the private recreational tilefish vessel permit. Permits must be renewed annually.

Private recreational tilefish vessels will also be required to submit electronic vessel trip reports (eVTR) for any trip targeting tilefish through a NMFS-approved electronic reporting system. There are several platforms available to submit electronic reports including SAFIS's eTrips, and GARFO's Fish Online. Fish Online is a system with both browser-based and mobile application versions available and is the recommended method to submit reports. Additionally, once a permit is issued to a vessel through the Fish Online system, the permit holder may use the same username and password to log on to either the Fish Online browser or app to submit their eVTR. The following information will be required to submit an eVTR for a private recreational tilefish trip: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of anglers; species caught; gear fished; quantity and size of gear; soak time; depth; chart area; latitude/longitude where fishing occurred; count of individual golden and blueline tilefish landed or discarded; and port and state landed. The 24-hour submission requirement is consistent with the requirement for Highly Migratory Species (HMS) permit holders, because we expect some anglers may hold both permits.

This action does not change the regulations for tilefish party/charter vessels and will apply to anglers using a personal vessel to fish for and/or retain blueline or golden tilefish. However, this may be the same vessel that is used in for-hire or commercial fisheries on other trips. This is a separate permit that will be required if a boat fishes privately (not taking paying clients) for tilefish. Fish retained on a recreational trip may only be kept for personal consumption and may not be sold or bartered.

Comments and Responses

We received 27 comments during the proposed rule. Fourteen commenters supported and 12 opposed the new measures. One comment was not relevant to this action and was forwarded to staff that work with Atlantic bluefin tuna. The commenters opposed to the permitting and reporting requirements said the measures were overly burdensome, unfairly targeted recreational fishermen, were duplicative with requirements for HMS, and there are costs associated with obtaining the proper equipment to report. Several commenters also noted their dissatisfaction with the different bag limits between the recreational and commercial sectors; however, that issue is not related to this action.

We do understand the requirements for private recreational fishermen to obtain a permit and submit reports are new concepts in our region and that they require extra effort. We will be conducting outreach and education to minimize confusion and assist private recreational fishermen with obtaining a permit and understanding the reporting forms. The permitting and reporting requirements will help to gather necessary recreational tilefish catch and effort data that are not currently captured through dockside interviews and/or angler phone surveys. These data are critical to the Council's efforts to manage effectively both blueline and golden tilefish.

There is no cost to obtain the private recreational tilefish vessel permit, and there are no postage costs associated with the permit or the eVTR because both will be submitted electronically. We estimate that the initial private recreational tilefish permit applications would take an average of 45 minutes to complete and an average of 5 minutes to complete the eVTR. We expect that private recreational fishermen already have a smartphone, computer, or tablet to obtain the Federal private recreational tilefish vessel permit and submit their electronic trip report. Additionally, many vessels that are fishing offshore for tilefish are likely equipped with a Global Positioning System to provide location information for the reports. This is because the tilefish fishery occurs offshore, typically in waters 50–100 miles (80–160 kilometers) from shore, and most vessels venturing that far have electronic navigational capabilities.

We did explore using existing HMS permitting and reporting systems for tilefish. This was not adopted because HMS permits and reporting data are managed in a separate database from our region, tilefish are not migratory species, and the HMS permit is a coast wide permit, where this permit covers waters north of the Virginia/North Carolina line. In response to the comments relating to duplication of permit requirements, if a vessel has an HMS permit and the private recreational tilefish permit there may be some duplication as they report certain highly migratory species caught through the HMS report system, then report all catch through our eVTR system. This duplication should only be temporary as we are working on a ''one-stop shop'' reporting system that will allow one report to meet the requirements from GARFO, HMS, and the Southeast Regional Office. This long-term solution is under development, but will not be ready by the time these tilefish private

recreational measures are due to be implemented.

Changes From the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this action is necessary for the conservation and management of the tilefish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under the PRA. NMFS has submitted these requirements to OMB for approval under control number 0648–0202 and 0648–0212.

The public reporting burden for initial private recreational tilefish permit applications is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for private recreational tilefish vessel trip reports is estimated to average 5 minutes per response. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to GARFO at the **ADDRESSES** above, and to OIRA by visiting *www.reginfo.gov/public.do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 6, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.4, add paragraphs (a)(12)(iii) and (c)(2)(i)(A) through (B) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(12) * * *

(iii) *Private recreational vessel permits.* Any private recreational vessel must have been issued, under this part, a Federal recreational tilefish vessel permit to fish for, possess, or land either golden tilefish or blueline tilefish in the Tilefish Management Unit. Such vessel must observe the recreational possession limits as specified at § 648.296 and the prohibition on sale.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) An application for a private recreational tilefish permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative; mailing address and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration.

(B) [Reserved]

* * * * *

■ 3. In § 648.7, revise paragraphs (b)(1)(i) and (b)(1)(iii) and add paragraphs (b)(1)(iv) and (f)(2)(iv) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(i) *General.* The reporting requirements specified in this paragraph (b)(1)(i) for an owner or operator of a vessel fishing for, possessing, or landing Atlantic chub mackerel are effective through December 31, 2020. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. Except for vessel owners or operators fishing under a surfclam or ocean quahog permit, or fishing under a private recreational tilefish permit, the owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must:

(A) Maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator.

(B) If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media.

(C) At least the following information and any other information required by the Regional Administrator must be provided:

(*1*) Vessel name;

(*2*) USCG documentation number (or state registration number, if undocumented);

(*3*) Permit number;

(*4*) Date/time sailed;

(*5*) Date/time landed;

(*6*) Trip type;

(*7*) Number of crew;

(*8*) Number of anglers (if a charter or party boat);

(*9*) Gear fished;

(*10*) Quantity and size of gear;

(*11*) Mesh/ring size;

(*12*) Chart area fished;

(*13*) Average depth;

(*14*) Latitude/longitude (or loran station and bearings);

(*15*) Total hauls per area fished;

(*16*) Average tow time duration;

(*17*) Hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and,

(*18*) In the case of skate discards, ''small'' (*i.e.,* less than 23 inches (58.42 cm), total length) or ''large'' (*i.e.,* 23 inches (58.42 cm) or greater, total length) skates;

(*19*) Dealer permit number;

(*20*) Dealer name;

(*21*) Date sold, port and state landed; and

(*22*) Vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(iii) *Charter/Party vessel permit owners and operators.* The owner or operator of any fishing vessel that holds a Federal charter/party (for-hire) permit to fish for Atlantic bluefish, black sea bass, scup, summer flounder, tilefish, Atlantic mackerel, squid, and/or butterfish, when on a trip carrying passengers for hire, must submit the required Vessel Trip Report by electronic means. This report must be submitted through a software application approved by NMFS and must contain all applicable information outlined in paragraph (b)(1)(i)(C) of this section.

(iv) *Private tilefish recreational vessel owners and operators.* The owner or operator of any fishing vessel that holds a Federal private recreational tilefish permit, must report for each recreational trip fishing for or retaining blueline or golden tilefish in the Tilefish Management Unit. The required Vessel Trip Report must be submitted by electronic means. This report must be submitted through a NMFS-approved electronic reporting system within 24 hours of the trip returning to port. The vessel operator may keep paper records while onboard and upload the data after landing. The report must contain the following information:

(A) Vessel name;

(B) USCG documentation number (or state registration number, if undocumented);

(C) Permit number;

(D) Date/time sailed;

(E) Date/time landed;

(F) Trip type;

(G) Number of anglers;

(H) Species

(I) Gear fished;

(J) Quantity and size of gear;

(K) Soak time;

(L) Depth;

(M) Chart Area;

(N) Latitude/longitude where fishing occurred;

(O) Count of individual golden and blueline tilefish landed or discarded; and

(P) Port and state landed.

* * * * *

(f) * * *

(2) * * *

(iv) Private recreational tilefish electronic log reports, required by paragraph (b)(1)(iv) of this section, must be submitted within 24 hours after entering port at the conclusion of a trip.

* * * * *

■ 4. In § 648.8 add paragraph (f) to read as follows:

§ 648.8 Vessel identification.

* * * * *

(f) *Private Recreational Tilefish Vessels.* Vessels issued only a Federal private recreational tilefish permit are not subject to the requirements of § 648.8, but must comply with any other applicable state or Federal vessel identification requirements.

■ 5. In § 648.11 revise paragraph (a) to read as follows:

§ 648.11 Monitoring coverage.

(a) *Coverage.* The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section. The requirements of this section do not apply to vessels with only a Federal private recreational tilefish permit.

* * * * *

■ 6. In § 648.14 add paragraph (u)(1)(iii)(C) and revise paragraph (u)(2)(i)(C) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(1) * * *

(iii) * * *

(C) Operate a private recreational vessel to fish for, retain, and/or possess blueline or golden tilefish, in the Tilefish Management Unit, without a valid tilefish private recreational permit as required in § 648.4(a)(12)(iii).

(2) * * *

(i) * * *

(C) The tilefish were harvested in or from the Tilefish Management Unit by a vessel with a Federal private recreational tilefish permit or a Federal charter/party tilefish permit.

* * * * *

■ 7. In § 648.296 revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 648.296 Tilefish recreational possession limits and gear restrictions.

(a) * * *

(1) The recreational tilefish possession limit for charter/party and private recreational anglers is eight golden tilefish per angler per trip. Any vessel engaged in recreational fishing for golden tilefish may not retain golden tilefish, unless issued a valid Federal charter/party permit, pursuant to § 648.4(a)(12)(ii), or a valid Federal private recreational tilefish permit issued pursuant to § 648.4(a)(12)(iv).

* * * * *

(b) * * *

(1) *Private recreational vessels.* Anglers fishing onboard a vessel issued a Federal private recreational tilefish permit pursuant to § 648.4(a)(12)(iv), may land up to three blueline tilefish per person per trip.

* * * * *

[FR Doc. 2020–14853 Filed 7–15–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 137
Thursday, July 16, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4497; Product Identifier 2016–SW–011–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (Type Certificate Previously Held by Eurocopter Deutschland GmbH) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model BO–105A, BO–105C, BO–105S, MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters. This proposed AD would require inspecting the starter-generator electrical ground connection, retrofitting the starter-generator wire harness, and depending on model, revising the Rotorcraft Flight Manual (RFM) for your helicopter. This proposed AD was prompted by a report of a loss of electrical ground between the starter-generator and the generator voltage regulator (regulator). The proposed actions are intended to correct an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 14, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2015–4497; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) ADs, any comments received, and other information. The street address for the Docket Operations Office is listed above. Comments will be available in the AD docket shortly after receipt.

For Airbus Helicopters and Eurocopter service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

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 George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *george.schwab@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2015–0098, dated June 2, 2015, and EASA AD No. 2015–0220, dated November 9, 2015 (EASA AD 2015–0220), to correct an unsafe condition for Airbus Helicopters (previously Eurocopter Deutschland

GmbH) Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, MBB–BK117 B–2, and MBB–BK117 C–1 helicopters, and Airbus Helicopters Model BO105 A, BO105 C, BO105 D, and BO105 S helicopters with certain part-numbered voltage regulators, respectively. EASA advises of a report of damaged electronic equipment caused by an in-flight overvoltage in the electrical power system of a Model MBB–BK117 helicopter. Due to design similarity, a similar occurrence could affect Model BO105 helicopters. According to EASA, the overvoltage was caused by an interruption of the electrical ground between the starter generator and the regulator due to a break in a wire terminal attached at Terminal E. EASA further advises that use of an outdated RFM revision for Model MBB–BK117 helicopters could lead to the use of incorrect emergency procedures in the event of an overvoltage.

For these reasons, the EASA ADs require recurring inspections of the wire terminals and measurements of the resistance between the starter generator and the regulator, as well as modifying the ground reference line and, for Model MBB–BK117 helicopters, revising the RFM.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its ADs. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other products of the same type designs.

Related Service Information Under 1 CFR Part 51

Eurocopter (now Airbus Helicopters) issued Alert Service Bulletin (ASB) No. ASB–MBB–BK117–90–118, Revision 2, dated May 4, 2009, for certain Model MBB–BK117 helicopters and ASB No. ASB BO105–90–103, Revision 4, dated June 21, 2010, for certain Model BO105 helicopters. This service information specifies a visual inspection for damage, corrosion, and cracks and measuring the resistance of the left-hand and right-hand electrical ground connections between each starter-generator and the regulator. If there is damage or suspected damage, or if the resistance is out of tolerance, this service information specifies replacing the wire terminal. This service information also specifies performing the visual inspection and resistance measurement each time the starter generator is removed or the wiring is disconnected until a retrofit ground connection is installed.

Eurocopter also issued Eurocopter Flight Manual BK117 A–3 Temporary Revision 9, Eurocopter Flight Manual BK117 A–4 Temporary Revision 5, Eurocopter Flight Manual BK117 B–1 Temporary Revision 6, Eurocopter Flight Manual BK 117 B–2 Temporary Revision 1, and Eurocopter Flight Manual BK 117 C–1 Temporary Revision 2, all dated September 22, 2006, to provide updated procedures in the event of a generator failure.

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

Eurocopter (now Airbus Helicopters) issued Service Bulletin (SB) No. SB BO105–90–104, Revision 1, dated June 21, 2010, for certain Model BO105 helicopters. This service information specifies procedures for installing a retrofit ground connection of the starter-generator for certain Model BO105 helicopters.

Eurocopter issued ASB No. ASB–BO 105–80–118, Revision 1, dated November 29, 1995, and SB No. SB–BO105–80–119, dated November 7, 1994, both for certain Model BO105 helicopters. This service information specifies retrofitting certain helicopters with voltage regulators that incorporate overvoltage protection by modifying the main relay box, modifying the overhead panel, and performing a functional test.

Eurocopter issued Information Notice No. 2370–I–24, Revision 0, dated November 15, 2011, for certain Model BO105 helicopters to provide notice that a modified starter-generator may only be installed on helicopters that have also been modified. This service information states that combining modified with non-modified can cause overvoltage in the electrical system during the first ground run following engine replacement and subsequent damage to electronic equipment. This service information also recommends retrofitting all helicopters approved to only fly under visual flight rules.

Proposed AD Requirements

This proposed AD would require, within 50 hours time-in-service (TIS), visually inspecting the electrical ground connection of each starter-generator and measuring the resistance between each starter-generator and its regulator. Depending on these outcomes, this proposed AD would require replacing the wire terminal. Within 150 hours TIS, this proposed AD would require installing a wire harness retrofit.

For Model MBB–BK 117 helicopters, this proposed AD would also require revising the RFM for your helicopter.

Differences Between This Proposed AD and the EASA ADs

The EASA ADs require visually inspecting the wire terminals for damage, corrosion, and cracks. This proposed AD would require visually inspecting for a crack, a kink, fraying, looseness, missing material, and corrosion.

The EASA ADs require repeating the visual inspection and resistance measurement each time a starter-generator is removed or the wiring is disconnected from a starter-generator. This proposed AD would not because such a compliance time would be difficult to enforce.

EASA AD 2015–0220 requires additional actions for Model BO–105 helicopters with a serial number up to 0160 than for helicopters with a serial number 0161 and larger. This proposed AD would require the same actions for all Model BO–105 helicopters regardless of serial number.

EASA AD 2015–0220 allows credit for complying with Eurocopter ASB No. ASB BO105–90–103, Revision 2 or Revision 3, whereas this proposed AD would not.

Costs of Compliance

The FAA estimates that this proposed AD affects 40 Model BO–105 helicopters and 44 Model MBB–BK 117 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD using an estimated labor cost of $85 per work-hour.

Performing a visual inspection and resistance measurement of the electrical ground connection would take about 2 work-hours for an estimated cost of $170 per helicopter and $14,280 for the U.S. fleet per inspection and measurement.

Performing the retrofit of the wiring harness would take about 10 work-hours. Required parts for a Model BO–105 helicopter would cost $2,509 for an estimated replacement cost of $3,359 per helicopter and $134,360 for the U.S. fleet. Required parts for a Model MBB–BK 117 helicopter would cost $1,730 for an estimated replacement cost of $2,580 per helicopter and $113,520 for the U.S. fleet. Revising the RFM for Model MBB–BK 117 helicopters would take about 0.5 work-hour, for an estimated cost of $43 per helicopter and $1,892 for the U.S. fleet.

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, I certify this proposed regulation:

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

2. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH (Type Certificate Previously Held by Eurocopter Deutschland GmbH): Docket No. FAA–2015–4497; Product Identifier 2016–SW–011–AD.

(a) Applicability

This AD applies to the following Airbus Helicopters Deutschland GmbH (Type Certificate previously held by Eurocopter Deutschland GmbH) helicopters, certificated in any category:

(1) Model BO–105A, BO–105C, and BO–105S helicopters with a voltage regulator part number (P/N) 51565–000, 51565–000R, or 51509–002R installed; and

(2) Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters.

(b) Unsafe Condition

This AD defines the unsafe condition as loss of electrical ground between the starter-generator and the generator voltage regulator (regulator). This condition could result in an overvoltage of electrical power, damage to electronic equipment, and subsequent loss of control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by September 14, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 50 hours time-in-service (TIS):

(i) Visually inspect the wire terminal of wire P55F16N/P56F16N for Model BO–105A, BO–105C, and BO–105S helicopters and wire 1PA53B20/2PA53B20 for Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters on Terminal E of each starter-generator for a crack, a kink, fraying, looseness, missing material, and corrosion. If there is a crack, a kink, fraying, looseness, missing material, or any corrosion, before further flight, replace the wire terminal.

(ii) Measure the resistance between each starter-generator and its regulator in accordance with the Accomplishment Instructions, paragraph 2.A.2.3. of Eurocopter ASB No. ASB BO105–90–103, Revision 4, dated June 21, 2010, or paragraphs 2.A.2.3. and 2.A.2.5. of Eurocopter ASB No. ASB–MBB–BK117–90–118, Revision 2, dated May 4, 2009, as applicable to your model helicopter. If the resistance is more than 500 milliohms, before further flight, replace the wire terminal.

(2) Within 150 hours TIS:

(i) Install a wire harness from each generator voltage regulator as follows.

(A) For Model BO–105A, BO–105C, and BO–105S helicopters: wire harness P/N 105–90081.

(B) For Model MBB–BK 117 A–1, MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, and MBB–BK 117 B–2 helicopters: wire harness P/N 117–901941.

(C) For Model MBB–BK 117 C–1 helicopters: wire harness P/N 117–901961.

(ii) For Model MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters, revise the Rotorcraft Flight Manual (RFM) for your helicopter to include the information in Section 3 Emergency and Malfunction Procedures of the following temporary revisions, as applicable to your helicopter: Eurocopter Flight Manual BK117 A–3 Temporary Revision 9, Eurocopter Flight Manual BK117 A–4 Temporary Revision 5, Eurocopter Flight Manual BK117 B–1 Temporary Revision 6, Eurocopter Flight Manual BK 117 B–2 Temporary Revision 1, or Eurocopter Flight Manual BK 117 C–1 Temporary Revision 2, all dated September 22, 2006. Using a later RFM revision with information identical to that contained in the temporary revision specified for your helicopter is acceptable for compliance with the requirement of this paragraph.

(iii) For Model MBB–BK 117 A–1 helicopters, revise Section 3 Emergency and Malfunction Procedures of the RFM for your helicopter to include the information in Figures 1 through 3 to paragraph (e)(2)(iii) of this AD.

BILLING CODE 4910–13–P

CAUTION LIGHT INDICATIONS

GEN I or **GEN II**

Conditions/Indications

Affected generator has failed or is disconnected from the power distribution system.

Procedure

1. BUS-TIE switch position – Check

If BUS–TIE in position OFF:

2. Electrical short circuit procedure – Perform (refer to para 3.6.1)

If voltage is out of normal range (> 30 V):

2. Generator overvoltage procedure – Perform (refer to para 3.6.1.a)

If BUS–TIE in position NORM:

2. Affected GENERATOR switch – RESET, then ON

GEN caution light remains on

3. Relevant GENERATOR sw – OFF
4. GEN TRIP switch (to trip generator) – Relevant position (I or II), then release
5. AMM SEL switch – Select normal generator
6. Ammeter and voltmeter – Monitor

NOTE One generator alone will provide sufficient power for normal services.

Figure 1 to Paragraph (e)(2)(iii)

CAUTION LIGHT INDICATIONS

GEN I and **GEN II**

Conditions/Indications

Both generators have failed or are disconnected from the power distribution system.

Procedure

1. GENERATOR 1 switch – RESET, then ON
2. Ammeter and voltmeter – Check
3. GENERATOR 1 switch – OFF
4. GENERATOR 2 switch – RESET, then ON
5. Ammeter and voltmeter – Check
6. GENERATOR 2 switch – OFF

If voltage is out of normal range (> 30 V):

7. Generator overvoltage procedure – Perform (refer to para 3.6.1.a)

If voltage is in normal range:

8. Both GENERATOR switches – RESET, then ON

If one GEN caution light remains on:

9. Respective GENERATOR switch – OFF
10. GEN TRIP switch – Respective position (I or II), then release

If both GEN caution light remain on:

11. GEN TRIP switch – Position I and II, then release
12. PWR SELECT switch – OFF

Battery supplies **both flight essential busses.**

NOTE If, in addition, both main busses are necessary, both BUS-TIE switches can be set to NORM and PWR SELECT switch to BAT. Then the battery supplies **both flight essential busses and also both main busses.** In this case battery will be discharged at a high rate.

13. AMM SEL switch – BAT

Figure 2 to Paragraph (e)(2)(iii)

14. Ammeter and voltmeter – Monitor

15. LAND AS SOON AS PRACTICABLE

Residual Battery Endurance					
Continuous load [A]	15	20	25	30	40
Time [min]	60	45	35	30	22
NOTE Calculations are based on an assumed minimum battery capacity of 15 Ah. Times include 10 minutes landing light operation and 10 minutes radio transmission.					
WARNING TOTAL ELECTRICAL FAILURE WILL LIMIT FUEL AVAILABLE TO QUANTITY CONTAINED IN SUPPLY TANKS AT TIME OF FAILURE AND THUS RESIDUAL FLIGHT TIME.					

Figure 2 to Paragraph (e)(2)(iii) (continued)

3.6. **SYSTEM EMERGENCY/MALFUNCTION CONDITIONS**

3.6.1. **Electrical Short Circuit - Generator System I Cutoff**

Conditions/Indications

– Short circuit on main bus No. I or on feeder line between generator No. I and main bus No. I or between main bus No. I and battery relay

– Power supply is interrupted to main bus No. I and battery

– Power supply is guaranteed to main bus No. II, flight essential bus No. II and to non–essential bus by generator No. II and to flight – essential bus No. I by battery.

– **GEN I** caution light on

– **BAT DISCH** warning light

– **BUS-TIE** switch OFF

– Failure of equipment powered by affected busses

Procedure

1. GENERATOR I switch – OFF
2. GEN TRIP switch – Position I, then release
3. AMM SEL switch – BAT
4. Electrical consumption on No. I FLT ESS BUS – Reduce
5. Ammeter and voltmeter – Monitor
6. LAND AS SOON AS PRACTICABLE

NOTE One generator alone will provide sufficient power for normal services.

3.6.1.a **Generator overvoltage**

Conditions/Indications

– Voltmeter indication > 30 V

– **GEN I** or **GEN II** caution light on

Procedure

1. Generator with high voltage – OFF (not to be used again)
2. Other generator – RESET, then ON
3. Ammeter and voltmeter – Monitor
4. GEN TRIP switch – Position (I or II), then release
5. AMM SEL switch – Select normal generator
6. LAND AS SOON AS PRACTICABLE

NOTE One generator alone will provide sufficient power for normal services

Figure 3 to Paragraph (e)(2)(iii)

BILLING CODE 4910–13–C

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) The following documents, which are not incorporated by reference, contain additional information about the subject of this AD: Eurocopter ASB No. ASB–BO 105–80–118, Revision 1, dated November 29, 1995; Eurocopter Information Notice No. 2370–I–24, Revision 0, dated November 15, 2011; Eurocopter SB No. SB–BO105–80–119, dated November 7, 1994; and Eurocopter SB No. SB BO105–90–104, Revision 1, dated June 21, 2010. For Airbus Helicopters and Eurocopter service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or *https://www.airbus.com/helicopters/services/technical-support.html.* You may view a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2015–0098, dated June 2, 2015, and EASA AD No. 2015–0220, dated November 9, 2015. You may view the EASA ADs on the internet at *https://www.regulations.gov* in Docket No. FAA–2015–4497.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2497, Electrical Power System Wiring.

Issued on July 10, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15313 Filed 7–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0652; Product Identifier 2019–SW–066–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. This proposed AD would require inspecting the main rotor (M/R) hub assembly (hub) phonic wheel lock washer (lock washer) for correct installation and depending on the outcome, repairing or replacing the M/R hub. This proposed AD was prompted by reported occurrences of M/R revolutions per minute (''NR'') sensor fluctuations. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 31, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2020–0652; 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 proposed AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, 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 service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

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 Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2019–0172, dated July 18, 2019, to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) Model AS 332 C, AS 332 C1, AS 332 L, and AS 332 L1 helicopters with M/R hub part number 332A31–0001–00, P/N 332A31–0001–01, P/N 332A31–0001–02, P/N 332A31–0001–03, P/N 332A31–0001–04, P/N 332A31–0001–05, or P/N 332A31–0001–06 installed. EASA advises of reported occurrences of ''NR'' sensor fluctuation and subsequent investigation identifying incorrect positioning of the M/R hub phonic wheel due to incorrect installation of the M/R mast nut press screws during maintenance of the M/R hubs. The investigation also determined that this incorrect installation can be identified by inspecting the lock washer position. EASA advises that this condition, if not detected and corrected, could lead to failure of M/R hub components, possibly resulting in loss of helicopter control.

Accordingly, the EASA AD requires a one-time inspection of the lock washer position and depending on findings, replacing the M/R hub.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. AS332–62.00.76, Revision 0, dated May 27, 2019, for civilian Model AS332C, C1, L, and L1 and military Model AS332B, B1, F1, M, and M1 helicopters. This service information specifies inspecting the position of the M/R hub lock washer.

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.

Proposed AD Requirements

This proposed AD would require, within 55 hours time-in-service, removing at least one ''NR'' sensor and borescope inspecting for the correct height of the lock washer through the hole of the removed ''NR'' sensor. This proposed AD would then require installing an ''NR'' sensor(s), and if the lock washer height is not correct, also repairing or replacing the M/R hub with an airworthy M/R hub.

This proposed AD would also prohibit the installation of an affected M/R hub unless it has successfully passed the required inspection for correct lock washer installation.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires using a flashlight and visually inspecting the position of the lock washer, and further specifies that using an endoscope can facilitate that inspection. This proposed AD would require borescope inspecting for the correct height of the lock washer instead. After inspecting, the EASA AD requires reinstalling the removed ''NR'' sensor(s), while this proposed AD would require installing airworthy ''NR'' sensor(s) instead. If the lock washer is in an incorrect position, the EASA AD requires replacing the M/R hub, whereas this proposed AD would require repairing or replacing the M/R hub with an airworthy M/R hub instead.

Costs of Compliance

The FAA estimates that this proposed AD affects 11 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Removing an ''NR'' sensor and borescope inspecting would take about 0.5 work-hour for an estimated cost of $43 per helicopter and $473 for the U.S. fleet.

Repairing the M/R hub would take about 10 work-hours and parts would cost up to about $3,000 for an estimated cost of up to $3,850 and replacing the M/R hub would take about 8 work-hours and parts would cost about $50,000 for an estimated cost of $50,680.

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, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2020–0652; Product Identifier 2019–SW–066–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, certificated in any category, with a main rotor (M/R) hub assembly (hub) part number (P/N) 332A31–0001–00, 332A31–0001–01, 332A31–0001–02, 332A31–0001–03, 332A31–0001–04, 332A31–0001–05, or 332A31–0001–06 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrect assembly of the M/R hub. This condition could result in failure of the M/R hub components and subsequent loss of control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by August 31, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 55 hours time-in-service, remove at least one M/R revolutions per minute (''NR'') sensor and borescope inspect the phonic wheel lock washer (lock washer) for correct height of the lock washer (if the installation is correct, you can see the edge of the splines) through the hole of the removed ''NR'' sensor(s) as shown in Figure 1 to Airbus Helicopters Alert Service Bulletin No. AS332–62.00.76, Revision 0, dated May 27, 2019.

(i) If the height of the lock washer is correct, before further flight, install the ''NR'' sensor(s).

(ii) If the height of the lock washer is not correct, before further flight, install the ''NR'' sensor(s) and repair or replace the M/R hub in accordance with FAA-approved procedures.

(2) As of the effective date of this AD, do not install M/R hub P/N 332A31–0001–00, 332A31–0001–01, 332A31–0001–02, 332A31–0001–03, 332A31–0001–04, 332A31–0001–05, or 332A31–0001–06 on any helicopter unless the actions of paragraph (e)(1) of this AD have been accomplished.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) No. 2019–0172, dated July 18, 2019. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6230, Main Rotor Mast/Swashplate.

Issued on July 10, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15329 Filed 7–15–20; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 323

[3084–AB64]

Made in USA Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') seeks comment on this Notice of Proposed Rulemaking (''NPRM'') related to ''Made in USA'' and other unqualified U.S.-origin claims on product labels.

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

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''MUSA Rulemaking, Matter No. P074204'' on your comment, and file your comment online through *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''MUSA Rulemaking, Matter No. P074204'' on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex C), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Julia Solomon Ensor (202–326–2377) or Hampton Newsome (202–326–2889), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Since at least 1940,[1] the Commission has pursued enforcement actions to prevent unfair and deceptive ''Made in USA'' and other U.S.-origin claims (''MUSA claims''). Currently, the Commission's comprehensive MUSA program consists of compliance monitoring, counseling, and targeted enforcement pursuant to the FTC's general authority under Section 5 of the FTC Act, 15 U.S.C. 45.[2] However, Congress has also granted the FTC authority to address MUSA labeling, including rulemaking authority, under a separate statute, 15 U.S.C. 45a.[3] To date, the Commission has not exercised its rulemaking authority under that provision.

Recently, the FTC held a public workshop and collected public comments in support of a review of its

[1] *See, e.g., Vulcan Lamp Works, Inc.,* 32 F.T.C. 7 (1940).

[2] Section 5 prohibits unfair or deceptive acts or practices in or affecting commerce. An act or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material—that is, likely to affect a consumer's decision to purchase or use the advertised product or service. A claim need not mislead all—or even most—consumers to be deceptive under the FTC Act. Rather, it need only be likely to deceive some consumers acting reasonably. *See FTC Policy Statement on Deception,* 103 F.T.C. 174 (1984) (*appended to Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 177 n.20 (1984) (''A material practice that misleads a significant minority of reasonable consumers is deceptive.''); *see also FTC* v. *Stefanchik,* 559 F.3d 924, 929 (9th Cir. 2009) (''The FTC was not required to show that all consumers were deceived . . . .'').

[3] *See* Section 320933 of the Violent Crime and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796, codified in relevant part at 15 U.S.C. 45a. Under the statute, the Commission may issue a rule pursuant to 5 U.S.C. 553. Section 45a also states that: ''This section shall be effective upon publication in the **Federal Register** of a Notice of the provisions of this section.'' The Commission published such a notice in 1995 (60 FR 13158 (Mar. 10, 1995)).

MUSA program.[4] Workshop participants and commenters discussed a variety of issues, including consumer perception of MUSA claims, concerns about the FTC's current enforcement approach, and potential changes to the FTC's MUSA program, including through rulemaking. During that proceeding, stakeholders expressed nearly universal support for the Commission to exercise authority pursuant to 15 U.S.C. 45a to issue a rule addressing MUSA claims. Commenters argued such a rule could have a strong deterrent effect against unlawful MUSA claims without imposing new burdens on law-abiding companies.[5]

For 80 years, the Commission has pursued enforcement actions that have established the principle that unqualified MUSA claims imply no more than a *de minimis* amount of the product is of foreign origin.[6] In 1997, following consumer research and public comments, the Commission published its *Enforcement Policy Statement on U.S. Origin Claims* (''Policy Statement''), elaborating that a marketer making an unqualified claim for its product should, at the time of the representation, have a reasonable basis for asserting that ''all or virtually all'' [7] of the product is made in the United States.[8] The Commission has routinely applied this standard in its MUSA Decisions and Orders since 1997. Specifically, during that time the Commission issued 24 administrative Decisions and Orders, and entered into four federal court settlements [9] enforcing the ''all or virtually all'' standard.[10] Therefore, to deter deceptive claims, enhance the Commission's ability to obtain appropriate relief for consumers, and provide additional certainty to marketers on the Commission's enforcement approach, the Commission now proposes a MUSA Labeling Rule incorporating this established standard pursuant to its rulemaking authority under 15 U.S.C. 45a.

II. Proposed Rule

Section 45a grants the Commission authority to issue rules to prevent unfair or deceptive acts or practices relating to MUSA labeling.[11] Specifically, the Commission ''may from time to time issue rules pursuant to section 553 of title 5, United States Code'' requiring MUSA labeling to ''be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 5 of the [FTC] Act.'' The FTC may seek civil penalties for violations of such rules.[12]

Consistent with these statutory provisions, the NPRM covers labels on products that make unqualified MUSA claims. It tracks the Commission's previous MUSA Decisions and Orders by prohibiting marketers from including unqualified MUSA claims on labels unless: (1) Final assembly or processing of the product occurs in the United States, (2) all significant processing that goes into the product occurs in the United States, and (3) all or virtually all ingredients or components of the product are made and sourced in the United States. The NPRM also covers labels making unqualified MUSA claims appearing in mail order catalogs or mail order advertising.

To avoid confusion or perceived conflict with other country-of-origin labeling laws and regulations, the NPRM specifies that it does not supersede, alter, or affect any other federal or state statute or regulation relating to country-of-origin labels, except to the extent that a state country-of-origin statute, regulation, order, or interpretation is inconsistent with the NPRM. The Commission invites comment on whether the NPRM conflicts with any state country-of-origin labeling requirements.

III. Request for Comment

The Commission seeks comments on any aspect of the NPRM. You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 14, 2020. Write ''MUSA Rulemaking, Matter No. P074204'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website, by following the instruction on the web-based form provided.

If you file your comment on paper, write ''MUSA Rulemaking, Matter No. P074204'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex C), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In

[4] *See https://www.ftc.gov/news-events/events-calendar/made-usa-ftc-workshop.*

[5] *See generally* Transcript of Made in USA: An FTC Workshop (Sept. 26, 2019) at 63–72.

[6] *See, e.g., Vulcan Lamp Works, Inc.,* 32 F.T.C. 7 (1940); *Windsor Pen Corp.,* 64 F.T.C. 454 (1964) (articulating this standard as a ''wholly of domestic origin'' standard).

[7] The Commission first used the ''all or virtually all'' language in the cases of *Hyde Athletic Industries,* File No. 922–3236 (consent agreement accepted subject to public comment Sept. 20, 1994) and *New Balance Athletic Shoes, Inc.,* Docket 9268 (complaint issued Sept. 20, 1994). In the 1997 **Federal Register** Notice requesting public comment on Proposed Guides for the Use of U.S. Origin Claims, the Commission explained that the ''all or virtually all'' standard merely rearticulated longstanding principles governing MUSA claims. FTC, *Request for Public Comment on Proposed Guides for the use of U.S. Origin Claims,* 62 FR 25020 (May 7, 1997).

[8] FTC, *Issuance of Enforcement Policy Statement on ''Made in USA'' and Other U.S. Origin Claims,* 62 FR 63756, 63766 (Dec. 2, 1997). The Policy Statement also provides broad guidance on how the Commission applies Section 5 of the FTC Act to such claims in advertising and labeling. For example, the Policy Statement explains that, in examining MUSA claims under the ''all or virtually all'' standard, the Commission considers several different factors including the proportion of the product's total manufacturing costs attributable to U.S. parts and processing, how far removed any foreign content is from the finished product, and the importance of the foreign content or processing to the product's overall function. *Id.* For additional information, see *http://business.ftc.gov/advertising-and-marketing/made-usa.*

[9] This includes two *de novo* settlements and two civil penalty settlements for violations of administrative consent orders filed by the Department of Justice at the FTC's request.

[10] *See generally* FTC, Compilation of MUSA Cases, *https://www.ftc.gov/tips-advice/business-center/advertising-and-marketing/made-in-usa.*

[11] *See supra* n.3.

[12] The statute provides that violations of any rule promulgated pursuant to the Section ''shall be treated by the Commission as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices.'' For violations of rules issued pursuant to 15 U.S.C. 57a, the Commission may commence civil actions to recover civil penalties. *See* 15 U.S.C. 45(m)(1)(A).

addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this Notice of Proposed Rulemaking and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 14, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

IV. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* requires federal agencies to seek and obtain Office of Management and Budget (''OMB'') approval before undertaking a collection of information directed to ten or more persons. The NPRM does not contain information collection requirements that the OMB must approve under the PRA.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.[13] The Commission recognizes some affected entities may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that this NPRM, if adopted, would have the threshold impact on small entities for two reasons. First, the NPRM includes no new barriers to making claims, such as reporting or approval requirements. Second, the proposed Rule merely codifies standards established in FTC enforcement Decisions and Orders for more than 20 years. Therefore, the NPRM imposes no new burdens on law-abiding businesses.

This document serves as notification to the Small Business Administration of the agency's certification of no effect. Although the Commission certifies under the RFA that the NPRM would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined it is appropriate to publish an IRFA to inquire into the impact of the NPRM on small entities. The Commission invites comment on the burden on any small entities that would be covered and has prepared the following analysis:

1. Reasons for the NPRM

The Commission proposes the Made in USA Labeling Rule for two primary reasons: To strengthen its enforcement program and make it easier for businesses to understand and comply with the law. Specifically, by codifying the existing standards applicable to MUSA claims in a rule as authorized by Congress, the FTC will be able to provide more certainty to marketers about the standard for making unqualified claims on product labels. In addition, enactment of the NPRM will enhance deterrence by authorizing civil penalties against those making unlawful MUSA claims on product labels.

2. Statement of Objectives and Legal Basis

The objective of the NPRM is to prevent deceptive MUSA claims on product labels. The legal basis for the Rule is the Made in USA provisions of the Violent Crime Control and Law Enforcement Act of 1994, codified in relevant part at 15 U.S.C. 45a.[14]

3. Description and Estimated Number of Small Entities To Which the Rule Will Apply

The Small Business Administration estimates that in 2018 there were 30.2 million small businesses in the United States. The NPRM will apply to small businesses that make MUSA claims on product labels. The Commission seeks comment and information regarding the estimated number or nature of small business entities for which the NPRM would have a significant economic impact.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The NPRM imposes no affirmative reporting or recordkeeping requirements. The NPRM's compliance requirements, consistent with the Policy Statement and longstanding Commission case law, require that marketers may not use unqualified U.S.-origin claims on product labels unless final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States. The NPRM codifies the standard for MUSA claims established in Commission Decisions and Orders, and no new obligations are anticipated.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Although there are other federal statutes, rules, or policies relating to country of origin labeling, the Commission has not identified any duplication, overlap, or conflict with the NPRM. The Commission invites comment and information on this issue.

6. Discussion of Significant Alternatives

The Commission seeks comment and information on the need, if any, for alternative compliance methods that would, consistent with the statutory requirements, reduce the economic impact of the NPRM on small entities. For example, the Commission is currently unaware of the need to adopt any special provisions for small entities. However, if such issues are identified, the Commission could consider alternative approaches. Nonetheless, if the comments filed in response to this notice identify small entities that are affected by the NPRM, as well as alternative methods of compliance that would reduce the economic impact of the NPRM on such entities, the Commission will consider the feasibility of such alternatives and determine

[13] 5 U.S.C. 603–605.

[14] Per its terms, 15 U.S.C. 45a was effective upon its publication in the **Federal Register** on March 10, 1995. *See* 60 FR 13158.

whether they should be incorporated into the final rule.

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VII. Proposed Rule Language

List of Subjects in 16 CFR Part 323

Labeling, U.S. origin.

For the reasons stated in the preamble, the Federal Trade Commission proposes to add part 323 to subchapter C, title 16 CFR as set forth below:

PART 323—MADE IN USA LABELING

Sec.
323.1 Definitions.
323.2 Prohibited acts.
323.3 Applicability to mail order advertising.
323.4 Enforcement.
323.5 Relation to Federal and State laws.

Authority: 15 U.S.C. 45a.

§ 323.1 Definitions.

As used in this part:

(a) The term *Made in the United States* means any unqualified representation, express or implied, that a product or service, or a specified component thereof, is of U.S. origin, including, but not limited to, a representation that such product or service is ''made,'' ''manufactured,'' ''built,'' ''produced,'' ''created,'' or ''crafted'' in the United States or in America, or any other unqualified U.S.-origin claim.

(b) The terms *mail order catalog* and *mail order promotional material* mean any materials, used in the direct sale or direct offering for sale of any product or service, that are disseminated in print or by electronic means, and that solicit the purchase of such product or service by mail, telephone, electronic mail, or some other method without examining the actual product purchased.

§ 323.2 Prohibited acts.

In connection with promoting or offering for sale any good or service, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act to label any product as Made in the United States unless the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States.

§ 323.3 Applicability to mail order advertising.

To the extent that any mail order catalog or mail order promotional material includes a seal, mark, tag, or stamp labeling a product Made in the United States, such label must comply with § 323.2 of this part.

§ 323.4 Enforcement.

Any violation of this part shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices.

§ 323.5 Relation to Federal and State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any other federal statute or regulation relating to country-of-origin labeling requirements. In addition, this part shall not be construed as superseding, altering, or affecting any other State statute, regulation, order, or interpretation relating to country-of-origin labeling requirements, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Commission on its own motion or upon the petition of any interested party.

By direction of the Commission,

April J. Tabor,

Secretary.

[FR Doc. 2020–13902 Filed 7–15–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 401

[Docket No. FR 6122–P–01]

RIN 2577–AJ48

Rent Adjustments in the Mark-to-Market Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Under the Mark-to-Market program, HUD preserves the affordability of eligible multifamily housing projects by modifying above-market rents while restructuring project debt to an amount supportable by the modified rents. This proposed rule would revise the Mark-to-Market program regulations to clarify that all annual rent adjustments for projects subject to a restructuring plan are by application of an operating cost adjustment factor (OCAF) established by HUD. The current regulations contain a provision authorizing HUD to approve a request for a budget-based rent adjustment in lieu of an OCAF. However, this provision is both contrary to the governing statutory framework and inconsistent with Mark-to-Market renewal contracts, which allow only OCAF rent adjustments. The proposed rule would conform the regulations to the governing statutory provision, the terms of Mark-to-Market renewal contracts, and the programmatic practice of adjusting rents annually only by OCAF.

DATES: *Comment Due Date:* September 14, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.* To receive consideration as public comments, comments must be submitted through one of two methods, specified below. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the

public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Thomas R. Davis, Director, Office of Recapitalization, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6106, Washington, DC 20410; telephone number 202–402–7549. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. History

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of Pub. L. 105–65, approved October 27, 1997 and codified at 42 U.S.C. 1437f note) (MAHRA) authorizes the Mark-to-Market program, which is designed to preserve low-income rental housing affordability while reducing the long-term costs of federal rental assistance. Under the program, multifamily housing projects with above-market rents that are subject to an expiring contract under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (Section 8) undergo both a restructuring of the project's HUD-insured or HUD-held debt and an initial renewal of its Section 8 contract so that a new first loan is serviceable based on modified rents.

The renewal of the Section 8 contract is governed by section 515 of MAHRA. Under section 515(a), HUD is required to offer and an owner is required to accept an initial renewal of the project's Section 8 contract if the renewal is in accordance with the terms and conditions specified in a mortgage restructuring and rental assistance sufficiency plan meeting the requirements of section 514 of MAHRA (Restructuring Plan). Under such a Restructuring Plan, the renewal rents are based on either comparable market rents, as required under section 514(g)(1) of MAHRA, or a budget, as permitted in limited circumstances under section 514(g)(2). In either case, the rents are adjusted annually by an OCAF, as required under section 514(e)(2). At the conclusion of the debt-restructuring process, HUD issues an initial renewal contract (Mark-to-Market Renewal Contract) for a maximum 20-year term reflecting the renewal rents and requiring annual OCAF rent adjustments, and the owner executes a minimum 30-year use agreement, as required under section 514(e)(6). As long as the use agreement remains in place, subsequent renewals are governed by section 515(b) of MAHRA.

HUD initially implemented MAHRA through an interim rule published on September 11, 1998, at 63 FR 48926 (Interim Rule), both for projects that are subject to a Restructuring Plan (24 CFR part 401) and those that are not (24 CFR part 402). Consistent with section 514(e)(2) of MAHRA, the Interim Rule required that all projects subject to a Restructuring Plan receive annual OCAF rent adjustments (63 FR 48948). It also implemented section 524 of MAHRA, as it existed then, which authorized HUD to renew expiring Section 8 contracts for projects that were not undergoing debt-restructuring but was silent on rent adjustments. The Interim Rule reflected an administrative determination that rents for contracts renewed under section 524 would be adjusted by an OCAF but could be ''redetermined using a budget-based rent adjustment from time-to-time at the discretion of HUD'' (63 FR 48954).

HUD issued the final rule implementing MAHRA on March 22, 2000, at 65 FR 15485 (Final Rule). Approximately five months earlier, however, section 524 had undergone an extensive amendment (section 531(a) of Pub. L. 106–74, approved October 20, 1999) that expanded and refined the renewal terms for projects not subject to a Restructuring Plan. As amended, section 524 of MAHRA requires HUD to renew a project's expiring Section 8 contract at the request of the owner under one of various owner-selected options, provided that the project is eligible and the Secretary has determined that a Restructuring Plan is not necessary. The options in section 524(a) require that renewal rents not exceed market, while section 524(b)(1), which applies to a limited universe of projects identified in section 524(b)(2), prescribes a renewal rent formula unconstrained by market. Section 524(c)(1) requires annual OCAF rent adjustments but authorizes HUD to approve a budget-based rent adjustment in lieu of an OCAF. Section 524(c)(1) is explicitly limited, however, to contracts initially renewed under section 524(a), (b)(1), or (e)(2) of MAHRA. Relying on section 524(c)(1), HUD included a provision in the Final Rule (§ 401.412(b)) that had not appeared in the Interim Rule purporting to allow HUD to approve an owner's request for a budget-based rent adjustment in lieu of an OCAF for projects renewed under section 515(a) of MAHRA subject to a Restructuring Plan.

To implement section 524(c)(1) of MAHRA, which HUD then thought to have relevance for projects subject to a Restructuring Plan, the Final Rule states with respect to § 401.412, ''We . . . added a new paragraph (b) explaining the availability of budget-based adjustments upon request of the owner, subject to the approval of the Secretary, *as provided in Pub. L. 106–74*'' (emphasis added). Although the amended section 524 has no application to projects that are subject to a Restructuring Plan, HUD at that time viewed section 524 as the *subsequent* renewal authority for projects subject to a Restructuring Plan and therefore believed that a discretionary budget-based rent adjustment would have been available during the term of any subsequent renewal under section 524(a), (b)(1), or (e)(2) of MAHRA. In this regard, the preamble to the Final Rule states, ''A Restructuring Plan will provide for adjustments using OCAF under this section, but this section will not prevent HUD from offering [subsequent] renewal with rent levels higher than those resulting from OCAF rent adjustments, *if legally authorized*'' (emphasis added) (65 FR 15461). The preamble to the Final Rule further states, ''We added language . . . under which HUD . . . must offer to renew section 8 contracts as provided in a Restructuring Plan, subject to . . . the renewal authority available at the time of each contract expiration. *Section 524 of MAHRA (as amended by Pub. L. 106–74) will be the [subsequent] renewal authority*'' (emphasis added) (65 FR 15483).

After publication of the Final Rule, however, HUD determined that for the life of the minimum 30-year use agreement required under section 514(e)(6) of MAHRA, the subsequent renewal authority for projects subject to a Restructuring Plan is section 515(b) of MAHRA, not section 524, and that only after the use agreement expires and the owner requests and is granted a subsequent renewal contract under section 524(a), (b)(1), or (e)(2) of MAHRA would a discretionary budget-based rent adjustment be available in lieu of an OCAF under section 524(c)(1). This determination is reflected in Mark-to-Market Renewal Contracts, which were finalized in the year following

publication of the Final Rule and which provide for annual rent adjustments by an OCAF without any provision authorizing a budget-based rent adjustment in lieu of an OCAF. Moreover, Mark-to-Market Renewal Contracts explicitly state that no rent adjustments other than an OCAF are allowed. Consistent with these determinations, HUD's policy has been not to approve a request for a budget-based rent adjustment while a project is subject to a Restructuring Plan despite the apparent authority to do so under § 401.412(b) of the Final Rule.

Like section 515(a) of MAHRA, which it implements, § 401.554 of the Final Rule states that HUD will ''offer to renew or extend'' a Section 8 contract, as provided in a project's Restructuring Plan. Because the programmatic practice is to offer to renew rather than to extend, HUD is proposing to revise this language accordingly. In addition, HUD is proposing to remove a parenthetical phrase in § 401.554 suggesting that there may be more than one renewal authority for projects subject to a Restructuring Plan.

II. Justification for Change

HUD is proposing this regulatory change to clarify the Mark-to-Market regulatory scheme by aligning the text of § 401.412 with section 514(e)(2) of MAHRA, the terms of Mark-to-Market Renewal Contracts regarding rent adjustments, and the programmatic practice of adjusting rents annually only by an OCAF. HUD believes that removing paragraph (b) would eliminate the misperception that a budget-based rent adjustment is available for projects that are subject to a Restructuring Plan. In addition, HUD believes that removing language in § 401.554 stating that HUD will offer to ''extend'' Section 8 contracts, and other language that refers to multiple renewal authorities, would clarify these provisions.

III. Summary of Proposed Rule

HUD is proposing to remove § 401.412(b), which provides that HUD may approve a request for a budget-based rent adjustment for projects that are subject to a Restructuring Plan.

In addition, HUD is proposing to revise § 401.554 to remove the statement that HUD will ''extend'' Section 8 contracts. In keeping with the explanation above, HUD is also proposing to remove a parenthetical reference in § 401.554 to multiple renewal authorities for contracts subject to a Restructuring Plan.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would codify existing statutory interpretations of the authorities granted for the Mark-to-Market program. It does not create compliance costs, nor does it alter the underlying operation of the Mark-to-Market program. Therefore, the undersigned certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Nevertheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. HUD, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a way less burdensome to them.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule does not change any information collection requirements.

Executive Order 12612, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

This proposed rule governs statutorily required establishment and review of rent schedules and related administrative and fiscal requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

List of Subjects for 24 CFR Part 401

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 401 as follows:

PART 401—MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)

■ 1. The authority for part 401 continues to read as follows:

Authority: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437(c)(8), 1437f(t), 1437f note, and 3535(d).

■ 2. Revise § 401.412 to read as follows:

§ 401.412 Adjustment of rents based on operating cost adjustment factor (OCAF).

(a) *OCAF.* The Restructuring Plan must provide for annual adjustment of the restructured rents for project-based assistance by an OCAF determined by HUD.

(b) *Application of OCAF.* HUD will apply the OCAF to the previous year's contract rent less the portion of that rent paid for debt service. This paragraph applies to renewals of contracts that receive restructured rents under either section 514(g)(1) or (2) of MAHRA.

■ 3. Revise § 401.554 to read as follows:

§ 401.554 Contract renewal and administration.

HUD will offer to renew section 8 contracts as provided in each Restructuring Plan, subject to the availability of appropriations and subject to the renewal authority

available at the time of each contract expiration. The offer will be made by HUD directly or through a PAE that has contracted with HUD to be a contract administrator for such contracts. HUD will offer to any PAE that is qualified to be the section 8 contract administrator the opportunity to serve as the section 8 contract administrator for a project restructured under a Restructuring Plan developed by the PAE under the Mark-to-Market Program. Qualifications will be determined under both statutory requirements and requirements issued by the appropriate office within HUD, depending on the type of section 8 assistance that is provided.

Brian D. Montgomery,

Deputy Secretary.

[FR Doc. 2020–14436 Filed 7–15–20; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 56

[Docket ID: DOD–2016–OS–0115]

RIN 0790–AJ04

Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DoD and in Equal Access to Information and Communication Technology Used by DoD, and Procedures for Resolving Complaints

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing to amend its regulations prohibiting unlawful discrimination on the basis of disability in programs or activities receiving Federal financial assistance from, or conducted by, DoD. These revisions update and clarify the obligations that section 504 of the Rehabilitation Act imposes on recipients of Federal financial assistance and DoD Components, in order to incorporate current statutory provisions, requirements from judicial decisions, and comparable provisions implementing title II of the Americans with Disabilities Act (ADA). The regulation is further revised to implement section 508 of the Rehabilitation Act, as applicable to the DoD Components, in order to provide policy concerning accessibility of DoD information and communication technology. Additionally, the regulation provides the procedures pursuant to sections 504 or 508 of the Rehabilitation Act.

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

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Randy Cooper, 703–571–9327.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice of Proposed Rulemaking (''NPRM'') proposes to amend 32 CFR part 56, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense'' by updating the nondiscrimination obligations that section 504 imposes on recipients of Federal financial assistance and DoD Components; modifying this rule to include the obligations that section 508 imposes on DoD Components; and clarifying the complaint resolution procedures applicable to allegations of noncompliance.

Congress enacted section 504 to prohibit discrimination on the basis of disability in federally assisted and federally conducted programs or activities. Executive Order 11914, ''Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs,'' authorized the then Department of Health, Education, and Welfare (HEW) to coordinate enforcement of section 504. This authority was later transferred to the Department of Health and Human Services. On November 2, 1980, this authority was transferred to the Attorney General by Executive Order 12250, ''Leadership and Coordination of Nondiscrimination Laws'' (45 FR 72995). On August 11, 1981, the Department of Justice (DOJ) promulgated a final rule, 28 CFR part 41, transferring the guidelines issued by HEW and designating them as part of the Attorney General's civil rights coordination regulations.

Consistent with the DOJ section 504 coordination regulation, on April 8, 1982, DoD promulgated 32 CFR part 56, implementing section 504 within the Department (47 FR 15124). Thirty-seven years later, there is a compelling need to clarify and update this regulation to ensure that DoD policies reflect current Federal law and policies regarding discrimination on the basis of disability.

Congress has amended certain provisions of the Rehabilitation Act of 1973, Public Law 93–112 (Sept. 26, 1973) (Rehabilitation Act), necessitating revisions to the Department's Section 504 federally conducted programs and activities regulation.[1] The Americans with Disabilities Act of 1990, Public Law 101–336 (July 26, 1990) (ADA), revised the Rehabilitation Act to include definitions of the terms ''drugs'' and ''illegal use of drugs,'' explaining that these terms were to be interpreted consistent with the principles of the Controlled Substances Act, 21 U.S.C. 801 *et seq.* See 29 U.S.C. 705(10). The ADA also amended the Rehabilitation Act to expressly exclude from coverage an individual who is currently engaging in the illegal use of drugs. See 29 U.S.C. 705(10), (20)(C). The Rehabilitation Act Amendments of 1992, Public Law 102–569 (Oct. 29, 1992) (the 1992 Amendments), adopted the use of ''person first'' language+ e by changing the term ''handicapped person'' to ''individual with a disability'' and provided that the standards applied under title I of the ADA shall apply to determinations of employment discrimination under section 504. More recently, the ADA Amendments Act of 2008 (ADA Amendments Act), Public Law 110–325 (Sept. 25, 2008), revised the meaning and interpretation of the definition of ''disability'' under section 504 to align them with the ADA. In addition, there have been significant Supreme Court decisions interpreting section 504 requirements relating to the principles of ''direct threat'' and reasonable accommodation. *See, e.g., Sch. Bd. of Nassau Cty.* v. *Arline,* 480

[1] See, *e.g.,* Public Law 99–506 (Oct. 21, 1986); Public Law 100–259 (Mar. 22, 1988); Public Law 100–630 (Nov. 7, 1988); Public Law 101–336 (July 26, 1990); Public Law 102–569 (Oct. 29, 1992); Public Law 103–382 (Oct. 20, 1994); Public Law 105–220 (Aug. 7, 1998); Public Law 107–110 (Jan. 8, 2002); Public Law 110–325 (Sept. 25, 2008); Public Law 113–128 (July 22, 2014).]

U.S. 273 (1987); *Alexander* v. *Choate,* 469 U.S. 287 (1985); *Se. Cmty. Coll.* v. *Davis,* 442 U.S. 397 (1979). Congress codified both the principle of direct threat and the requirement for reasonable modifications in title II of the ADA.

Below is a summary of some of the major additions, deletions, and modifications to the 1982 regulation implementing section 504 that are included in this proposed rule.

The DoD proposes to add a new provision at subpart D that affirmatively states the longstanding section 504 obligation to provide reasonable modifications in policies, practices, and procedures, unless those changes can be shown to pose a fundamental alteration to the program or activity or an undue financial and administrative burden. The extent of the obligation to modify policies, practices, or procedures was first enunciated by the Supreme Court in *Southeastern Community College* v. *Davis,* 442 U.S. 397 (1979). *Davis* held that while section 504 prohibits the exclusion of an otherwise qualified individual with a disability from participation in a federally funded program solely by reason of the individual's disability, section 504 does not require program or policy modifications that would fundamentally alter the nature of the provider's program.

Subsequently, in *Alexander* v. *Choate,* 469 U.S. 287 (1985), which addressed a section 504 challenge to a State policy reducing the annual number of days of inpatient hospital care covered by the State's Medicaid program, the Court implicitly acknowledged that the obligation to provide reasonable modifications could be considered as an affirmative obligation, noting, ''the question of who is 'otherwise qualified' and what actions constitute 'discrimination' under the section would seem to be two sides of a single coin; the ultimate question is the extent to which a grantee is required to make reasonable modifications in its programs for the needs of the handicapped.'' *Id.* at 299 n.19. *Alexander* also introduced the concept of undue financial and administrative burden as a limitation on the reasonable modification obligation. In responding to the petitioners' contention that any durational limitation on inpatient coverage in a State Medicaid plan is a violation of section 504, the Court stated: ''It should be obvious that the administrative costs of implementing such a regime would be well beyond the accommodations that are required under Davis.'' *Id.* at 308.

Over the past several decades, in keeping with these Supreme Court decisions, Federal courts and Federal agencies have regularly acknowledged Federal agencies' affirmative obligation to ensure that recipients of Federal funding provide reasonable modifications in programs and activities to qualified individuals with disabilities unless the recipient can demonstrate that making these modifications would fundamentally alter the program or activity or result in an undue financial and administrative burden. The Department's existing regulations include a provision requiring DoD and recipients of federal financial assistance to provide reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the DoD or the recipient of federal financial assistance can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or result in undue financial and administrative burdens.

In addition, when Congress enacted the ADA Amendments Act, it expressly provided that a covered entity need not provide a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability under the ''regarded as'' prong. ADA Amendments Act, sec. 6(a)(1). While Congress did not specifically apply this provision of the ADA Amendments Act to section 504, the DoD believes that it is equally appropriate to apply this limitation to reasonable modifications under section 504 and proposes to adopt this limitation in this regulation.

In addition, the DoD notes that the necessary reasonable modifications will vary based on the need of the individual and the impact of the modification on the DoD or the recipient of federal financial assistance.

Lastly, section 508 was enacted in 1986, and subsequent amendments and implementing regulations require Federal agencies to develop, procure, use, and maintain accessible information and communication technology and develop section 508 complaint resolution procedures.

A. Purpose

The proposed rule reaffirms that the purpose of the regulation is to establish and implement policy, assign responsibilities, and prescribe procedures to prevent unlawful discrimination on the basis of disability in programs or activities that receive Federal financial assistance from, or are conducted by, a DoD Component. Section 56.31 has also been added to establish and implement section 508 policy regarding the accessibility of DoD information and communication technology by individuals with disabilities who are Federal employees or members of the public.

B. Applicability

The proposed rule applies to DoD Components, the programs or activities conducted by DoD Components and all recipients of Federal financial assistance from any DoD Component.

C. Definitions

The proposed rule adds and updates definitions of key terms used within the text of the rule to reflect the most current Federal law and policies under both sections 504 and 508, including terms such as disability; information and communication technology; program or activity; and video remote interpreting services.

D. Prohibition Against Unlawful Discrimination

The section regarding prohibition of discrimination has been significantly updated to reflect the most current Federal statutes and regulations, as well as developments in Supreme Court jurisprudence, regarding unlawful discrimination on the basis of disability. Consistent with congressional intent, the provisions in the proposed rule are consistent with the nondiscrimination provisions in Department of Justice (DOJ) regulations implementing title II of the Americans with Disabilities Act (applicable to state and local government entities).

Title II and Section 504 are generally understood to impose similar requirements, given the similar language employed in the ADA and the Rehabilitation Act and the congressional directive that the ADA be construed to grant at least as much protection as provided by the regulations implementing the Rehabilitation Act. *See, e.g.,* 42 U.S.C. 12201(a).[2] Many of

[2] The 1992 Amendments revised the Rehabilitation Act's findings, purpose, and policy provisions to incorporate language acknowledging the discriminatory barriers faced by persons with disabilities, and recognizing that persons with disabilities have the right to ''enjoy full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society.'' 29 U.S.C. 701(a)(3) as amended. The legislative history to the 1992 Amendments states ''[t]he statement of purpose and policy is a reaffirmation of the precepts of the Americans with Disabilities Act, which has been referred to as the 20th century emancipation proclamation for individuals with disabilities. It is the Committee's intent that these principles guide the policies, practices, and procedures developed under all titles

Continued

the proposed changes are intended to conform the regulation's provisions to corresponding provisions in the title II regulation, which was updated in 2010.

Provisions were added or modified to reflect topics including relationship to other laws, self-evaluation, notice, illegal use of drugs, maintenance of accessible features, retaliation or coercion, personal devices and services, service animals, mobility devices, direct threat, program accessibility, and communications.

E. Information and Communication Technology

Generally, ''electronic and information technology,'' the statutory term used in section 508, is referred to as ''information and communication technology,'' consistent with the section 508 regulations published at 36 CFR part 1194. In the definition of ''auxiliary aids and services'' at § 56.4, however, the term ''electronic and information technology'' is used in order to provide consistency with the Title II regulatory definition at 28 CFR 35.104.

F. Responsibilities of DoD Officials

The proposed rule makes technical and conforming changes to the responsibilities of DoD officials and DoD Components to reflect changes in DoD organization structures since 1982 and the added or modified responsibilities included in other sections of the proposed rule. For example, the proposed rule adds and then specifies the responsibilities of the Chief Information Officer regarding policies and procedures related to the implementation of section 508 as section 508 did not exist in 1982.

G. Responsibilities of Recipients of Federal Financial Assistance

The proposed rule includes clarifications, updates, and technical and conforming changes relating to responsibilities of recipients of Federal financial assistance. It clarifies, for example, that a written assurance must be submitted by a recipient in accordance with this proposed rule or the DoD Grant and Agreement Regulations (DoDGARs) issued by the Under Secretary of Defense for Research and Engineering (R&E). The clarification reduces burdens on recipients subject to DoDGARS.

H. Assurance and Compliance Information and Procedures

The proposed rule includes clarifications, updates, and technical and conforming changes to the policies and procedures applicable to ''Assurances by Recipients and Compliance Information and Procedures Applicable to Recipients.'' For example, provisions specify that the assurance must meet the requirements of this rule or DoD Grant and Agreement Regulations (DoDGARs) issued by the Under Secretary of Defense for Research and Engineering (R&E). This provision was included to avoid undue burden on recipients that are subject to DoDGARS. The provisions in the proposed rule regarding compliance information and procedures have been clarified and updated to reflect current approaches regarding: securing compliance, including voluntary compliance; conducting periodic compliance reviews; and requests for information from and reports by recipients.

I. Complaint Resolution and Enforcement Procedures Applicable to Recipients of Federal Financial Assistance

The proposed rule includes clarifications, updates, and technical and conforming changes relating to ''Complaint Resolution and Enforcement Procedures Applicable to Recipients.'' For example, under the ''applicability'' provision, the proposed rule clarifies that complaints concerning employment against DoD Components must be processed in accordance with procedures established by the Equal Employment Opportunity Commission, and not procedures specified in this proposed rule.

Additional modifications include who may file a complaint; content of complaints; maintenance of a log; evaluation of complaints (including the addition of criteria for determining good cause for rejecting the sufficiency of a complaint); pre-investigation mediation; investigation of complaints; preliminary findings and decisions; recommended administrative action; and enforcement. Also, the proposed rule includes provisions governing coordination with other agencies.

J. Complaint Resolution and Enforcement Procedures Applicable to Programs and Activities Conducted by DoD Components

The proposed rule includes updates, clarifications, and technical and conforming changes relating to ''Complaint Resolution and Enforcement Procedures Applicable to DoD Components.'' For example, it clarifies that these complaint resolution procedures do not apply to allegations of employment discrimination, which are subject to other procedures applicable to DoD and other Federal agencies. Also, the procedures apply to section 508 complaints in addition to section 504 complaints.

Additional clarifications and updates relate to who may file a complaint; filing of informal complaints; when and how to file complaints; acceptance of complaints; maintenance of a log; determining which complaints to investigate; reports of investigations; voluntary compliance; final administrative decisions; and coordination with other agencies. Further, clarifications are included regarding the conduct of compliance reviews and the submission of compliance reports.

II. Authority for This Regulatory Action

Title 29, United States Code. Chapter 16, subchapter V, sections 794 through 794d, codifies legislation prohibiting discrimination on the basis of disability under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Federal agency, including provisions establishing the United States Access Board and requiring Federal agencies to ensure that information and communication technology is accessible to and usable by individuals with disabilities.

Title 28, Code of Federal Regulations, Part 41 implements Executive Order 12250, which assigns the Department of Justice responsibility to coordinate implementation of section 504 of the Rehabilitation Act.

III. Expected Impact of the Proposed Rule

Finalization of this Department-wide rule will clarify the longstanding policy of the Department and do not change the Department's practices in addressing issues of discrimination. This rule updates the Department's prior regulation to include updated accessibility standards for recipients of federal financial assistance to be more user-friendly and support individuals with disabilities.

IV. Regulatory Procedures

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

Executive Orders 12866 and 13563 direct agencies to assess all cost 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

of the [Rehabilitation] Act.'' S. Rep. 102–357 at 14 (Aug. 3, 1992); H.R. Rep. 102–822 at 81 (Aug. 10, 1992).

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both cost and benefits, reducing cost, harmonizing rules, and promoting flexibility. This rule is not a significant regulatory action and has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

This rule is not expected to be an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

2 U.S.C. Ch. 25, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $141 million or more in any one years, and it will not significantly or uniquely affect small governments.

Moreover, section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Therefore, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Ch. 6)

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act because it would not if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

It has been certified that 32 CFR part 56 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by OMB and assigned four OMB Control Numbers as per OMB Form 83–C: 4040–0001 (Research and Related), 4040–0007 (Assurances-Non-Construction Programs, 4040–0010 (Project Performance Site Locations), and 4040–0013 (Disclosure of Lobbying Activities) for Standard Form series 424 (SF–424). SF–424 refers to a standard form required for use as a cover sheet for submission of pre-applications and applications and related information under discretionary programs. There are no changes expected in burden or content based on the finalization of this rule.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on State and local governments.

Executive Order 12250

Under Executive Order 12250, Executive agencies must submit regulations implementing Section 504 of the Rehabilitation Act to the Department of Justice to ensure consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance. This proposed rule has been reviewed and cleared by the Department of Justice in accordance with Executive Order 12250.

List of Subjects in 32 CFR Part 56

Administrative practice and procedure, Buildings and facilities, Civil rights, Communications, Grant programs, Individuals with disabilities, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 56 is proposed to be revised to read as follows:

PART 56—UNLAWFUL DISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM, OR CONDUCTED BY, THE DOD AND IN ACCESSIBILITY OF INFORMATION AND COMMUNICATION TECHNOLOGY

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56.19 Discrimination prohibited.
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Subpart G—Information and Communication Technology Requirements

56.26 Information and communication technology requirements.

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56.27 Responsibilities.
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56.29 Complaint resolution and enforcement procedures applicable to recipients of Federal financial assistance.
56.30 Complaint resolution and enforcement procedures applicable to programs and activities conducted by DoD components.
56.31 Complaint resolution and enforcement procedures applicable to accessibility of information and computer technology.

Authority: 29 U.S.C. 794–794d, 28 CFR part 41, Executive Order 12250.

Subpart A—General

§ 56.1 Purpose and broad coverage.

(a) *Purpose.* (1) The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in services, programs, and activities receiving Federal financial assistance, or conducted by Executive agencies or the United States Postal Service.

(2) The purpose of this part is also to implement section 508 of the

Rehabilitation Act, as amended, 29 U.S.C. 794d, which requires that when Federal departments and agencies develop, procure, maintain, or use information and communication technology, they shall ensure accessibility by individuals with disabilities who are Federal employees or applicants, or members of the public.

(b) *Broad coverage.* Consistent with the ADA Amendments Act's purpose of reinstating a broad scope of protection under both the ADA and section 504, the definition of ''disability'' in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of section 504. The primary object of attention in cases brought under section 504 should be whether the DoD and entities receiving federal financial assistance have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of ''disability.'' The question of whether an individual meets the definition of ''disability'' under this part should not demand extensive analysis.

§ 56.2 Application.

(a) Where applicable to recipients of Federal financial assistance from a DoD Component, this part applies to each recipient of Federal financial assistance from a DoD Component that provides assistance to services, programs, or activities that involve individuals with disabilities in the United States. This part also applies to each service, program, or activity receiving such assistance that involves individuals with disabilities in the United States. This part does not apply to recipients of Federal financial assistance from a DoD Component that provide assistance to services, programs, or activities outside the United States that do not involve individuals with disabilities in the United States. In addition, this part does not apply to services, programs, or activities outside the United States that receive such assistance that do not involve individuals with disabilities in the United States.

(b) Where applicable to recipients of Federal financial assistance from a DoD Component, the requirements of this part do not apply to the ultimate beneficiaries of any service, program, or activity receiving Federal financial assistance.

(c) Where applicable to services, programs, and activities conducted by a DoD Component, this part applies to all services, programs, and activities that involve individuals with disabilities in the United States. This part does not apply to services, programs, or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 56.3 Relationship to other laws.

Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 56.4 Definitions.

For purpose of this part, these terms mean the following—

2004 ADA Accessibility Guidelines (ADAAG). The requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

2010 Standards. The 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in 28 CFR 35.151.

Applicant. One who submits an application, request, or plan required to be approved by the designated DoD official or by a primary recipient, as a condition of eligibility for Federal financial assistance.

Auxiliary aids and services. Includes—

(1) Qualified interpreters on site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Award official. The DoD Component official with the authority to approve and execute assistance agreements and to take other assistance-related actions authorized by this part or related DoD regulations.

Current illegal use of drugs. Illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Department of Defense (''DoD'') component. Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

Direct threat. (1) Except as provided in paragraph (2) of this definition, a significant risk of substantial harm to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 56.11.

(2) With respect to employment as provided in § 56.15, the term as defined by the Equal Employment Opportunity Commission's regulation implementing title I of the Americans with Disabilities Act of 1990, at 29 CFR 1630.2(r).

Disability. With respect to an individual:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment, as described in 28 CFR 35.108(f).

Drug. A controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Existing facility. A facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.

Facility. All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Federal financial assistance. Any grant, cooperative agreement, loan,

contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the DoD Component provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government;

(4) Any other thing of value by way of grant, loan, contract or cooperative agreement.

Historic preservation programs. Programs conducted by a recipient or DoD Component that have preservation of historic properties as a primary purpose.

Historic properties. Those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

Illegal use of drugs. The use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability. A person who has a disability. The term *individual with a disability* does not include an individual who is currently engaging in the illegal use of drugs, when the recipient or DoD Component acts on the basis of such use.

Information and communication technology (formerly referred to as electronic and information technology). Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: Computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; websites; videos; and electronic documents.

Other power-driven mobility device. Any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

Program or activity receiving Federal financial assistance. All of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education, or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraphs (1), (2), or (3) of this definition.

Qualified individual with a disability. (1) Except as provided in paragraph (2) of this definition, an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a recipient or DoD Component; and

(2) With respect to employment, the definition of ''qualified'' in the Equal Employment Opportunity Commission's regulation implementing title I of the Americans with Disabilities Act of 1990, at 29 CFR 1630.2(m), applies to this part.

Qualified interpreter. An interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified reader. A person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Recipient. Any State or unit of local government, any instrumentality of a State or unit of local government, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

Section 504. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

Section 508. Section 508 of the Rehabilitation Act of 1973 (Pub. L. 93–112, Title V, section 508, as added Pub. L. 99–506, Title VI, section 603(a), Oct. 21, 1986, 100 Stat. 1830), as amended.

Revised 508 standards. The standards for information communication technology (ICT) developed, procured, maintained, or used by agencies subject to Section 508 of the Rehabilitation Act as set forth in Chapters 1 and 2 (36 CFR part 1194, appendix A), and Chapters 3 through 7 (36 CFR part 1194, appendix C).

Service animal. Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be

directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

State. Each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Subrecipient. Any of the entities in the definition of ''recipient'' to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient and has all of the duties of a recipient.

Ultimate beneficiary. One among a class of persons who are entitled to benefit from, or otherwise participate in, a program or activity receiving Federal financial assistance and to whom the protections of this part extend. The *ultimate beneficiary* class may be the general public or some narrower group of persons.

Video remote interpreting (VRI) service. An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 56.22(d).

Wheelchair. A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

§ 56.5 Self-evaluation.

Each recipient shall, within 6 months of first receiving Federal financial assistance:

(a) Evaluate its policies and practices to evaluate whether such policies and practices may involve discrimination on the basis of disability. The self-evaluation must contain a description of:

(1) Any areas examined and any problems identified within those areas.

(2) Any modification made or remedial steps taken to remedy any discrimination on the basis of disability.

(b) Modify any policies or practices not meeting the requirements of section 504 of the Rehabilitation Act and this part or the DoD Component's policies.

(c) Provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(d) Take the appropriate remedial steps to eliminate the discriminatory effects of any such policies or practices.

(e) Maintain the self-evaluation for a period of three years following its completion and make it available to the DoD Component award official and the public, should they request it within the three-year period.

§ 56.6 Notice.

A recipient or DoD Component shall make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the recipient or DoD Component, and make such information available to them in such manner as the head of the DoD finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

Subpart B—General Requirements

§ 56.7 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, solely on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient or a DoD Component, or be subjected to discrimination by any recipient or DoD Component.

(b) A recipient or DoD Component, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(1) Deny a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(7) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(c) A recipient or DoD Component may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(d) A recipient or DoD Component may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—

(1) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's or DoD Component's program with respect to individuals with disabilities; or

(3) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(e) A recipient or DoD Component may not, in determining the site or location of a facility, make selections—

(1) That have the effect of excluding individuals with disabilities from,

denying them the benefits of, or otherwise subjecting them to discrimination; or

(2) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(f) A recipient or DoD Component, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(g) A recipient or DoD Component may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient or DoD Component establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient or DoD Component are not, themselves, covered by this part.

(h) A recipient or DoD Component shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the recipient or DoD Component can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or result in undue financial and administrative burdens.

(i) A recipient or DoD Component is not required to provide a reasonable modification to an individual who meets the definition of ''disability'' solely under the ''regarded as'' prong of the definition of disability at 28 CFR 35.108(a)(1)(iii).

(j) A recipient or DoD Component shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(k) Nothing in this part prohibits a recipient or DoD Component from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(l) A recipient or DoD Component shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(m)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under section 504 or this part which such individual chooses not to accept.

(2) Nothing in section 504 or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(n) A recipient or DoD Component may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by section 504 or this part.

(o) A recipient or DoD Component shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(p) A recipient or DoD Component may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the recipient or DoD Component must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(q) Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

(r) The exclusion of individuals without disabilities from the benefits of a program limited by federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

§ 56.8 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A recipient or DoD Component shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A recipient or DoD Component shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a recipient or DoD Component from adopting or administering reasonable drug testing policies or procedures, including, but not limited, to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the illegal use of drugs.

(2) Nothing in paragraph (c)(1) of this section will be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 56.9 Maintenance of accessible features.

(a) A recipient or DoD Component shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities, in accordance by section 504 or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

(c) For a recipient, if the 2010 Standards reduce the technical requirements or the number of required accessible elements below the number required by UFAS, the technical requirements or the number of accessible elements in a facility subject to this part may be reduced in accordance with the requirements of the 2010 Standards.

§ 56.10 Retaliation or coercion.

(a) No recipient or DoD Component shall discriminate against any individual because that individual has opposed any act or practice made

unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under section 504 or this part.

(b) No recipient or DoD Component shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by section 504 or this part.

§ 56.11 Personal devices and services.

This part does not require a recipient or DoD Component to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

§ 56.12 Service animals.

(a) *General.* Generally, a recipient or DoD Component shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(b) *Exceptions.* The recipient or DoD Component may ask an individual with a disability to remove a service animal from the premises if—

(1) The animal is out of control and the animal's handler does not take effective action to control it; or

(2) The animal is not housebroken.

(c) *If an animal is properly excluded.* If a recipient or DoD Component properly excludes a service animal under § 56.12, it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

(d) *Animal under handler's control.* A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.,* voice control, signals, or other effective means).

(e) *Care or supervision.* A recipient or DoD Component is not responsible for the care or supervision of a service animal.

(f) *Inquiries.* A recipient or DoD Component shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A recipient or DoD Component may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A recipient or DoD Component shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a recipient or DoD Component may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g.,* the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(g) *Access to areas of a recipient or DoD Component.* Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a recipient or DoD Component's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

(h) *Surcharges.* A recipient or DoD Component shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If the recipient or DoD Component normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

(i) *Miniature horses.* (1) *Reasonable modifications.* A recipient or DoD Component shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(2) *Assessment factors.* In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a recipient or DoD Component shall consider—

(i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(ii) Whether the handler has sufficient control of the miniature horse;

(iii) Whether the miniature horse is housebroken; and

(iv) Whether the miniature horses' presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(3) *Other requirements.* Paragraphs (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

§ 56.13 Mobility devices.

(a) A recipient or DoD Component shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

(b)(1) *Use of other power-driven mobility devices.* A recipient or DoD Component shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient or DoD Component can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the recipient or DoD Component has adopted pursuant to § 56.13.

(2) *Assessment factors.* In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a recipient or DoD Component shall consider—

(i) The type, size, weight, dimensions, and speed of the device;

(ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The facility's design and operational characteristics (*e.g.,* whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and

(v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

(c)(1) *Inquiry about disability.* A recipient or DoD Component shall not ask an individual using a wheelchair or

other power-driven mobility device questions about the nature and extent of the individual's disability.

(2) *Inquiry into use of other power-driven mobility device.* A recipient or DoD Component may ask a person using another power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. The recipient or DoD Component that permits the use of another power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, the recipient or DoD Component shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A ''valid'' disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance's requirements for disability placards or cards.

§ 56.14 Direct threat.

(a) This part does not require a recipient or DoD Component to permit an individual to participate in or benefit from the services, programs, or activities of that recipient or DoD Component when that individual poses a direct threat to the health or safety of others.

(b) In determining whether an individual poses a direct threat to the health or safety of others, a recipient or DoD Component must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures, or the provision of auxiliary aids or services will mitigate the risk.

Subpart C—Employment

§ 56.15 Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity receiving Federal financial assistance from or conducted by a DoD Component.

(b) The standards used to determine whether paragraph (a) of this section has been violated shall be the standards applied under Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12111 *et seq.,* and, as such sections relate to employment, the provisions of sections 501 through 504 and 511 of the ADA of 1990, as amended (codified at 42 U.S.C. 12201–12204, 12210), as implemented in the Equal Employment Opportunity Commission's regulation at 29 CFR part 1630.

Subpart D—Program Accessibility for Recipients of Federal Financial Assistance

§ 56.16 Discrimination prohibited.

Except as otherwise provided in § 56.17, no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a recipient of Federal financial assistance from a DoD Component, or be subjected to discrimination by any recipient.

§ 56.17 Existing facilities.

(a) *General.* A recipient shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a recipient to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the recipient believes that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the recipient has the burden of proving that compliance with § 56.18(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the recipient after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the recipient.

(b) *Methods*—(1) *General.* A recipient may comply with these requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A recipient, in making alterations to existing buildings, shall meet the accessibility requirements of § 56.18(c). In choosing among available methods for meeting the requirements of this section, a recipient shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Safe harbor.* Elements that have not been altered in existing facilities on or after November 5, 2019, and that comply with the corresponding technical and scoping specifications for those elements in the Uniform Federal Accessibility Standards (UFAS), appendix A to 41 CFR 101–19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984), are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

(3) *Historic preservation programs.* In meeting the requirements of § 56.17 in historic preservation programs, a recipient shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* When structural changes are necessary to make programs or activities in existing facilities accessible to the extent required by this section, such changes shall be made as soon as practicable, but not later than 3 years after June 1, 1982.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient that employs 50 or more persons shall develop, with the assistance of interested persons or organizations and within a period to be established in each DoD Component's guidelines, a transition plan setting out the steps necessary to complete the changes.

(1) A copy of the transition plan shall be made available for public inspection.

(2) The plan shall, at a minimum:

(i) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Identify the official responsible for implementation of the plan.

§ 56.18 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after June 1, 1982.

(b) *Alterations.* Each facility or part of a facility altered by, on behalf of, or for the use of a recipient in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after June 1, 1982.

(c) *Accessibility standards and compliance dates for recipients that are public entities.* (1) If physical construction or alterations commence after June 1, 1982, but before [EFFECTIVE DATE OF THE FINAL RULE], then new construction and alterations subject to this section must comply with UFAS. Departures from particular requirements of UFAS by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(2) If physical construction or alterations commence on or after [EFFECTIVE DATE OF THE FINAL RULE], but before [DATE ONE YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE], then new construction and alterations subject to this section may comply with either UFAS or the 2010 Standards. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(3) If physical construction or alterations commence on or after [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], then new construction and alterations subject to this section shall comply with the 2010 Standards.

(4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(d) *Accessibility standards and compliance dates for recipients that are private entities.*

(1) New construction and alterations subject to this section shall comply with UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is before [EFFECTIVE DATE OF THE FINAL RULE], or if no permit is required, if the start of physical construction or alterations occurs before [EFFECTIVE DATE OF THE FINAL RULE].

(2) New construction and alterations subject to this section shall comply either with UFAS or the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after [EFFECTIVE DATE OF THE FINAL RULE], and before [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], or if no permit is required, if the start of physical construction or alterations occurs on or after [EFFECTIVE DATE OF THE FINAL RULE], and before [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE].

(3) New construction and alterations subject to this section shall comply with the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after [EFFECTIVE DATE OF THE FINAL RULE], or if no permit is required, if the start of physical construction or alterations occurs on or after [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE].

(4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(e) *Noncomplying new construction and alterations.* (1) Newly constructed or altered facilities or elements covered by §§ 56.18(a) and (b) that were constructed or altered before [EFFECTIVE DATE OF THE FINAL RULE], and that do not comply with UFAS, shall before [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], be made accessible in accordance with either UFAS or the 2010 Standards.

(2) Newly constructed or altered facilities or elements covered by §§ 56.18(a) and (b) that were constructed or altered before [EFFECTIVE DATE OF THE FINAL RULE] and that do not comply with UFAS shall, on or after [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], be made accessible in accordance with the 2010 Standards.

(3) New construction and alterations of buildings or facilities undertaken in compliance with the 2010 Standards will comply with the scoping and technical requirements for a ''public building or facility'' regardless of whether the recipient is a public entity as defined in 28 CFR 35.104 or a private entity.

(f) *Compliance with the Architectural Barriers Act of 1968.* Nothing in this section relieves recipients whose facilities are covered by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), from their responsibility of complying with the requirements of that Act and any implementing regulations.

(g) *Mechanical rooms.* For purposes of this section, section 4.1.6(1)(g) of UFAS will be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical disabilities.

Subpart E—Program Accessibility for Programs and Activities Conducted by DoD Components

§ 56.19 Discrimination prohibited.

Except as otherwise provided in § 56.20, no qualified individual with a disability shall, because a DoD Component's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities conducted by a DoD Component, or be subjected to discrimination by any DoD Component.

§ 56.20 Existing facilities.

(a) *General.* A DoD Component shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a DoD Component to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a DoD Component to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a DoD Component to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the DoD Component believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the DoD Component has the burden of proving that compliance with § 56.20(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the DoD Component after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the DoD Component shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the DoD Component.

(b) *Methods*—(1) *General.* A DoD Component may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A DoD Component is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A DoD Component, in making alterations to existing buildings, shall meet the accessibility requirements of the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and federal regulations implementing it. In choosing among available methods for meeting the requirements of this section, a DoD Component shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 56.20(a) in historic preservation programs, a DoD Component shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) of this section, alternative methods of achieving program accessibility include—

(i) *Audio-visual materials and devices.* Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) *Guides.* Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) *Innovation.* Adopting other innovative methods.

(iv) *Time period for compliance.* When structural changes are necessary to make programs or activities in existing facilities accessible to the extent required by this section, such changes shall be made as soon as practicable, but not later than 3 years after June 1, 1982.

(v) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, a DoD Component shall develop, with the assistance of interested persons or organizations and within a period to be established in each DoD Component's guidelines, a transition plan setting out the steps necessary to complete the changes.

(A) A copy of the transition plan shall be made available for public inspection.

(B) The plan shall, at a minimum:

(*1*) Identify physical obstacles in the DoD Component's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(*2*) Describe in detail the methods that will be used to make the facilities accessible;

(*3*) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(*4*) Identify the official responsible for implementation of the plan.

§ 56.21 New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the DoD component shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in the Architectural Barriers Act Accessibility Standards at 41 CFR 102–76.60, apply to buildings covered by this section.

Subpart F—Communications

§ 56.22 General.

(a)(1) A recipient or DoD Component shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

(2) For purposes of this section, ''companion'' means a family member,

friend, or associate of an individual seeking access to a service, program, or activity of a recipient or DoD Component, who, along with such individual, is an appropriate person with whom the public entity should communicate.

(b)(1) A recipient or DoD Component shall furnish appropriate auxiliary aids and services when necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a recipient or DoD Component.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a recipient or DoD Component shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(c)(1) A recipient or DoD Component shall not require an individual with a disability to bring another individual to interpret for him or her.

(2) A recipient or DoD Component shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(3) A recipient or DoD Component shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) A recipient or DoD Component that chooses to provide qualified interpreters via VRI services shall ensure that it provides—

(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(2) A sharply-delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

(3) A clear, audible transmission of voices; and

(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

§ 56.23 Telecommunications.

(a) Where a recipient or DoD Component communicates by telephone with applicants and beneficiaries, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.

(b) When a recipient or DoD Component uses an automated-attendant system, including, but not limited to, voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay system, including internet-based relay systems.

(c) A recipient or DoD Component shall respond to telephone calls from a telecommunications relay service established under Title IV of the ADA in the same manner that it responds to other telephone calls.

§ 56.24 Information and signage.

(a) A recipient or DoD Component shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A recipient or DoD Component shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§ 56.25 Duties.

This subpart does not require a recipient or DoD Component to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the recipient or DoD Component believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the recipient or DoD Component has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the recipient or DoD Component or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, the recipient or DoD Component shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient or DoD Component.

Subpart G—Information and Communication Technology Requirements

§ 56.26 Information and communication technology requirements.

(a) *Accessible information and communication technology.* A DoD Component must make information and communication technology accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act.

(b*) Development, procurement, maintenance, or use of information and communication technology.* When developing, procuring, maintaining, or using information and communication technology, DoD Components shall ensure, unless an undue burden would be imposed on it, that the information and communication technology allows, regardless of the type of medium of the technology—

(1) Individuals with disabilities who are employees of DoD Components to have access to and use of information and data that is comparable to the access to and use of the information and data by employees of DoD Components

who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from DoD Components to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(c) *Alternative means of access when undue burden is imposed.* When development, procurement, maintenance, or use of information and communication technology that meets the standards published by the Access Board at 36 CFR part 1194 would impose an undue burden, the DoD Component shall provide individuals with disabilities covered by this section with the information and data involved by an alternative means of access that allows the individual to use the information and data.

Subpart H—Compliance Procedures

§ 56.27 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)), through the Executive Director, Force Resiliency (EDFR), reviews recommended administrative decisions proposed by the Office of Diversity, Equity, and Inclusion (ODEI) and issues final administrative decisions, when necessary, in accordance with §§ 56.29 through 56.31.

(b) Under the authority, direction, and control of the USD(P&R), the EDFR:

(1) Exercises authority, direction, and control over the Director, ODEI.

(2) Provides guidance to DoD Components when developing policies, procedures, and guidelines in support of this part.

(c) Under the authority, direction, and control of the EDFR, ODEI:

(1) Serves as the primary point of contact for the DoD Components, including when disseminating nondiscrimination policies, programs, and initiatives.

(2) Administers an effective civil rights program prohibiting discrimination on the basis of disability by:

(i) Overseeing the full implementation of and compliance with section 504 of the Rehabilitation Act, this part, and policies and plans related to unlawful discrimination on the basis of disability in federally assisted and conducted programs.

(ii) Ensuring no person is excluded from participation in, denied the benefits of, or subjected to unlawful discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the DoD or conducted by DoD.

(iii) Overseeing DoD Component compliance reviews and collection of assurances as described in § 56.28 from recipients.

(iv) Reviewing compliance reports generated by the DoD Component heads in accordance with § 56.28.

(v) Ensuring all complaints of unlawful discrimination on the basis of disability in any recipient are referred to the appropriate DoD Component head and resolved in a timely manner.

(vi) Providing education, training, and technical assistance to the DoD Components on issues related to nondiscrimination policies, programs, and initiatives.

(vii) Providing advice to the USD(P&R) regarding the issuance of final administrative decisions resolving complaints of unlawful discrimination on the basis of disability and complaints of failure to make information and communication technology accessible to individuals with disabilities.

(viii) Managing formal mediation of complaints of unlawful discrimination on the basis of disability and complaints of failure to make information and communication technology accessible to individuals with disabilities.

(ix) Monitoring compliance with this part by personnel under the authority, direction, and control of the USD(P&R).

(3) Notifies and provides updates to the Civil Rights Division of the Department of Justice (DOJ) when, with regard to recipients, a DoD Component head:

(i) Defers an application.

(ii) Schedules a hearing.

(iii) Refuses or terminates assistance.

(iv) Undertakes an enforcement action.

(d) The Director, Defense Legal Services Agency, under the authority, direction, and control of the General Counsel of the Department of Defense, and in addition to the responsibilities in paragraph (e) of this section, the Director, Defense Legal Services Agency, provides for fair and impartial administrative procedures, including, but not limited to, conducting hearings and issuing decisions as required in § 56.29.

(e) The DoD Component heads:

(1) In coordination with the EDFR, develop and maintain internal policies, procedures, and guidance to promote nondiscrimination on the basis of disability in programs or activities receiving Federal financial assistance from or conducted by the DoD Component.

(2) Oversee:

(i) Dissemination of all relevant internal policies and procedures and ensure implementation at all levels within their respective DoD Components.

(ii) Compliance with applicable DOJ and Equal Employment Opportunity Commission guidance, this part, and all implementing DoD Component parts.

(iii) Development of an effective compliance review program of applicants for and recipients of Federal financial assistance, in accordance with § 56.28.

(iv) Collection of assurances from recipients, as described in § 56.28.

(v) Compliance with the reporting requirements of this or other parts.

(vi) The complaint process for allegations of discrimination in violation of section 504 of the Rehabilitation Act against recipients of Federal financial assistance, which are processed in accordance with § 56.29.

(vii) The complaint process for allegations of discrimination in violation of section 504 of the Rehabilitation Act against DoD Components and allegations of failure by DoD Components to make information and communication technology accessible to individuals with disabilities in in violation of section 508 of the Rehabilitation Act, which are processed in accordance with §§ 56.30 and 56.31.

(3) Ensure the cooperation of applicants and recipients of Federal financial assistance with this part. Enforce the provisions of this part in accordance with § 56.31 if a recipient violates the policy of this section.

(4) Establish internal procedures for the prompt processing and disposition of complaints, including notice to both complainant and recipient regarding the respective rights and obligations of each party.

(5) Promptly review and investigate all complaints filed in accordance with this part unless the complainant and the party complained against agree to delay the investigation pending settlement negotiations.

(6) Provide technical assistance to recipients, when necessary, to aid them in complying with this part.

(7) Provide educational materials setting out the rights of beneficiaries, including the right to file complaints in accordance with this part, and obligations of recipients in accordance with this part.

(8) Prepare recommended administrative decisions, when applicable, for complaints of a violation of sections 504 or 508 of the Rehabilitation Act, for review and

consideration by the USD(P&R) when issuing final administrative decisions.

(f) The Chief Information Officer of the Department of Defense (DoD CIO):

(1) Develops policies and procedures related to achieving implementation of and compliance with section 508 of the Rehabilitation Act.

(2) Provides advice regarding complaints for failure to make information and communication technology accessible to individuals with disabilities.

(g) Listed below are responsibilities of recipients of Federal financial assistance. Each recipient must:

(1) Submit to the DoD Component head a written assurance in accordance with § 56.28 or 32 CFR 22.510(b) and appendix B, where applicable.

(2) Designate at least one person to coordinate its efforts to comply with the obligations of section 504 of the Rehabilitation Act, who will:

(i) Investigate any complaints communicated to the recipient alleging the recipient's noncompliance with or any actions prohibited by section 504 of the Rehabilitation Act.

(ii) Make available to all interested individuals the name, office address, and telephone number of the employee or employees designated to coordinate its efforts.

(3) Notify applicants for employment, employees, beneficiaries, subrecipients, and participants, regardless of disability, of their rights. The notification must:

(i) State that the recipient does not discriminate on the basis of disability in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in its programs or activities with respect to access, treatment, or employment.

(ii) Be transmitted via methods which may include the posting of notices, transmission via electronic mail or text message, publication on the recipient's internet website, or in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(4) Develop, adopt, and disseminate internal complaint procedures for the prompt processing and disposition of informal and formal complaints and appeals of violations of section 504 of the Rehabilitation Act. The procedures must:

(i) Comply with §§ 56.29 through 56.31.

(ii) Include directions on how and where to file complaints and appeal decisions made by DoD.

(5) Provide to the DoD Component award official in the application for Federal financial assistance:

(i) Notice of any lawsuit pending against the applicant alleging unlawful discrimination on the basis of disability related to the financial assistance received from DoD.

(ii) A statement regarding the applicant describing any compliance review relating to unlawful discrimination on the basis of disability conducted during the two-year period before the application and information concerning the agency or organization performing the reviews.

(iii) Reports of any compliance reviews conducted by other Federal agencies.

(6) Conduct a self-evaluation in accordance with § 56.5.

(7) Maintain compliance information.

§ 56.28 Assurance requirements and compliance information and procedures applicable to recipients of Federal financial assistance.

(a) *Assurance requirements for applicants and recipients: General.* (1) Subject to the option described in paragraph (a)(3) of this section, applicants for and recipients of Federal financial assistance must include with their submission to the DoD Component a written assurance certification that meets the requirements of this section. The assurance must certify that, with respect to programs or activities that receive Federal financial assistance, such applicants or recipients will comply with the requirements of section 504 of the Rehabilitation Act and this part. Applicants also must submit any additional information that the DoD Component determines is necessary for a pre-award review. The applicant or recipient's acceptance of federal financial assistance is an acceptance of the obligation of the assurance certification and this section.

(2) At a minimum, the assurance submitted for purposes of compliance with this section of the part must state that:

(i) It is provided as a condition for the receipt of Federal funds.

(ii) The applicant or recipient agrees to:

(A) Compile and maintain records pursuant to § 56.28(g)(1)(i).

(B) Submit reports on its programs, as may be required by the DoD Component.

(iii) Where a recipient makes the funds available to sub recipients, subcontractors, or subgrantees, the applicant or recipient must notify and require the sub recipients, subcontractors or sub grantees to comply with section 504 of the Rehabilitation Act and this part.

(iv) Provide a basis for judicial enforcement.

(3) An applicant subject to 32 CFR part 22 who submits an assurance which meets the requirements in 32 CFR 22.510(b) and appendix B will be considered to have satisfied the requirements of this section of the part pertaining to the submission of assurances. For Federal financial assistance awards subject to the DoD Grant and Agreement Regulations, award officials:

(i) May include, in accordance with 32 CFR 22.510(b), an award term in each award that makes compliance with the requirements in this part a condition of receipt of funding under the award in order to satisfy the requirement for obtaining an assurance from recipients.

(ii) Follow the pre-award procedures in 32 CFR 22.420, which indicate that a DoD grant's officer (*i.e.,* award official) must ensure that the recipient has provided all certifications and assurances required by Federal statute, Executive order, or codified regulation—unless they are to be addressed in award terms and conditions at the time of award—before determining that a potential recipient is qualified to receive an award.

(iii) If the DoD award official has reason to question the potential recipient's compliance with this part based on a review of any pre-award assurance received from the potential recipient in accordance with this section or compliance review of the potential recipient received before issuing the award, the award official should consult the personnel from the Component that is responsible for handling the civil rights' compliance review. Those personnel will inform the award official whether they have sufficient information to issue a written determination of compliance or if they will take additional steps in accordance with paragraph (e) or (f) of this section before making such a determination or taking any enforcement actions.

(iv) The DoD award official will maintain for each potential recipient the signed copy of any or all certifications and assurances, or proof of an electronic signature, in an easily accessible location for not less than the duration of the assistance and any additional time that reasonably may be necessary to enforce the terms, such as through an enforcement action.

(b) *Duration of assurance*—(1) *Real property.* When a DoD Component awards an assurance in the form of real property or assistance to acquire real property or structures on the property,

the assurance will obligate the recipient or transferee during the period the real property or structures are used for the purpose for which Federal financial assistance is extended, or for another purpose in which similar services or benefits are provided. The transfer instrument must contain covenants running with the land which assure that the property will be used for such purposes and that nondiscrimination on the basis of disability will be enforced. Where applicable, the covenants must also retain a right for the DoD Component to recover the property if either covenant is broken.

(2) *Personal property.* When a DoD Component provides assistance in the form of personal property, the assurance will obligate the recipient for as long as it continues to own or possess the property.

(3) *Other forms of assistance.* In all other cases, the assurance will obligate the recipient for as long as Federal financial assistance is extended.

(c) *Continuing state and block grant programs.* As a condition for the extension of Federal financial assistance, any recipient, State, or State agency administering a program that receives continuing Federal financial assistance subject to this part must provide to the DoD Component an assurance.

(1) *Primary recipients.* Primary recipients must sign an assurance agreeing to conduct the program in compliance with section 504 of the Rehabilitation Act and this part. Where applicable, a primary recipient must collect assurances from sub recipients.

(2) *Assurance requirements.* (i) All recipients must sign an assurance complying with the requirements of paragraph (a)(2) of this section.

(ii) Assurances for primary recipients disbursing funds to sub recipients must include a requirement to collect assurances from sub recipients.

(d) *Compliance information and procedures: Policies, procedures, and guidelines.* (1) Whenever necessary, DoD Components will publish supplementary guidelines for nondiscrimination on the basis of disability in the programs and activities to which it disburses Federal financial assistance.

(2) The EDFR must review and approve policies and procedures before DoD Components may issue them.

(3) At a minimum, all relevant policies, procedures, and guidance must:

(i) Contain a description of the:

(A) Types of programs and activities covered.

(B) Form of the assurances that must be executed in accordance with paragraph (a)(2) of this section or an assurance which meets the requirements in 32 CFR 22.510(b) and appendix B.

(ii) List the data collection and reporting requirements for recipients, all of which must be cleared by the Office of Management and Budget pursuant to 44 U.S.C. 3501 (also known and referred to in this part as ''The Paperwork Reduction Act.'')

(iii) Identify procedures for filing, processing, investigating, and resolving complaints of discrimination on the basis of disability. Such procedures must include, at a minimum:

(A) The requirements for filing a complaint. The requirements must comply with § 56.30(b).

(B) Notification that the DoD Component may require or permit a recipient to investigate a complaint if the recipient can comply with the investigation procedures in § 56.28 and internal DoD Component procedures.

(C) Notification of the right, at any time, to file suit in a Federal district court of competent jurisdiction and that such action immediately terminates the administrative process.

(iv) Include requirements:

(A) For recipients to designate a responsible official to coordinate the implementation of the policies, procedures, and guidelines.

(B) For recipients to conduct a self-evaluation in compliance with self-evaluation requirements in § 56.5.

(C) For suggestions for affirmative action on behalf of qualified individuals with a disability.

(D) For the dissemination of program and complaint information to the public.

(E) About the frequency and nature of post-approval reviews conducted pursuant to paragraph (f) of this section.

(F) For any other actions or procedures necessary to implement this part.

(v) Contain examples of prohibited practices likely to arise with respect to those types of programs and activities.

(4) When the head of a DoD Component determines that it will not be appropriate to include one or more of the provisions described in this section in the supplementary guidelines issued by that DoD Component, or that it is not necessary to issue such guidelines at all, the DoD Component must:

(i) State the reasons for such omissions in writing.

(ii) Submit the reasons to the EDFR for review and approval.

(e) *Pre-award compliance.*—(1) *Notice of lawsuits and compliance reviews.* To show compliance with the requirements of section 504 of the Rehabilitation Act and this part regarding the program or activity receiving federal financial assistance, each applicant for DoD federal financial assistance must provide to the DoD Component award official in the application for federal financial assistance, who will furnish such submissions to ODEI upon written request:

(i) Notice of any lawsuit pending against the applicant alleging unlawful discrimination on the basis of disability.

(ii) A statement describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the reviews.

(iii) If the applicant has any information to report from paragraph (e)(1)(i) or (ii) of this section at the time the application is submitted, he or she must provide that information with the application in accordance with any directions in the relevant notices of funding opportunity (*e.g.,* program announcements, funding opportunity announcements, and broad agency announcements). If the announcement does not provide specific directions, applicants with information to report from paragraph (e)(1)(i) or (ii) at the time of proposal submission must include that information in the portion of the application that includes any certifications, representations, or assurances (*e.g.,* attached to Block 18 of the Standard Form 424).

(2) *Failure to file an adequate assurance.* If an applicant for Federal financial assistance fails to file an adequate assurance in accordance with this section or an assurance which meets the requirements in 32 CFR 22.510(b) and appendix B, or breaches its terms, the DoD Component must:

(i) Notify the applicant promptly of its noncompliance and state the reason for noncompliance.

(ii) Make an immediate effort to secure voluntary compliance in accordance with § 56.28(f).

(3) *Written determination of compliance.* (i) Within the application processing period, the DoD Component will make a written determination of whether the applicant is in compliance with § 56.28(a) and inform the awarding official. In accordance with 32 CFR 22.420(c)(2), the grant officer is responsible for ensuring that the potential recipient has provided all assurances required by section 504 of the Rehabilitation Act and the implementing regulations unless they are to be addressed at the time of award, in accordance with 32 CFR 22.510(b).

(ii) The DoD Component will base its determination on the submissions required by paragraph (a) of this section and any other information the DoD Component receives during this time (including complaints) or has on file about the applicant.

(iii) When the DoD Component cannot make a determination on the basis of this information, the DoD Component may also conduct an on-site review. The DoD Component may request additional information from the applicant, local government officials, or interested persons or organizations, including individuals with disabilities or organizations representing such individuals.

(iv) If, after examination, the DoD Component finds enough evidence to support a finding of noncompliance, it must seek voluntary compliance.

(4) *Voluntary compliance.* If the review indicates noncompliance with this part, an applicant may agree in writing to take the steps recommended by the DoD Component in order to come into compliance. The DoD Component must approve the written agreement before any award is made.

(5) *Refusal to comply.* If the applicant refuses to enter into such an agreement, the DoD Component must follow the procedure established by § 56.29.

(6) *Deferment.* A DoD Component may choose to defer action on an application for assistance pending initiation and completion of the procedures in § 56.29.

(i) An action may only be deferred for initial or non-continuing assistance applications.

(ii) An action may not be deferred if Federal financial assistance is due and payable pursuant to a previously-approved application.

(f) *Periodic compliance reviews of recipients*—(1) *Periodic review of recipients.* (i) The DoD Component or Director, ODEI, may conduct periodic nondiscrimination compliance reviews, including on-site reviews, of any recipient's programs or activities receiving Federal financial assistance, including requests for data and information.

(ii) Whenever possible, the DoD Components or Director, ODEI, should perform this periodic compliance review in conjunction with its review and audit efforts to implement, in programs or activities receiving Federal financial assistance, similar CFR parts dealing with discrimination on the basis of race, color, sex, national origin, and age.

(2) *Notice of review.* After selecting a recipient for review or initiating an investigation, the DoD Component or Director, ODEI, must:

(i) Notify the recipient of the nature of the review or investigation.

(ii) Request relevant records for the review.

(iii) If applicable, notify the recipient of its opportunity, before the determination is made, to make a written submission responding to, rebutting, or denying the allegations raised in the review or complaint.

(3) *Post-review report.* (i) The DoD Component or Director, ODEI, must deliver a written report to the recipient that includes:

(A) Findings of fact and deficiencies.

(B) Recommendations for achieving voluntary compliance.

(C) The determination of the recipient's compliance status.

(D) Notice of the recipient's right to engage in compliance negotiation, if applicable.

(ii) The DoD Component's civil rights program official should approve the reports.

(iii) The DoD Component must forward reports of findings of noncompliance to the U.S. Assistant Attorney General for the Civil Rights Division of the DOJ, the EDFR, and ODEI.

(g) *Requests for data and information from or investigations by recipients.* (1) If necessary, the DoD Component may require recipients to:

(i) Submit records or data and information specific to certain programs or activities to determine if a program or activity receiving Federal financial assistance is in compliance with this part.

(ii) Investigate a complaint alleging unlawful discrimination on the basis of a disability in a program or activity receiving Federal financial assistance.

(2) Requests must be limited to data and information relevant in determining compliance and must be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that unlawful discrimination on the basis of disability may exist.

(3) A DoD Component conducting a compliance review or investigating a complaint of a violation of the procedures in this part must notify any other affected agency upon discovery of its jurisdiction and inform the agency of the findings made. Such reviews or investigations may be conducted jointly between the DoD Component and other affected agency.

(4) If a DoD Component requests that a recipient investigate a complaint, the DoD Component is still responsible for ensuring that the complaint is resolved in accordance with this part.

(h) *Reports.* (1) Recipients (through DoD Components) and DoD Components must submit annual reports to ODEI:

(i) Listing all programs and activities receiving Federal financial assistance subject to this part.

(ii) Summarizing the complaint information required by § 56.28.

(iii) Containing the information submitted by recipients in accordance with paragraphs (e)(1)(i) and (ii) of this section.

(2) Additionally, within 5 business days of commencing any of the actions in § 56.29, DoD Components must notify ODEI, in writing.

§ 56.29 Complaint resolution and enforcement procedures applicable to recipients of Federal financial assistance.

(a) *Applicability.* (1) Except as provided in paragraph (a)(2) of this section, this section applies to all allegations of discrimination on the basis of disability under section 504 of the Rehabilitation Act in programs, services, or activities receiving Federal financial assistance.

(2) Complaints alleging violations of section 504 of the Rehabilitation Act with respect to employment will be processed in accordance with the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1640 and § 56.29(b).

(b) *Enforcement procedures.* The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') apply to these section 504 regulations. The procedures at 32 CFR 195.7 through 195.12 are hereby adopted.

§ 56.30 Complaint resolution and enforcement procedures applicable to programs and activities conducted by DoD components.

(a) *Applicability.* (1) Except as provided in paragraph (a)(2) of this section, this section applies to all allegations of discrimination on the basis of disability in violation of section 504 of the Rehabilitation Act in a program or activity conducted by a DoD Component.

(2) DoD shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(3) This section also applies to all complaints alleging a violation of a DoD Component's responsibility to procure information and computer technology in compliance with section 508.

(b) *Filing a complaint*—(1) *Who may file.* An individual, alone or through a representative, may file a written complaint with ODEI in accordance with the procedures prescribed in this section on any of the following grounds:

(i) He or she has been subjected to discrimination prohibited by section 504 of the Rehabilitation Act in a program or activity conducted by a DoD Component.

(ii) The DoD Component has failed to make information and communication technology accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act.

(iii) He or she is a member of a specific class of individuals that has been subjected to discrimination prohibited by section 504 of the Rehabilitation Act or denied accessible information and communication technology in violation of section 508 of the Rehabilitation Act.

(2) *Exhaustion.* A complainant will first exhaust informal administrative procedures in paragraph (b)(3) of this section before filing a formal complaint.

(3) *Informal complaints.* (i) Before filing a formal complaint with ODEI alleging discrimination on the basis of disability in violation of section 504 of the Rehabilitation Act, the complainant must attempt to resolve the complaint informally with the DoD Component.

(ii) Before filing a formal complaint with ODEI alleging a failure to make information and communication technology accessible to individuals with disabilities in violation of section 508 of the Rehabilitation Act, an individual with a disability must use the informal procedures for resolving issues and concerns with the DoD Component in accordance with DoD Manual 8400.01, ''Accessibility of Information and Communications Technology (ICT),'' (November 14, 2017).

(iii) The process for resolving informal complaints may include the use of a mediator.

(4) *Confidentiality.* DoD officials must hold in confidence the identify of any person submitting a complaint, unless the person submits written authorization otherwise or except to the extent necessary to carry out the purposes of this section, including the conduct of any investigation, hearing, or proceeding conducted pursuant to this section.

(5) *When to file.* An individual must file a formal complaint with ODEI no later than 30 calendar days after he or she receives a decision denying the requested relief under the informal complaint procedure in paragraph (b)(3) of this section, or 180 calendar days after the date of the alleged discrimination or failure to make information and communication technology accessible, whichever date is later, unless the time for filing is extended by ODEI, in its sole discretion. For purposes of determining when a complaint is timely filed under this paragraph, a complaint mailed to ODEI will be considered filed on the date it is postmarked. Any other complaint will be considered filed on the date it is received by the agency.

(6) *How to file.* Complaints alleging a violation of sections 504 or 508 of the Rehabilitation Act may be emailed, mailed, or delivered in person to ODEI. If any other official receives a complaint, he or she must forward the complaint to ODEI, within five calendar days. ODEI must submit a copy of any complaint alleging a failure to make information and communication technology accessible in violation of section 508 of the Rehabilitation Act to the DoD CIO within seven days of receipt.

(7) *Notification to U.S. Access Board.* In accordance with paragraph (g)(2) of this section, ODEI will promptly send to the U.S. Access Board any complaint alleging that a building or facility that is subject to the ABA or section 502 of the Rehabilitation Act is not readily accessible to and usable by individuals with disabilities.

(8) *Acceptance of complaint.* For the complaint to be complete, it must contain:

(i) The complainant's contact information, including name, postal address and, if available, email address, and telephone number, if available.

(ii) The basis of the complaint, including:

(A) In the case of a complaint involving section 504 of the Rehabilitation Act, a detailed description of the alleged unlawful discrimination, on the basis of disability, that contains sufficient information to understand the facts that led the complainant to believe that discrimination occurred and when the discrimination took place. The description should include the how, why, where, and when of the alleged discrimination.

(B) In the case of a complaint by a DoD employee or member of the public involving section 508 of the Rehabilitation Act, a detailed description of the alleged violation that contains sufficient information to understand the facts that led the complainant to believe that the violation occurred and when the violation took place, if known. The description should include the how, why, where, and when of the alleged violation.

(C) The nature of the individual's disability, insofar as it relates to a complaint involving section 504 of the Rehabiliation Act.

(D) Identification of the individual, agency, or organization alleged to have discriminated unlawfully on the basis of disability or failed to make information and communication technology accessible. At a minimum, include the name and address.

(iii) The complainant's electronic or physical signature.

(iv) The names of and basic contact information for any individuals, if known, that the investigating agency could contact for additional information to support or clarify the complainant's allegations.

(9) *Maintenance of a log.* (i) DoD Components must maintain a log of informal complaints filed with the Component involving sections 504 and 508 of the Rehabilitation Act. Each entry should identify:

(A) Each complainant described in the informal complaint.

(B) The individual, party, or organization charged with the alleged discriminatory behavior or failure to make electronic or information technology accessible.

(C) The nature of the informal complaint.

(D) The date the informal complaint was filed.

(E) The current status or disposition, including the date, of the informal complaint investigation.

(F) Other pertinent information, such as resolution of the informal complaint, a formal complaint being filed, and the date the informal complaint was closed.

(ii) ODEI must maintain a log of formal complaints filed with ODEI consistent with the requirements identified in paragraph (b)(9)(i) of this section.

(c) *Receipt of complaints.* Upon receiving a formal complaint alleging discrimination on the basis of disability or failure to make information and communication technology accessible by a DoD employee or a member of the public, the Director, ODEI must:

(1) Evaluate the complaint to determine whether the complaint:

(i) May be dismissed without investigation for failure to state a claim, in accordance with paragraph (b)(8) of this section. The Director, ODEI must notify the complainant, the DoD Component, and the DoD CIO (where appropriate), in writing, if the complaint is dismissed without investigation.

(ii) Will not be investigated because the complaint lacks good cause to investigate.

(A) Examples of a complaint that lacks good cause to investigate include a complaint that:

(*1*) Is already the basis of a pending civil action in a United States District Court.

(*2*) Is moot or premature.

(*3*) Alleges dissatisfaction with the processing of a previously-filed complaint.

(*4*) Is filed as part of a clear pattern of misuse of the complaint process for a purpose other than the prevention and elimination of discrimination on the basis of disability. A clear pattern of misuse of the complaint process requires:

(*i*) Allegations that are similar or identical, lack specificity, or involve matters previously resolved; or

(*ii*) Evidence of circumventing other administrative processes, retaliating against the DoD Component's in-house administrative processes, or overburdening the complaint system.

(B) ODEI must notify the complainant, the DoD Component, the DoD Component CIO and the DoD CIO, where appropriate, if it does not refer the complaint for investigation because the complaint lacks good cause. The notice must be in writing and include ODEI's reason for not referring the complaint.

(iii) Requires additional information for the DoD Component to begin an investigation. Within 30 calendar days of receipt of the complaint, ODEI must request any additional information needed from a complainant to fulfill the requirements of paragraph (b)(8) of this section. If ODEI does not receive this additional information within 30 calendar days of the request, the complaint may be dismissed.

(2) Refer complaints that are complete in accordance with paragraph (b)(8) of this section within seven days to the appropriate DoD Component or Components for investigation unless, in accordance with paragraph (d)(1) of this section, ODEI retains responsibility for conducting the investigation.

(3) With respect to a complaint alleging a violation of section 508 of the Rehabilitation Act, transmit an information copy of the complaint to the DoD CIO within seven days of receipt.

(4) Forward complaints alleging discrimination on the basis of disability or failure to make information and communication technology accessible that should have been filed with another government agency to the correct agency, in accordance with paragraph (g) of this section.

(5) Send written notification to the complainant, if ODEI does not refer the complaint for investigation in accordance with paragraphs (c)(1)(i), (ii), or (c)(4) of this section.

(d) *Investigation of complaints.*—(1) *Prompt investigation.* If ODEI determines that the complainant has adequately stated a claim of unlawful discrimination in violation of section 504 of the Rehabilitation Act or failure to make information and communication technology accessible in violation of section 508 of the Rehabilitation Act, it must delegate the responsibility to conduct a prompt investigation to the DoD Component or, at the discretion of ODEI, retain responsibility for conducting the investigation:

(i) Of all accepted complaints filed in accordance with this part.

(ii) Following the procedures in this section.

(iii) Unless all parties agree to delay the investigation pending settlement negotiations.

(2) *Report of investigation.* (i) Within 180 calendar days of receipt of the complaint, the DoD Component or ODEI, whichever agency has conducted the investigation, must prepare a report of investigation, including a written recommended administrative decision, in accordance with paragraph (f) of this section. Within the 180 calendar day time period, ODEI may grant an extension of not more than 90 calendar days. The DoD Component may unilaterally extend the time period or any period of extension for not more than 30 calendar days where it must sanitize a complaint file that may contain information classified as secret pursuant to Executive Order 12356 in the interest of national security. The DoD Component must notify all involved parties and ODEI of any such extension.

(ii) The report of investigation should include:

(A) Complaint claim and allegations.

(B) Procedural history.

(C) Findings of fact.

(D) Names of individuals interviewed during the investigation.

(E) Evidence reviewed.

(F) Investigation assessment.

(G) Analysis and determinations.

(H) Additional relevant information.

(I) Investigator's recommendation for disposition.

(e) *Voluntary compliance.* (1) At the completion of an investigation in accordance with paragraph (d) of this section, if the DoD Component or ODEI, whichever agency has conducted the investigation, has made a finding of noncompliance, the DoD Component may voluntarily agree to come into compliance.

(2) If the DoD Component and ODEI (after consultation with the DoD CIO in the case of complaints alleging violation of section 508 of the Rehabilitation Act) reach a mutually-satisfactory resolution of the complaint:

(i) The agreement must be in writing and signed by ODEI and the DoD Component head.

(ii) The DoD Component must send a copy of the signed settlement to the complainant and notify the complainant of his or her right to pursue relief in U.S. district court.

(f) *Final administrative decision*—(1) *Recommended administrative decision.* (i) When the investigation is performed by a DoD Component in accordance with paragraph (d) of this section:

(A) At the completion of the investigation resulting in a finding of compliance or a finding of noncompliance and completion of efforts to secure voluntary compliance in accordance with paragraph (e) of this section, the DoD Component must:

(*1*) Coordinate with the DoD Component's legal counsel.

(*2*) Provide ODEI with the report of investigation, including the recommended administrative decision.

(B) ODEI will review the DoD Component's recommended administrative decision and accept, reject, or modify the recommended administrative decision based on the report of investigation prepared by the DoD Component or, if necessary, based on additional investigation conducted by ODEI or the DoD Component pursuant to a request by ODEI.

(ii) When the investigation is performed by ODEI, it must recommend an administrative decision after coordinating with ODEI's legal counsel.

(2) *Final administrative decision.* After reviewing ODEI's recommended administrative decision, which may include justifications for accepting, rejecting, or modifying the recommended administrative decision by the DoD Component, the USD(P&R) may:

(i) Request further investigation by the DoD Component or ODEI.

(ii) Issue a DoD final administrative decision which includes a finding of noncompliance by the DoD Component and requires the DoD Component to take appropriate corrective action by an identified suspense date, to include establishing a monitoring plan that will continue until the corrective action is completed, in accordance with this section.

(iii) Issue a DoD final administrative decision in which the DoD Component is found to be in compliance.

(iv) Issue, as the need arises, affirmative recommendations regarding exemplary practices and proactive

measures that could reduce the risk of future complaints.

(3) *Notice.* After the USD(P&R) issues the final administrative decision, ODEI must notify the complainant in writing of the final administrative decision. The written notice must include notice of the complainant's right to appeal the decision to a U.S. district court of competent jurisdiction in the case of unlawful discrimination on the basis of disability in violation of section 504 of the Rehabilitation Act or a failure to make information and communication technology accessible to individuals with disabilities in violation of section 508 of the Rehabilitation Act.

(g) *Coordination with other agencies*—(1) *Cooperation with other agencies.* If, while conducting a compliance review or investigation of a complaint, it becomes evident that another agency has joint jurisdiction over the subject matter, the DoD Component will cooperate with that agency during the investigation. Pursuant to 28 CFR 42.413, the DoD Component must:

(i) Forward the complaint to the other agency, if it determines that the complaint was filed incorrectly with the DoD.

(ii) Coordinate its efforts with the other agency, to the extent consistent with the Federal statutes under which the assistance is provided.

(iii) Designate one of the agencies, via written delegation agreement, to be the lead agency for this purpose. When an agency other than ODEI serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency must have the same effect as though the action had been taken by ODEI. Both agencies must adopt written procedures to assure that the same standards of compliance with sections 504 and 508 of the Rehabilitation Act are used at the operational levels by each of the agencies.

(2) *Cooperation with the U.S. Access Board.* The U.S. Access Board and Deputy USD(P&R) will enter into an agreement regarding the referral and resolution of complaints relating to accessibility of DoD facilities under the ABA.

(h) *Coordination between DoD components.* When two or more DoD Components have joint responsibility for a program or activity, the DoD Components may negotiate a proposed written delegation agreement.

(1) The delegation agreement must:

(i) Assign responsibility to one of the DoD Components to ensure compliance with this part.

(ii) Provide for the notification to responsible program officials of the assignment of enforcement responsibility.

(2) No delegation agreement will be effective until it is approved in writing by the USD(P&R).

(i) *Prevention and resolution of complaints.* The DoD Component equal opportunity officials and DoD Component section 508 program managers will facilitate, with ODEI, pre-complaint resolution of claims of unlawful discrimination on the basis of disability and failure to make information and communication technology accessible in violation of sections 504 or 508 of the Rehabilitation Act.

(j) *Periodic compliance reports of Components.* (1) ODEI is overall responsible for implementation of this part and the conduct of investigations and compliance reviews, including with respect to compliance with section 508 of the Rehabilitation Act.

(2) Whenever possible, ODEI will perform this periodic compliance review in conjunction with its review and audit of similar regulations concerning nondiscrimination on the basis of race, color, sex, national origin, and age in programs or activities conducted by a Component.

(3) If, as a result of an investigation or in connection with any other compliance activity, ODEI determines that a DoD Component appears to be in noncompliance with its responsibilities pursuant to this part, ODEI will undertake appropriate action with the DoD Component to assure compliance.

(4) In the event that ODEI and the DoD Component are unable to agree on a resolution of any particular matter, the matter will be submitted to the USD(P&R) for resolution.

§ 56.31 Complaint resolution and enforcement procedures applicable to accessibility of information and computer technology.

(a) *Applicability.* This section applies to all complaints alleging a violation of a DoD Component's responsibility to procure information and communication technology in compliance with section 508, whether filed by members of the public or DoD employees.

(b) *Enforcement procedures.* DoD Components will process complaints alleging violations of section 508 of the Rehabilitation Act according to the procedures at § 56.30.

Dated: June 11, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–12999 Filed 7–15–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0283; FRL–10011–69–Region 3]

Air Plan Approval; Virginia; Negative Declarations Certification for the 2008 Ozone National Ambient Air Quality Standard Including the 2016 Oil and Natural Gas Control Techniques Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. The portion for approval consists of negative declarations for certain specified Control Techniques Guidelines (CTG), including the 2016 Oil and Natural Gas CTG (2016 Oil and Gas CTG), as well as a number of other negative declarations for Alternative Control Techniques (ACTs) for the 2008 ozone National Ambient Air Quality Standard (NAAQS). The negative declarations cover only those CTGs or ACTs for which there are no sources subject to those CTGs or ACTs located in the Northern Virginia Volatile Organic Compound (VOC) Emissions Control Area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 17, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0283 at *https://www.regulations.gov,* or via email to *Spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission

methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Erin Trouba, 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) 814–2023. Ms. Trouba can also be reached via electronic mail at *Trouba.Erin@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 2, 2020, the Virginia Department of Environmental Quality (VADEQ) submitted a SIP revision certifying that it has met all of the Reasonably Available Control Technology (RACT) requirements set forth in CAA section 182(b)(2) for the 2008 ozone NAAQS in the Northern Virginia VOC Emissions Control Area. This action proposes approval of only the negative declarations contained in section 2.2 of the April 2, 2020 SIP submission. The remaining portion of the SIP submission, which addresses the RACT requirements in CAA section 182(b)(2)(C) applicable to the Northern Virginia VOC Emissions Control Area for the 2008 ozone NAAQS, will be addressed in a future action. Also, VADEQ previously submitted a 2008 ozone NAAQS RACT certification SIP revision on December 12, 2017. EPA is not, at this time, proposing to take action on the earlier 2017 submission.

I. Background

The CAA regulates emissions of nitrogen oxides (NO_X) and VOCs to prevent photochemical reactions that result in ozone formation. RACT is a strategy for reducing NO_x and VOC emissions from stationary sources within areas not meeting the ozone NAAQS. EPA has consistently defined ''RACT'' as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include RACT, including RACT for existing sources of emissions. Section 182(b)(2)(A) of the CAA requires that for areas designated nonattainment for an ozone NAAQS and classified as moderate, states must revise their SIP to include provisions to implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. Section 182(b)(2)(B) requires the same for CTGs issued before November 15, 1990. CAA section 182(c) through (e) applies this requirement to states with areas designated nonattainment for an ozone NAAQS classified as serious, severe, and extreme. The CAA also imposes the same requirement on states in Ozone Transport Regions (OTR). Specifically, CAA section 184(b) provides that states in an OTR must revise their SIP to implement RACT with respect to all sources of VOC in the OTR covered by a CTG document issued before or after November 15, 1990, even for areas designated attainment within the OTR. CAA section 184(a) establishes a single OTR comprised of 11 eastern states and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia. See 81 FR 74798 (October 27, 2016). Portions of Northern Virginia are in the CMSA and therefore the OTR. The Virginia portion of the OTR includes the following areas: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City. Collectively, these areas will be referred to as the ''Northern Virginia VOC Emissions Control Area'' or the ''Northern Virginia area.'' [1] Finally, section 182(f) requires that plan provisions required under subpart 4 of part D of title I of the CAA, which includes sections 182 through 184, for major sources of VOC shall also apply to major stationary sources of NO_x in ozone nonattainment areas.

CTGs and ACTs form important components of the guidance that EPA provides to states for making RACT determinations. CTGs are used to presumptively define VOC RACT for applicable source categories. ACTs describe an available range of control technologies and their respective cost effectiveness, but do not identify any particular option as the presumptive norm for what is RACT.[2] ACTs are not legally binding.

On March 6, 2016 (80 FR 12264), EPA issued a final rule entitled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' (2008 Ozone Implementation Rule). In the preamble to the final rule, EPA makes clear that if there are no sources covered by a specific CTG source category located in an ozone nonattainment area or an area in the OTR, the state may submit a negative declaration for that CTG. 80 FR 12264, 12278.

On October 27, 2016 (81 FR 74798), EPA published in the **Federal Register** the ''Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry.'' This 2016 Oil and Gas CTG provided information to state, local, and tribal air agencies to assist in determining RACT for VOC emissions from select oil and natural gas industry emission sources. The 2016 Oil and Gas CTG replaces an earlier 1983 CTG entitled ''Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. December 1983.'' EPA–450/3–83–007 (1983 CTG) 49 FR 4432; February 6, 1984. 2016 Oil and Gas CTG, p. 8–1.

II. Summary of SIP Revision and EPA Analysis

On April 2, 2020, VADEQ submitted a SIP revision to EPA certifying that the Northern Virginia area has met all of the CAA section 182(b)(2) RACT implementation requirements for the 2008 ozone NAAQS. However, this proposal only addresses section 2.2 of the April 2, 2020 submittal, which contains negative declarations for certain CTGs and ACTs in the Northern Virginia area, as described in this proposed rulemaking.

A. Recertification of Prior Negative Declarations for VOC Sources Subject to Certain CTGs and ACTs Located in the Northern Virginia Area

Table 3 of section 2.2 of the SIP submittal, identifies source categories subject to CTGs and ACTs, for which Virginia is submitting a negative declaration that there are no sources located in the Northern Virginia area subject to the terms of these CTGs or ACTs, for purposes of the 2008 ozone NAAQS. VADEQ used several methods to determine whether there were any

[1] The following areas in the Commonwealth of Virginia were designated as moderate nonattainment for the 2008 ozone NAAQS: The counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. See 40 CFR 81.347. On April 4, 2019 (84 FR 15108) the Maryland and Virginia portion of the Washington, DC-MD-VA nonattainment area were redesignated to attainment of that standard. These areas, in addition to Stafford County, are in the OTR and therefore must still meet the requirements certifying implementation of 2008 ozone RACT, despite the redesignation to attainment.

[2] A complete list of EPA-issued CTGs and ACTs with links to each CTG or ACT can be found at *https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques.*

sources subject to CTGs or ACTs in the Northern Virginia area. First, VADEQ reviewed the Comprehensive Environmental Data System (CEDS), which is the air regulatory registration database for the jurisdictions comprising the Northern Virginia VOC Emissions Control Area (*i.e.,* the Northern Virginia area). As explained in the SIP submission, facilities must register in this database all units subject to any applicable regulation in the Regulations for the Control and Abatement of Air Pollution, any facilities with the potential to emit (PTE) at least 25 tons per year (tpy) of VOC or 40 tpy of NO_X, and any facility making a change with a PTE of at least 10 tpy VOC or NO_X. The CEDS also has registration and reporting requirements for facilities emitting much lower levels of VOC. For example, miscellaneous metal parts facilities must register if they emit 2.7 tpy or 15 pounds per day of VOC.

Virginia also used the Virginia Employment Database to identify small, mid-sized, and large sources in the affected area that may not be registered in CEDS. Using these databases, Virginia developed the list of CTGs and ACTs set forth in Table 3 of its submittal that it believes do not have sources located in the Northern Virginia area. Table 1 of this proposed rulemaking lists those CTGs and ACTs for which Virginia is submitting a negative declaration that no sources subject to the applicability requirements of these CTGs and ACTs are found in the Northern Virginia area. Table 1 also lists the CTGs and ACTs for which VADEQ is recertifying prior negative declarations or submitting new negative declarations.

TABLE 1—NEGATIVE DECLARATIONS FOR THE NORTHERN VIRGINIA AREA

Document title.
Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, June 1978. EPA–450/2–78–036.
Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners, September 1982. EPA–450/3–82–009.
Control of Volatile Organic Compound Emissions from Manufacture of High Density Polyethylene, Polypropylene, and Polystyrene Resins, November 1983. EPA–450/3–83–008.
Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants, December 1983. EPA–450/2–83–007.
Control of Volatile Organic Compound Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment, March 1984. EPA–450/3–83–006.
Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry, December 1984. EPA–450/3–84–015.
Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation and Reactor Processes CTG, August 1993. EPA 450/4–91–031.
Wood Furniture Manufacturing Operations (CTG–MACT)—draft MACT out 5–94; final CTG, April 1996. CTG: EPA–453/R–96–007.
Surface Coating Operations at Shipbuilding and Ship Repair Facilities ACT (April 1994) and CTG, August 27, 1996. EPA 453/R–94–032 (ACT).
Aerospace (CTG & MACT), December 1997. EPA 453/R–97–004 CTG.
Control Techniques for Organic Emissions from Plywood Veneer Dryers, May 1983, ACT. EPA 450/3–83–012.
Ethylene Oxide Sterilization ACT, March 1989. EPA 450/3–89–007.
ACT Polystyrene Foam Manufacturing, 1990. EPA 450/3–90–020.
ACT Document—Organic Waste Process Vents, December 1990. EPA 450/3–91–007.
Bakery Ovens ACT, December 1992. EPA 453/R–92–017.
ACT Control Techniques for Volatile Organic Compound Emissions from Stationary Sources, December 1992. EPA 453/R–92–018.
ACT Industrial Wastewater, September 1992 & April 1994. EPA 453/D–93–056.
Control of VOC Emissions from the Application of Agricultural Pesticides, March 1993. EPA 450/R–92–011.
Control of Volatile Organic Compound Emissions from Batch Processes ACT, February 1994. EPA 453/R–93–017.
ACT Business Machine Plastic Parts coating/Automobile Plastic Parts Coating, February 1994. EPA 453/R–94–017.
ACT NO_X Emissions from Nitric and Adipic Acid Manufacturing Plants, December 1991. EPA453/3–91–026.
NO_X Emissions from Cement Manufacturing, March 1994 Updated September 2000. EPA 453/R–94–004.
NO_X Emissions from Industrial, Commercial & Institutional Boilers, March 1994. EPA 453/R–94–022.
NO_X Emissions from Glass Manufacturing, June 1994. EPA 453/R–94–037.
NO_X Emissions from Iron and Steel, September 1994. EPA 453/R–94–065.
Control Techniques Guidelines for Flexible Package Printing, September 2006. EPA 453/R–6–003.
Control Techniques Guidelines for Flat Wood Paneling Coatings, September 2006. EPA 453/R–06–004.
Control Techniques Guidelines for Paper, Film, and Foil Coatings, September 2007. EPA 453/R–07–003.
Control Techniques Guidelines for Large Appliance Coatings, September 2009. EPA 453/R–07–004.
Control Techniques Guidelines for Metal Furniture Coatings, September 2007. EPA 453/R–07–005.
Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials, September 2008. EPA 453/R–08–004.
Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings, September 2008. EPA 453/R–08–006.
Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Primer-Surface and Topcoat Operations, September 2009. EPA 453/R–08–002.
Control Techniques Guidelines for the Oil and Natural Gas Industry, October 2016. EPA 453/B–16–001

B. New Negative Declaration for the 2016 Oil and Gas CTG

As noted in section I of the preamble for this proposed rulemaking, EPA adopted a revised CTG for the Oil and Gas Industry in October of 2016. Because this is a newer CTG, previous negative declarations submitted by Virginia for the 1997 ozone NAAQS did not address the 2016 Oil and Gas CTG. Therefore, section 2.2 of the submittal includes a first-time negative declaration for the 2016 Oil and Gas CTG.[3] A brief explanation of the scope of the 2016 Oil and Gas CTG is provided here in order to provide background information for Virginia's negative declaration.

The 2016 Oil and Gas CTG divides the industry into four segments: production, processing, transmission and storage, and distribution. CTG p. 3–1; see also CTG pp. 3–1 through 3–3 for a brief explanation of each segment. However, not all four segments of the industry are subject to the requirements of the CTG. The 2016 Oil and Gas CTG covers certain specified sources of VOC emissions in the onshore production and processing segments of the

[3] Section 8 of the 2016 Oil and Gas CTG states that it replaces the December 1983 Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants CTG. VADEQ submitted a negative declaration for this source category, so it is listed in Table 1.

industry, as well as storage vessel VOC emissions in all segments of the industry except distribution. CTG p. 3–5. A summary of the oil and natural gas emission sources and recommended RACT for those sources is provided in Table 1 of the CTG, on pages 3–6 through 3–8.

In order to determine whether there were any sources in the Northern Virginia area subject to the 2016 Oil and Gas CTG, VADEQ consulted the Department of Mines, Minerals, and Energy (DMME)—Division of Gas and Oil (DGO), database, which showed that only plugged wells exist in the Northern Virginia area. VADEQ also consulted the CEDS and found that no natural gas processing or storage facilities are located in this area. VADEQ also consulted with the Virginia DMME, which could not identify any natural gas processing or storage facilities in the area. The details concerning VADEQ's analysis are on pages 17 through 18 of Virginia's submittal. Notwithstanding VADEQ's finding that there are no VOC sources in the Northern Virginia area subjected to RACT by the 2016 Oil and Gas CTG, VADEQ identified facilities in Northern Virginia defined by the 2016 Oil and Gas CTG as part of the oil and natural gas industry. Specifically, VADEQ identified certain natural gas compressor stations in the Northern Virginia area, but determined that these are ''downstream'' of the point of custody transfer to the natural gas transmission and storage segment. That is, these compressor stations are in neither the production nor processing segment of the industry. Compressor stations located in the transmission and storage segment of the oil and gas industry are not subject to any RACT requirements specified by the 2016 Oil and Gas CTG. See CTG, p. 3–7. However, if these compressor stations meet the VOC or NO_X emission thresholds to be considered major sources of VOC or NO_X for a moderate ozone nonattainment area, these sources will be subject to a major source RACT determination under section 182(b)(2)(C) of the CAA.

EPA notes that Virginia's April 2, 2020 SIP submission does address RACT for major sources of NO_X and VOC in the Northern Virginia area under section 182(b)(2)(C), but that portion of the SIP submittal is not being addressed in this action, and will instead be addressed in a future action taken by EPA. See CTG p. 3–7.[4] VADEQ asserts that there are no facilities in the Northern Virginia area that are currently involved in oil and gas production and processing activities covered by the 2016 Oil and Gas CTG.

[4] For a diagram of the segments of the industry, see the CTG at p. 3–4.

III. Proposed Action

EPA's review of this material indicates that section 2.2 of the April 2, 2020 submittal meets CAA requirements and that VADEQ's analysis adequately demonstrates that there are no affected sources located in the Northern Virginia area for the CTG source categories for which VADEQ has submitted a new negative declaration or recertification of an existing negative declaration. EPA is proposing to approve section 2.2 of the Virginia SIP revision submitted on April 2, 2020, which recertifies the negative declarations for the CTGs and ACTs listed in Table 1 of this preamble for the purpose of partially satisfying CAA section 182(2)(A) and (B) for the 2008 ozone NAAQS. EPA is also proposing to approve the negative declaration in section 2.2 for the 2016 Oil and Gas CTG. At this time, EPA is not proposing any action on the other sections of Virginia's April 2, 2020 submission. The other sections of Virginia's April 2, 2020 submittal address those CTGs and ACTs for which there are sources subject to the CTGs or ACTs in the Northern Virginia area, and also address RACT for major stationary sources of VOC or NO_X located in the Northern Virginia area. EPA will propose later separate action on those remaining parts. EPA is soliciting public comments on the proposed approval of the negative declarations discussed in this document. These comments will be considered before taking final action.

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 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

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 proposed action:

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

The SIP is not approved to apply on any Indian reservation land 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 certifying negative declarations for Northern Virginia for the 2008 ozone NAAQS and the negative declaration for the 2016 Oil and Gas CTG 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).

List of Subjects in 40 CFR Part 52

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

Dated: June 30, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–14576 Filed 7–15–20; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–10011–95–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Fort Wayne Reduction Dump Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete Operable Unit 1 (OU1) and Operable Unit 2 (OU2) (the two capped landfill areas) of the Fort Wayne Reduction Dump Superfund Site (Fort Wayne Reduction Site or Site) located in Fort Wayne, Indiana, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Indiana, through the Indiana Department of Environmental Management (IDEM), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 17, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *https://www.regulations.gov.* Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*
- *Email: Deletions@usepa.onmicrosoft.com.*

Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via email or at *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index, Docket ID No. EPA–HQ–SFUND–1986–0005. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *https://www.regulations.gov,* Docket ID No. EPA–HQ–SFUND–1986–0005 and at *https://www.epa.gov/superfund/fort-wayne-dump* or you may contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Karen Cibulskis, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5, at (312) 886–1843 or via email at *cibulskis.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Partial Site Deletion

I. Introduction

EPA Region 5 announces its intent to delete OU1 and OU2 (the two capped landfill areas) of the Fort Wayne Reduction Site from the NPL and requests public comment on this proposed action. The Operable Unit 3 (OU3) (groundwater) portion of the Site will remain on the NPL and is not being considered for deletion as part of this action.

The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP. EPA promulgated the NCP pursuant to Section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of OU1 and OU2 of the Fort Wayne Reduction Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466), November 1, 1995. As described in 40 CFR 300.425(e)(3) of the NCP, portions of a site deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete OU1 and OU2 of the Fort Wayne Reduction Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses the procedures that EPA is using for this action. Section IV of this preamble discusses where to access and review information that demonstrates how the deletion criteria have been met at OU1 and OU2 of the Fort Wayne Reduction Site.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites, or portions thereof, may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion of OU1 and OU2 (the two capped landfill areas) of the Fort Wayne Reduction Site from the NPL:

(1) EPA consulted with the State of Indiana prior to developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the State thirty (30) working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate for OU1 and OU2 of the Site other than routine operation and maintenance, monitoring, and five-year reviews.

(4) The State of Indiana, through the IDEM, concurred with the deletion of OU1 and OU2 of the Fort Wayne Reduction Dump Site from the NPL on June 18, 2020.

(5) Concurrently with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, an announcement of the availability of the Notice of Intent for Partial Deletion is being published in a major local newspaper, the Fort Wayne Journal Gazette. The newspaper notice

announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Fort Wayne Reduction Site from the NPL.

(6) EPA placed copies of documents supporting the proposed partial deletion in the deletion docket and made these items available for public inspection and copying at *https://www.regulations.gov,* Docket ID No. EPA–HQ–SFUND–1986–0005 and on the EPA's Fort Wayne Reduction Site web page at *https://www.epa.gov/superfund/fort-wayne-dump.*

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete OU1 and OU2 of the Fort Wayne Reduction Site from the NPL. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete OU1 and OU2 of the Fort Wayne Reduction Site from the NPL, the EPA will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions, and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the docket listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site or a portion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The EPA placed copies of a Site-Specific Justification for the Partial Deletion from the NPL of Operable Units 1 and 2 (Capped Landfill Areas), Fort Wayne Reduction Dump Superfund Site and other documents supporting the proposed partial deletion in the deletion docket. The material provides explanation of EPA's rationale for the partial deletion and demonstrates how OU1 and OU2 of the Fort Wayne Reduction Site meet the NPL deletion criteria. This information is made available for public inspection in the docket at the locations identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 10, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–15344 Filed 7–15–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0013; FRL–10011–27–Region 6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Tulsa Fuel and Manufacturing Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete Tulsa Fuel and Manufacturing Superfund Site (Site) located 1 and ⅓ miles south of downton Collinsville, Oklahoma, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality, have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 17, 2020.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1990–0013, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email: torres.michael@epa.gov.*
- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1990–0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.*

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT: Michael Torres, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, Superfund and Emergency Management Division (R6 SED–RL); 1201 Elm Street, Suite 500; Dallas, Texas 75270, (214) 665–2108, email *torres.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion

I. Introduction

EPA Region 6 announces its intent to delete the Tulsa Fuel and Manufacturing Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses procedures that EPA is using for this action. Section IV of this preamble discusses where to access and review information that demonstrates how the deletion criteria have been met at the Tulsa Fuel and Manufacturing Superfund Site.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete.

(2) EPA has provided the state 30 working days for review of this action prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of Oklahoma, through the Oklahoma Department of Environmental Quality, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the Tulsa World. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this action, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The EPA placed copies of documents supporting the proposed deletion in the deletion docket. The material provides explanation of EPA's rationale for the deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the docket identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.*

Dated: July 1, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–14652 Filed 7–15–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 20–145; FCC 20–73; FRS 16851]

Promoting Broadcast Internet Innovation Through ATSC 3.0

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on the extent to which we should clarify or modify our existing rules in order to further promote the deployment by television broadcasters of new, innovative ancillary and supplementary services, which we refer to as ''Broadcast Internet,'' as part of the transition to ATSC 3.0. We first seek comment generally on potential uses of the new technological capability from ATSC 3.0 and any existing regulatory barriers to deployment. We then consider specifically whether any changes or clarifications are needed to the ancillary and supplementary service fee rules and the rules defining derogation of service and analogous services. A *Declaratory Ruling* relating to the broadcast ancillary and supplementary service rules is published elsewhere in this issue of the **Federal Register**.

DATES: Comments due on or before August 17, 2020; reply comments due on or before August 31, 2020.

ADDRESSES: You may send comments, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by 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. 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. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact John Cobb, *John.Cobb@fcc.gov* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MB Docket Nos. 20–145; FCC 20–73, adopted and released on June 9, 2020. A summary of the *Declaratory Ruling* adopted concurrently relating to the broadcast ancillary and supplementary service rules is published elsewhere in this issue of the **Federal Register**. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC, 20554. The full text of this document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

The United States is transitioning to a new era of connectivity. From innovative 5G offerings to high-capacity fixed services and an entirely new generation of low-earth orbit satellites, providers from previously distinct sectors are competing like never before to offer high-speed internet services through a mix of different technologies. The Commission has been executing on a plan to identify and remove the overhang of unnecessary government regulations that might otherwise hold back the introduction and growth of new competitive offerings. We want the marketplace—not outdated rules—to determine whether new services and technologies will succeed. Broadcasters, as well as a range of other entities, now have the potential to use broadcast spectrum to enter the converged market for connectivity in ways not possible only a few short years ago.

With this item, we take important steps to further unlock the potential of broadcast spectrum, empower innovation, and create significant value for broadcasters and the American public alike by removing the uncertainty cast by legacy regulations. More than twenty years ago, during the transition from analog to digital broadcast television, the Commission adopted rules allowing digital television (DTV) licensees to provide ancillary or supplementary services on their excess spectrum capacity and authorized licensees to enter into leases with other entities that would provide such services. Flash forward to today, and the conversion of digital television from the first-generation technologies associated with the ATSC 1.0 standard to the next-generation of ancillary services that will be enabled by ATSC 3.0 is now underway. This new technology promises to expand the universe of potential uses of broadcast spectrum capacity for new and innovative services beyond traditional over-the-air video in ways that will complement the nation's burgeoning 5G network and usher in a new wave of innovation and opportunity. These new offerings over broadcast spectrum can be referred to collectively as ''Broadcast Internet'' services to distinguish them from traditional over-the-air video services. Broadcasters will not only be able to better serve the information and entertainment needs of their communities, but they will have the

opportunity to play a part in addressing the digital divide and supporting the proliferation of new, IP-based consumer applications or voluntarily entering into arrangements to allow others to invest in achieving those goals. We undertake this proceeding to ensure that our rules help to foster the introduction of new services and the efficient use of spectrum.

In the *NPRM,* we seek comment on the extent to which we should clarify or modify our existing rules in order to further promote the deployment of Broadcast Internet services as part of the transition to ATSC 3.0. As when the ancillary services rules were first adopted, the Commission seeks to promote and preserve free, universally available, local broadcast television by providing a clear regulatory landscape that permits licensees the flexibility to succeed in a competitive market and incentivizes the most efficient use of prime spectrum. And given that the existing rules were adopted over twenty years ago, we believe it is appropriate at this time to reassess them in the context of the newest advanced broadcast television technology. To that end, in the *NPRM* we first seek comment generally on potential uses of the new technological capability from ATSC 3.0 and any existing regulatory barriers to deployment. We then consider specifically whether any changes or clarifications are needed to the ancillary and supplementary service fee rules and the rules defining derogation of service and analogous services. In so doing, we seek to encourage the robust usage of broadcast television spectrum capacity for the provision of Broadcast Internet services consistent with statutory directives.

Background. Commission Regulations Applicable to Ancillary and Supplementary Services. Pursuant to section 336 of the Telecommunications Act of 1996 (the 1996 Act), Congress established the framework for licensing DTV spectrum to television broadcasters and permitted them to offer ancillary and supplementary services consistent with the public interest. Congress recognized that the transition from analog to digital broadcast technology would enable DTV licensees to provide new and innovative services, including various forms of data services, over their additional spectrum capacity and wanted to provide licensees with the flexibility necessary to utilize fully that new potential. Accordingly, section 336 directed the Commission to adopt regulations that would allow DTV licensees to make use of excess spectrum capacity, so long as the ancillary or supplementary services carried on DTV capacity do not derogate any advanced television services (*i.e.,* free over-the-air broadcast service) that the Commission may require. Such ancillary or supplemental services are also subject to any Commission regulations that are applicable to analogous services. The statute also directed the Commission to impose a fee on ancillary or supplementary services for which the DTV licensee charges a subscription fee or receives compensation from a third party other than commercial advertisements used to support non-subscription broadcasting.

The Commission adopted the initial rules governing the provision of ancillary or supplementary broadcast services in 1997 as part of the *DTV Fifth Report and Order.* Consistent with the Act, the rules obligate DTV licensees to ''transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel.'' This means that regardless of whatever other services a broadcaster may provide over its spectrum, it must continue to provide one free stream of programming to viewers. As long as DTV licensees satisfy that obligation, the rules permit them to ''offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis'' provided the services do not derogate the licensee's obligation to provide one free stream of programming to viewers and are subject to any regulations on services analogous to the ancillary or supplementary service. These rules reflect the Commission's intent to promote the public interest by maximizing ''broadcasters' flexibility to provide a digital service to meet the audience's needs and desires.''

The Commission initiated a separate proceeding to determine how best to assess and collect the statutorily required fee for ancillary or supplementary services. The statute directed the Commission to adopt a fee structure that would ''recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and . . . avoid unjust enrichment through the method employed to permit such uses of that resources.'' It also specifically instructed the Commission to set the fee at a value that, ''to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of [the Act] and the Commission's regulations thereunder.'' Ultimately, the Commission determined that a fee based on a percentage of the gross revenues generated by feeable ancillary or supplementary services was the best option to satisfy the statutory directive and achieve the goal of incentivizing innovation to maximize spectrum efficiency. The Commission set the fee at five percent of gross revenues received from any feeable ancillary or supplementary services.

Subsequently, the Commission clarified the ancillary or supplementary service rules as applied to noncommercial educational (NCE) television licensees. The Commission concluded that § 73.621 of the rules, which requires public NCE stations to provide a nonprofit and noncommercial broadcast service, would apply to the provision of ancillary or supplementary services by NCE licensees. However, the Commission also decided to allow NCE licensees to offer subscription services on their excess capacity and to advertise on ancillary or supplementary services that do not constitute broadcasting. Finally, the Commission concluded that section 336(e) of the Act does not exempt NCE licensees ''from the requirement to pay fees on revenues generated by the remunerative use of their excess digital capacity, even when those revenues are used to support their mission-related activities.''

Pursuant to section 336(e)(4) of the Act, the Commission originally adopted rules requiring all DTV licensees and permittees annually to file a form (currently Form 2100, Schedule G), reporting information about their use of the DTV bitstream to provide feeable ancillary and supplementary services. In 2017, as a part of the *Modernization of Media Regulation Initiative,* the Commission revised these filing requirements. The Commission concluded that requiring every DTV licensee to file the form was an unnecessary regulatory burden, as very few licensees offered any feeable service, and instead changed the rules to require only those licensees who had provided feeable ancillary or supplementary services during the applicable reporting period to file the form. As the Commission observed, at that time only a fraction of all television broadcast stations provided feeable ancillary or supplementary services despite expectations in the wake of the digital transition.

Next Generation Broadcast Standard (ATSC 3.0). ATSC 3.0 is the ''Next Generation'' broadcast television (Next Gen TV) transmission standard developed by the Advanced Television Systems Committee as the world's first IP-based broadcast transmission platform, which ''merges the capabilities of over-the-air broadcasting

with the broadband viewing and information delivery methods of the internet, using the same 6 MHz channels presently allocated for DTV service.'' As stated in the *Next Gen TV Report and Order,* the ATSC 3.0 standard will allow broadcasters to ''offer exciting and innovative services,'' including superior reception, mobile viewing capabilities, enhanced public safety capabilities (such as advanced emergency alerting capable of waking up sleeping devices to warn consumers of imminent emergencies), enhanced accessibility features, localized and/or personalized content, interactive educational children's content, and other enhanced features. In 2017, the Commission authorized broadcasters to begin the transition to ATSC 3.0 voluntarily and established standards to minimize the impact on, and costs to, consumers and other industry stakeholders. The Media Bureau began accepting applications for Next Gen TV licenses on May 28, 2019. Earlier this year, the Commission adopted a Notice of Proposed Rulemaking seeking comment on proposed changes to the rules governing the use of distributed transmission systems (DTS) by broadcast television stations. Proponents of the changes assert that they will facilitate the use of new and innovative technologies that will improve traditional broadcast service and mobile reception of broadcast signals, as well as allow the more efficient use of broadcast spectrum, which they claim would enable broadcasters to exploit more fully the new capabilities resulting from ATSC 3.0.

ATSC 3.0 provides greater spectral capacity than the current digital broadcast television standard, allowing broadcasters to innovate, improve service, and use their spectrum more efficiently. Although today many broadcasters are focused solely on deploying traditional broadcast television services using the ATSC 3.0 standard, some broadcasters and third-party groups are looking to the future and examining ways broadcasters can become part of the 5G ecosystem and provide myriad other services using the enhanced capabilities of ATSC 3.0 technologies. Specifically, these groups hope to utilize television spectrum to provide non-traditional broadcast video services such as video-on-demand or subscription video services and new, innovative non-broadcast services in such areas as the automotive industry, agriculture, distance learning, telehealth, public safety, utility automation, and the ''Internet of Things'' (IoT). Providing a regulatory environment to enable a thriving secondary market is key to unlocking the potential for such Broadcast Internet services via ATSC 3.0.

Discussion. With this *NPRM,* we seek comment on any rule changes that would create even more certainty and promote greater investment in innovative Broadcast Internet services. We therefore seek comment on three topics related to the provision of ancillary or supplementary services by broadcast television licensees, either on their own or in conjunction with a third party, to aid the Commission in determining whether and how to modify or clarify its rules to promote the deployment of Broadcast Internet services that can complement the 5G network as a part of the transition to ATSC 3.0. First, we seek comment on a number of general matters concerning the potential uses and applications of excess broadcast spectrum capacity resulting from the transition to ATSC 3.0. Second, we seek comment on whether the amount and method of calculating the ancillary services fee should be reconsidered given the new potential uses of excess spectrum capacity. Finally, we ask whether the Commission should clarify the rules prohibiting derogation of broadcast service and defining an analogous service.

General Matters. As an initial matter, we invite comment on the types of Broadcast Internet services that are likely to be provided in the future using the ATSC 3.0 standard. Recently, television broadcasters have indicated that they will use their spectrum to provide innovative services in such areas as automotive transportation, agriculture, distance learning, telehealth, public safety, utility automation, and IoT devices. Given the wide and likely expanding range of services that could rely on Broadcast Internet spectrum, are there rule changes we should consider to help promote such services? In addition, we invite comment on when television broadcasters anticipate such services might be introduced into the marketplace. Further, to what extent will Broadcast Internet services be utilized as a complement to our nation's 5G network? Are Broadcast Internet services likely to be offered in urban areas of the country as well as in rural and underserved areas?

We seek comment generally on the steps the Commission should take to promote innovation, experimentation, and greater use of broadcast television spectrum to provide ancillary and supplementary services. In addition to today's declaratory ruling, are there additional steps we should take, in light of changes to the marketplace, that could encourage or facilitate the ability of broadcast licensees to enter into partnerships or leasing arrangements for the provision of ancillary and supplementary services that would allow them or others to utilize broadcast spectrum more efficiently and to its fullest extent? For example, are there steps the Commission could take to help facilitate dynamic spectrum management agreements or to provide regulatory certainty for prospective lessees, specifically? Should we consider revisions to our broadcast licensing rules to allow for partnerships or leasing arrangements beyond those that are the subject of clarification in today's declaratory ruling (*e.g.,* leases more closely resembling those used by wireless licensees)? To this end, are there any rules applicable to mobile or fixed wireless services that could be considered useful models for the purposes of encouraging Broadcast Internet services? In addition, what regulatory, technical, or other barriers exist that might impede the introduction of Broadcast Internet services? For example, do the existing technical rules regarding ancillary and supplemental services restrict the types of services that could be offered, either by a station directly or in partnership with a third party? To the extent such barriers exist, what steps, if any, should the Commission take to eliminate them?

We seek comment more specifically on whether there are any potential regulatory limitations on the ability of public television stations to provide Broadcast Internet services. For example, section 399B of the Communications Act permits public stations to provide facilities and services in exchange for remuneration provided those uses do not interfere with the stations' provision of public telecommunications services. Section 399B, however, does not permit public broadcast stations to make their facilities ''available to any person for the broadcasting of any advertisement.'' In 2001, however, the Commission concluded that the section 399B ban on advertising applies to all broadcast programming streams provided by NCE licensees but does not apply to ancillary or supplementary services on their DTV channels, such as subscription services or data transmission services, to the extent that such services do not constitute ''broadcasting.'' We tentatively conclude that the Commission's 2001 determination regarding section 399B permits NCE

broadcasters to offer Broadcast Internet services. We seek comment on the kinds of Broadcast Internet services NCE licensees are likely to provide. How are these stations planning to take advantage of the opportunities afforded by the transition from ATSC 1.0 to ATSC 3.0? Are there any regulatory or other impediments to the provision of ancillary and supplementary services by NCE stations?

We also seek comment on the provision of Broadcast Internet services by low power (LPTV) television stations. Are LPTV broadcasters likely to offer Broadcast Internet services? If so, what kinds of services are these broadcasters likely to provide? Do LPTV stations face unique challenges in the provision of Broadcast Internet services and, if so, what are they? If such challenges exist, what steps, if any, should the Commission take to facilitate the provision of such services by LPTV stations?

Ancillary and Supplementary Service Fee. As noted above, the 1996 Act requires broadcasters to pay a fee to the U.S. Treasury to the extent they use their DTV spectrum to provide ancillary or supplementary services ''(A) for which the payment of a subscription fee is required in order to receive such services, or (B) for which the licensee directly or indirectly receives compensation from a third party in return from transmitting material furnished by such a third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).'' Below we seek comment on whether we should clarify or modify the rules applicable to the provision of feeable ancillary and supplementary services, such as the amount and method of calculating the fee or the reporting requirements, given the new potential uses of spectrum capacity to provide ancillary and supplementary offerings through ATSC 3.0 technologies, including innovative services that were not contemplated when the Commission first implemented the rules over two decades ago.

At the outset, we note that, as discussed above, the Commission is subject to certain statutory mandates for determining the fee for ancillary and supplementary services carried on the public spectrum. Specifically, the ancillary and supplementary services fee must be designed to: (1) Recover for the public a portion of the value of the public spectrum resource made available for ancillary or supplemental use by broadcasters; (2) avoid unjust enrichment of broadcasters through the method used to permit digital use of the spectrum; and (3) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed at auction. Also, the Commission is required by statute to adjust the ancillary and supplementary services fee ''from time to time'' in order to ensure that these requirements continue to be met.

When the Commission last undertook an assessment of ancillary and supplementary service fees in 1998, it determined that it would assess fees on all revenue—both subscription and advertising revenue—from all ancillary and supplementary services for which viewers must pay subscription fees. In addition, as required by the 1996 Act, the Commission determined that fees must be assessed on ancillary and supplementary services for which the licensee directly or indirectly receives compensation from a third party in exchange for the transmission of material provided by the third party (other than for commercial advertisements used to support broadcasting for which a subscription fee is not required). The Commission noted that, pursuant to our rules, over-the-air video programming provided at no charge to viewers is not an ancillary or supplementary service. It reasoned, therefore, that this provision ''applies to ancillary or supplementary services, consisting of material that does not originate with the licensee and that the viewer can receive without payment of a fee.'' These services may include data, audio, ''or any other ancillary or supplementary services that may be established in the future.'' The Commission noted that it received very little comment on the types of non-subscription ancillary or supplementary services parties contemplated providing. Accordingly, it concluded that, in determining whether a non-subscription ancillary or supplementary service is feeable, ''until we gain more experience, we will simply be guided by the statutory criteria as questions arise.''

Given the passage of time since the implementation of the ancillary and supplementary fee program over two decades ago and the technological developments since then that will enable the provision of new and innovative ancillary or supplementary services on the public spectrum, we seek comment on whether we should clarify or modify our rules for assessing fees on such services. In the ATSC 3.0 proceeding, some commenters suggested that a higher fee might be warranted to ensure compliance with the statutory directives in section 336(e)(2)(A) through (B), while others asserted that the fee should be reduced to ensure that it does not impede innovation by Next Gen TV broadcasters. In the *Next Gen TV Report and Order,* the Commission concluded that it would be premature to adjust the fee associated with ancillary services in part because it was not clear from the record in that proceeding which ATSC 3.0-based services and features would be ''ancillary services'' or which such services will be feeable.

With the possibility of providing new, innovative ancillary and supplementary services that were not necessarily envisioned at the time the fee rules were established, is it appropriate at this time to adjust the fee associated with ancillary and supplementary services? Should we consider adjustments to either the basis of the fee or the percentage of the fee? Are there any circumstances under which it would be appropriate to set the fee at zero? What changes, if any, would ensure that the fee promotes the provision of innovative ancillary and supplementary services offered by ATSC 3.0 transmission while complying with statutory requirements (*e.g.,* recovering some portion of the value of the spectrum for the public, preventing unjust enrichment, recovering for the public an amount that equals the amount that would have been recovered at auction)? And how, if at all, should we account for changes in the communications and media landscape? What would be the costs and benefits of adjusting the ancillary services fee? Commenters advocating in favor of modifying the fee should describe with specificity the kinds of ancillary services broadcasters are likely to offer in ATSC 3.0 and the benefits that would accrue from any proposed change in fee structure. Alternatively, is it still premature to change the fee rules now? Should we allow the ATSC 3.0 marketplace to develop further before considering changes?

Are there any other issues we should consider with respect to the application of fees to the provision of ancillary or supplementary services during the transition to ATSC 3.0? For example, in order to promote the provision of new services, should we apply the fee only to gross revenues above a certain threshold? If so, should such a threshold apply only to certain classes of stations, such as NCE stations? Similarly, should the fees be capped during license term and, if so, at what level? Should we revisit the Commission's prior decision to adopt a fixed percentage rate as opposed to a variable percentage rate based upon the type of service provided? Should we consider granting exemptions for certain classes of service

from fees, such as telehealth, distance learning, public safety, or homeland security-related services, or services that promote access in rural areas? Would it be consistent with the statute to do so? Would such rule changes or exemptions be consistent with the Commission's statutory obligation to assess a fee that will recover some portion of the value of the spectrum for the public, prevent unjust enrichment, and approximate the revenue that would have been received through auction? We note that when the Commission initially implemented the program for assessing ancillary and supplementary fees, it observed that ''[a]n overly complex fee program could be difficult for licensees to calculate and for the Commission to enforce and could create uncertainty that might undermine a DTV licensee's efficient planning of what services it will provide.'' Does this concern regarding complexity weigh against any changes to the ancillary and supplementary fee that differentiate among types of services? We invite comment generally on these issues.

We invite comment on how the ancillary and supplementary services fee should be calculated in instances where a broadcaster receives compensation from an unaffiliated third party, such as a spectrum lessee, in return for the airing of material provided by the third party. For example, the broadcaster could lease spectrum to a third party for a set fee or could agree to share in the proceeds generated by the service offered by the third party. We tentatively conclude that, in each instance, the fees should be calculated based on the gross revenue received by the broadcaster, without regard to the gross revenue of the spectrum lessee. Indeed, to hold otherwise could subject the broadcaster to a fee payment in excess of the actual gross revenue it received. We seek comment on this tentative conclusion. To the extent the licensee and the lessee are affiliated (*e.g.,* commonly owned or controlled), we believe that the gross revenues of the lessee should be attributed to the licensee for purposes of calculating the ancillary and supplementary services fee. Otherwise, the licensee (or its parent company) could create a subsidiary for the sole purpose of evading the fee while retaining all of the financial benefit of the arrangement. We seek comment on these issues. We also invite comment on whether the calculation of fees should include the value of any ''in-kind'' improvements made by an unaffiliated spectrum lessee to the licensee's facilities to facilitate the provision of services. While such facility improvements could reasonably be considered a form of indirect compensation that may otherwise be subject to the ancillary and supplementary services fee, we tentatively conclude that the value of such improvements should be excluded from the gross revenue calculation. The transition to ATSC 3.0 is voluntary and many stations may lack the funds and/or expertise to upgrade their transmission facilities. Excluding the value of in-kind improvements from the fee calculation may help promote faster adoption of ATSC 3.0 and greater use of spectrum for Broadcast Internet applications. Over time, this could result in greater fee collection as broadcasters derive greater gross revenues as a result of the facilities upgrade. We invite comment on these issues.

Finally, we seek comment on whether we should consider any changes to the annual reporting requirement applicable to the provision of feeable ancillary or supplementary services. Currently, the Commission's rules require all commercial and noncommercial DTV licensees and permittees that provided feeable ancillary or supplementary services during the applicable 12-month period to report each December 1: (1) A brief description of the feeable ancillary or supplementary services provided; (2) gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and (3) the amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. Should the Commission make any changes to the information collected on the form or any other information collections related to the provision of ancillary and supplemental services?

Derogation of Service and Analogous Services. The 1996 Act and specifically section 336 thereof allow broadcasters flexibility to provide ancillary and supplementary services. But in authorizing broadcast television stations to provide ancillary or supplementary services on their DTV channels, Congress required that the provision of such services: (1) Must avoid derogating any advanced television services that the Commission may require; and (2) must be subject to Commission regulations applicable to analogous services. In furtherance of this statutory requirement, the Commission adopted § 73.624(c) of the rules, which permits broadcasters to offer ancillary and supplementary services so long as they ''do not derogate the DTV broadcast stations' obligations under paragraph (b) of this section.'' Section 73.624(b) of the rules, in turn, requires that each DTV broadcast licensee transmit at least one standard definition (SD) over-the-air video program signal on its digital channel at no charge to viewers that is at least comparable in resolution to analog television programming. Accordingly, a station's service is not derogated so long as it continues to offer at least one free over-the-air SD video programming stream at least comparable in resolution to analog television programming pursuant to § 73.624(b). Furthermore, broadcasters are permitted to provide ancillary or supplementary services on their broadcast spectrum that are analogous to other regulated services, but should they choose to do so, they are required to adhere to any rules specific to such type of service.

While the Commission adopted broad rules in furtherance of these statutory requirements in 1997, it has not revisited these rules since affirming them on reconsideration in 1998. In particular, the Commission has not conducted a recent examination of how these restrictions should be applied in the context of changes in the media and communications landscape, or in light of the capabilities offered by the ATSC 3.0 transmission standard as compared to the ATSC 1.0 standard. Accordingly, we seek comment below on whether the existing interpretation of what constitutes a derogation of service remains valid or whether any changes are warranted. Further, we seek comment on whether and, if so, how the Commission should provide greater clarity to broadcasters to determine when an offered service is ''analogous'' to a regulated service and thus would require compliance with parts of the Act and Commission rules beyond those governing broadcast services.

Derogation of Service. As discussed above, section 336(b) of the Act requires that the Commission ''limit the broadcasting of ancillary or supplementary services . . . so as to avoid derogation of any advanced television services.'' We tentatively conclude that the determination of whether a broadcast station's signal has been derogated should continue to be evaluated by whether it provides at least one standard definition over-the-air video program signal at no direct charge to viewers that is at least comparable in resolution to analog television programming, as required by § 73.624(b). We seek comment on this tentative conclusion. We also tentatively conclude that we should amend the wording of § 73.624(b) to specifically define the precise resolution that is considered to be ''at least comparable in

resolution to analog television programming'' as 480i. We seek comment on this proposal. What resolution does the broadcast industry currently use for purposes of compliance with the Commission's existing ''at least comparable in resolution to analog television programming'' standard? We recognize that since adoption of these rules, broadcasters have begun providing a myriad of broadcast television programming offerings both in high definition (HD) and SD, often offering multiple streams (*i.e.,* subchannels) of free, over-the-air, video programming. We seek comment on whether a broadcaster's replacement of an HD offering with an SD offering in order to deploy ancillary and supplementary services should be deemed a derogation of advanced television services under our rules. Are there any other modifications of the Commission's current derogation of service rule that we should consider in order to ensure that, as mandated by section 336 of the Act, broadcasters' ancillary and supplementary offerings are not being provided to the derogation of ''advanced television services'' (*i.e.,* free over-the-air broadcast service)? How might any proposed rule modification, on balance, affect broadcasters' ability to deploy ancillary and supplementary services?

Standard for Evaluating Analogous Services. As stated above, section 336(b) of the Act outlines the Commission's authority to permit the provision of ancillary or supplementary services by DTV licensees in order to ensure parity among regulated entities and prevent unjust enrichment. While the Commission's rules provide examples of the types of services that might be offered, there is no specific guidance on how licensees or the Commission should determine whether a non-broadcast service being offered by a DTV licensee is ''analogous'' to another regulated service and therefore subject to regulation under those rules. To date, the Commission has provided little guidance beyond that offered in the rule when it was initially adopted. At that time, the Commission referenced, and largely just extended, the prior approach applicable to the provision of ancillary and supplementary services by television station licensees broadcasting in analog.

We seek comment on whether the Commission should provide additional guidance regarding the factors or other approaches it will use to determine whether an ancillary or supplementary service is sufficiently ''analogous'' to another service. What are some examples of services that broadcasters may be looking to offer to consumers that could be deemed ''analogous'' to services currently regulated by the Commission? As a general matter, what information should the Commission consider when determining whether an ancillary or supplementary service being offered is analogous to another regulated service? Should we adopt a presumptive standard by which any service that has certain specific characteristics is deemed to be analogous to another Commission service? What characteristics would be indicative of a service that should be considered to meet such a presumptive standard? Alternatively, are there certain circumstances in which a broadcaster should be presumptively deemed not to be offering an analogous service? For example, what if the broadcaster or a third-party spectrum lessee is not offering the entire, end-to-end, service to the consumer or customer? What if the broadcast spectrum is only being used for wireless off-load for existing broadband providers (*e.g.,* airing large bit-rate video programming), one-way data distribution services (*e.g.,* consumer device software updates), or as part of spectrum that must be aggregated across more than one broadcaster in order to provide a viable service? Can an input to another service be regulated as an ''analogous service''? Should any affirmative finding by the Commission be required? If so, what should be the process for obtaining such approval and what information should be provided by broadcasters to demonstrate that the presumptive standard has been met?

Further, in the event that an ancillary or supplementary service is analogous to a service permitted elsewhere in the Commission's rules, but is only provided by a third party lessee or the television station for a very short period of time—on a discrete basis (*e.g.,* only an hour per day) and/or on an aggregated basis (*e.g.,* no more than 48 hours collectively in a month or a year)—should the Commission's analogous services rule apply nonetheless? Stated differently, should an analogous service always be subject to the applicable analogous service's rules regardless of the circumstances, or should the Commission permit some flexibility or ''de minimis'' operation if the broadcaster or its third-party spectrum lessee only offers the service on a discrete or aggregated basis? Should we adopt a ''de minimis'' service threshold that exempts DTV licensees that provide analogous services from needing to apply for a license or authorization that may otherwise be required under the analogous services rules? Would this be consistent with the statute that seeks to ensure parity among service providers? If so, what would an appropriate ''de minimis'' service threshold be for such an exemption? Specifically, what would be the appropriate discrete and/or aggerated time limits? Would such flexibility benefit and promote broadcasters' efforts to offer Broadcast Internet services, and, if so, how? In order to promote the offering of ancillary and supplementary services, should the Commission consider waiving, on a case-by-case or other basis, certain regulations that would apply to analogous services? Are there certain rules that are applicable to other regulated service providers that may not be feasible for broadcasters to comply with?

Are there other actions the Commission can take to provide broadcasters with greater guidance and clarity as to whether a service they are seeking to offer would be deemed an analogous service? Are there any other issues we should consider with regard to the analogous services provision in light of advancements in broadcasting and the capabilities of the ATSC 3.0 standard?

Paperwork Reduction Act. This document may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 through 3520). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ex Parte Rules—Permit-But-Disclose. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. 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. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 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 section 1.1206(b) of the rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Requirements—Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent 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. 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. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice,* DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.* During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules. With this item, we take important steps to help further unlock the potential of broadcast spectrum, empower innovation, and create significant value for broadcasters and the American public alike by removing the uncertainty cast by legacy regulations. More than twenty years ago, during the transition from analog to digital broadcast television, the Commission adopted rules allowing digital television (DTV) licensees to provide ancillary or supplementary services on their excess spectrum capacity and authorized licensees to enter into leases with other entities that would provide such services. Flash forward to today, and the conversion of digital television from the first-generation technologies associated with the ATSC 1.0 standard to the next-generation of ancillary services that will be enabled by ATSC 3.0 is now underway. This new technology promises to expand the universe of potential uses of broadcast spectrum capacity for new and innovative services beyond traditional over-the-air video in ways that will complement the nation's burgeoning 5G network and usher in a new wave of innovation and opportunity. These new offerings over broadcast spectrum can be referred to collectively as ''Broadcast Internet'' services to distinguish them from traditional over-the-air video services. Broadcasters will not only be able to better serve the information and entertainment needs of their communities, but they will have the opportunity to play a part in addressing the digital divide and supporting the proliferation of new, IP-based consumer applications or voluntarily entering into arrangements to allow others to invest in achieving those goals. We undertake this proceeding to ensure that our rules help to foster the introduction of new services and the efficient use of spectrum.

By this *NPRM,* we seek comment on the extent to which we should clarify or modify our existing rules in order to further promote the deployment of Broadcast Internet services as part of the transition to ATSC 3.0. As when the ancillary services rules were first adopted, the Commission seeks to promote and preserve free, universally available, local broadcast television by providing a clear regulatory landscape that permits licensees the flexibility to succeed in a competitive market and incentivizes the most efficient use of prime spectrum. And given that the existing rules were adopted over twenty years ago, we believe it is appropriate at this time to reassess them in the context of the newest advanced broadcast television technology.

To that end, in this *NPRM* we first seek comment on potential uses of the new technological capability from ATSC 3.0 in such areas as the automotive industry, agriculture, distance learning, telehealth, public safety, utility automation, and the ''Internet of Things'' (IoT). We intend to identify and minimize any existing regulatory, technical, or other barriers that might

impede the introduction of these Broadcast Internet services. We then consider whether any changes or clarifications are needed to the ancillary and supplementary service fee rules and the rules defining derogation of service and analogous services. Specifically, we ask whether we should clarify or modify the rules applicable to the provision of feeable ancillary and supplementary services, such as the amount and method of calculating the fee or the reporting requirements, given the new potential uses of spectrum capacity to provide ancillary and supplementary offerings through ATSC 3.0 technologies, including innovative services that were not contemplated when the Commission first implemented the rules over two decades ago. With regard to the rules defining derogation of service we tentatively conclude that the determination of whether a broadcast station's signal has been derogated should continue to be evaluated by whether it provides at least one standard definition over-the-air video program signal at no direct charge to viewers, as required by the rules. Further, with regard to the rules defining analogous services, we seek comment on whether the Commission should provide additional guidance regarding the factors or other approaches it will use to determine whether an ancillary or supplementary service is sufficiently ''analogous to another service.'' We seek comment on any other rule changes we should consider to provide greater regulatory clarity to television broadcasters. In so doing, we seek to encourage the robust usage of broadcast television spectrum capacity for the provision of Broadcast Internet services consistent with statutory directives.

Legal Basis. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than $25 million, 25 had annual receipts ranging from $25 million to $49,999,999, and 70 had annual receipts of $50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374. Of this total, 1,282 stations (or 94.2%) had revenues of $41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 388. The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

There are also 387 Class A stations. Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,892 LPTV stations and 3,621 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. It is our intent to promote and preserve free, universally available, local broadcast television by permitting licensees the freedom to succeed in a competitive market, as well as to incentivize the most efficient use of prime spectrum. We do not anticipate this NPRM leading to any new reporting, recordkeeping, or other compliance requirements. Rather, it should decrease already existing regulatory burdens on broadcast television licensees as the goal of this proceeding is to reduce regulatory uncertainty and eliminate outdated rules that could hinder the development of the new, innovative uses of broadcast spectrum that the ATSC 3.0 standard enables.

However, we do seek comment on whether we should consider any changes to the annual reporting requirement applicable to the provision of feeable ancillary or supplementary services. Currently, the Commission's rules require all commercial and noncommercial DTV licensees and permittees that provided feeable ancillary or supplementary services during the applicable 12-month period to report each December 1: (1) A brief description of the feeable ancillary or supplementary services provided; (2) gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and (3) the amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. If after the record develops we determine that there is a need for any additional reporting requirements associated with the

provision of feeable ancillary or supplementary services, we will take all appropriate steps to minimize the burden on broadcast licensees.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Through this *NPRM,* the Commission seeks to minimize the regulatory burden associated with the provision of ancillary or supplementary services by broadcast television licensees, the majority of which are classified as small entities. The existing rules governing the provision of ancillary or supplementary broadcast services, found in § 73.624, apply consistently to all broadcast licensees to ensure that the provision of new and innovative services does not result in a derogation of the free, universally available, local broadcast television service for which the license is granted. These minimum service standards must apply to all licensees, including small entities. The *Declaratory Ruling* we issue today removes regulatory uncertainty that could hinder the development of the new, innovative uses of broadcast spectrum that the ATSC 3.0 standard enables. Consistent with this action, any final rule the Commission adopts in response to this *NPRM* will reduce regulatory barriers in our existing regulations restricting broadcasters from using the full potential of ATSC 3.0 technologies and therefore should not result in any increased regulatory burden or negative economic impact for any broadcast licensees.

Federal Rules that May Duplicate, Overlap or Conflict With the Proposed Rule. None.

It is ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, this Notice of Proposed Rulemaking in MB Docket No. 20–145 *is adopted. It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking in MB Docket No. 20–145, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–13203 Filed 7–15–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2018–0093; FF09E21000 FXES11110900000 201]

Endangered and Threatened Wildlife and Plants; 90-Day Finding for the Dunes Sagebrush Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the dunes sagebrush lizard as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the dunes sagebrush lizard may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a review of the status of the dunes sagebrush lizard to determine whether listing the species is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding the species. Based on the status review, we will issue a 12-month finding that will address whether or not listing the dunes sagebrush lizard is warranted, in accordance with the Act.

DATES: This finding was made on July 16, 2020. As we commence work on the status review, we seek any new information concerning the status of, or threats to, the species or its habitat. We will consider any relevant information that we receive during our work on the status review.

ADDRESSES:

Supporting documents: A summary of the basis for the petition finding is available on *http://www.regulations.gov* under docket number FWS–R2–ES–2018–0093. In addition, this supporting information is available for public inspection, by appointment, during normal business hours by contacting the person specified in **FOR FURTHER INFORMATION CONTACT**.

Submitting information: If you have new scientific or commercial data or other information concerning the status of, or threats to, the dunes sagebrush lizard, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter docket number FWS–R2–ES–2018–0093. Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard* copy: Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2018–0093, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Seth Willey, 505–346–2525; *seth_willey@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the Lists (*i.e.,* ''list'' a species), remove

a species from the Lists (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to ''credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted'' (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (indirect impacts). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summary of Finding

Species and Range

Dunes sagebrush lizard (*Sceloporus arenicolus*); New Mexico and Texas.

Petition History

On June 1, 2018, we received a petition from the Center for Biological Diversity and Defenders of Wildlife, requesting that the dunes sagebrush lizard be listed as endangered or threatened and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the dunes sagebrush lizard due to potential threats associated with the following: Oil and gas development and operations, and sand mining (Factor A); and climate change (Factor E). The petition also presented substantial information that the existing regulatory mechanisms may be inadequate to address impacts of these threats (Factor D).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0093 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petition under section 4(b)(3)(A) of the Act, we have determined that the petition summarized above for the dunes sagebrush lizard presents substantial scientific or commercial information indicating that listing the species may be warranted. We are, therefore, initiating a status review to determine whether listing the species is warranted under the Act. At the conclusion of the status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether listing the dunes sagebrush lizard is not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–14453 Filed 7–15–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 85, No. 137
Thursday, July 16, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest; California; Social and Ecological Resilience Across the Landscape EIS

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service is preparing an Environmental Impact Statement (EIS) for the Social and Ecological Resilience Across the Landscape (SERAL) project. The overall purpose of the project is to increase the landscape's resilience to natural disturbances such as fire, drought, insects, and disease by restoring the forest structure and composition to its natural range of variation (NRV).

DATES: Comments concerning the scope of the analysis must be received by August 17, 2020. The draft environmental impact statement is expected February 2021 and the final environmental impact statement is expected February 2022.

ADDRESSES: Scoping comments may also be submitted electronically through *https://cara.ecosystem-management.org/Public/commentInput?Project=56500.* Written comments may be submitted via mail or by hand delivery to Stanislaus National Forest, Attn: SERAL, 19777 Greenley Road, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Katie Wilkinson (Environmental Coordinator), 209–288–6321, or by email at *kathryn.wilkinson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Proposed forest restoration treatments consist of prescribed fire, hand thinning, mastication, variable density thinning, hand the limited salvage of insect-, disease-, drought-, and fire-killed trees. Treatments will be strategically located where the forest structure is departed from the natural range of variation within a 116,000-acre project area. The proposed forest restoration treatments have been designed to implement management approaches provided in the Conservation Strategy for the California Spotted Owl in the Sierra Nevada (USDA Forest Service 2019), which require multiple forest plan amendments. Approximately 10,800 acres of strategic fire management features (linear fuelbreaks, prepared roadsides, and defensible space) are proposed within the project area to break up large expanses of continuous fuels, provide for firefighter access and safety, increase suppression opportunities, and provide control points for the implementation of prescribed fire. A combination of control and restoration treatments are also proposed to address invasive plant infestations occurring on the Stanislaus National Forest involving the use of herbicides with mechanical, manual, and cultural control methods over several years.

Purpose and Need for Action

The purpose of the SERAL EIS is to prepare the landscape for the safe reintroduction of fire as a key ecological process, increase the landscape's resilience and adaptive capacity to natural disturbances such as fire, drought, insects and disease, reduce the risk of fire spreading into communities or damaging critical infrastructure, and to manage the forest in a cost-effective manner, including making wood products available to local industries and businesses. The actions proposed in the SERAL project are needed to minimize the potential for large-, high-severity fire and habitat loss; shift the landscape vegetation structure and composition towards conditions that are more in alignment with its historic NRV, abate hazard trees; control occurrences of invasive, non-native plants; and assist wildfire management operations., conserve and/or restore terrestrial and aquatic ecosystems and protect these systems.

Proposed Action

The Stanislaus National Forest is proposing multiple actions to meet the purpose and need of the project, as described below.

A combination of mechanical thinning and prescribed fire is proposed for approximately 38,000 acres. The majority of the treatments (approximately 28,000 acres) will be focused within mid-closed forested areas and designed to create conditions favorable to allow forest succession towards a late-open seral open forest. The other approximate 10,000 acres of treatments will be located across late-closed and mid-closed seral forest areas designed to create a late-open and mid-open seral forest structure.

Treatment objectives to create both late-open and mid-open forest structure will be achieved through variable density thinning with strategically placed openings (gaps) and retained groups of trees (clumps) scattered throughout the treated landscape. Gaps and clumps will generally range in size between 0.1 and 0.5 acres each averaging approximately 0.25 acres in size and a gap frequency of approximately one every two acres. Thinning would primarily consist of timber harvesting but also includes non-commercial methods such as prescribed fire and biomass removal. Multiple logging systems, road maintenance, temporary road construction, and landing development would be required for commercial harvest. A proportion of the proposed restoration treatments will occur within California spotted owl protected activity centers and territories adhering to specifications based on guidance provided in the Conservation Strategy for the California Spotted Owl in the Sierra Nevada (USDA Forest Service 2019) and located strategically to ensure high quality habitat is maintained.

The conditional salvage of trees to respond to future insect and disease, drought (I&D, D) or fire mortality is included as part of the proposed action. When I&D, D mortality affects more than 30% of the overstory canopy, salvage is limited to areas within 0.25 miles of an existing road prism and not needing greater than 500 feet of temporary road to access the salvage unit. When less than 30% of the overstory canopy is affected by I&D, D mortality salvage may occur within restoration treatment areas

but will be incorporated into the variable density thinning treatments to establish the desired gaps. Salvage of fire-killed trees would be authorized for abating hazard trees along high use roads (level 3,4, 5 and some level 2), and up to 500 acres per two HUC–6 watersheds, and a maximum of 1,000 acres per single fire event.

Additional treatments are proposed for approximately 10,800 acres within the project area to create a network of strategic fire management features (linear fuelbreaks, prepared roadsides, and defensible space). These features are proposed to break up large expanses of continuous fuels, provide for firefighter access and safety, increase suppression opportunities, and provide control points for the implementation of prescribed fire. To create these features, trees may be thinned to shaded fuelbreak standards and continuous vegetation under 8'' DBH or 12 feet tall will be broken up into naturally appearing clumps or islands of varied size and shape.

Non-native invasive weed control and eradication treatments are proposed for mapped known invasive weed locations; additional acres to account for a 20% rate of spread from those known locations; and a limited number of acres where future infestations are discovered subsequent to the analysis.

Forest Plan Amendment

For more than a quarter of a century, the Forest Service has been engaging in proactive California spotted owl (CSO) conservation focusing on retaining suitable habitat and minimizing disturbance to breeding owls. However, new science indicates threats to spotted owls are shifting and evolving, environmental conditions are changing, and owl populations are declining in some areas of the species' range. The proposed forest plan amendments would allow the SERAL proposed landscape restoration treatments to best meet the purpose and need of the project and implement the guiding principles of the Conservation Strategy for the California Spotted Owl in the Sierra Nevada (USDA forest Service 2019), hereafter referred to as the ''Conservation Strategy''. The Conservation Strategy provides conservation measures that provide some immediate stability for individual owls that allow landscape treatments to occur to better align the landscape with its NRV. The Conservation Strategy concludes that restoring landscape structure and function to be within the NRV can help develop resilient habitat conditions that provide CSO conservation in the long term.

The amendments are specific to the 116,000-acre project area and proposed NRV restoration treatments and are consistent with the 2012 Planning Rule. The substantive provisions of 36 CFR 219.8 through 219.11 that directly apply to the proposed amendments are 36 CFR 219.9 Diversity of Plant and Animal Communities, (a) Ecosystem plan components, (1) Ecosystem integrity (36 CFR 219.9(a)(1)); 36 CFR 219.9 Diversity of Plant and Animal Communities, (a) Ecosystem plan components, (2) Ecosystem diversity, (i) key characteristics associated with the terrestrial and aquatic ecosystem types (36 CFR 219.9(a)(2)(i)); 36 CFR 219.9 Diversity of Plant and Animal Communities, (a) Ecosystem plan components, (2) Ecosystem diversity, (ii) rare aquatic and terrestrial plant and animal communities (36 CFR 219.9(a)(2)(ii)); and 36 CFR 219.8 Sustainability, (b) Social and Economic Sustainability, (1) Social, cultural, and economic conditions relevant to the area influenced by the plan (36 CFR 219.8(b)(1)).

Responsible Official

The responsible official will be Jason Kuiken, Forest Supervisor, Stanislaus National Forest.

Nature of Decision To Be Made

Given the purpose and need, the responsible official will determine whether the proposed actions comply with all applicable laws governing Forest Service actions and with the applicable standards and guidelines found in the Stanislaus National Forest Forest Plan; whether the EIS has sufficient environmental analysis to make an informed decision; and whether the proposed action meets the purpose and need for action. With this information, the responsible official must decide whether to select the proposed action or one of any other potential alternatives that may be developed, and what, if any, additional actions should be required.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. Public comments regarding this proposal are requested in order to assist in identifying issues and opportunities associated with the proposal, how to best manage resources, and to focus the analysis. The SERAL project is subject to pre-decisional administrative review consistent with the Consolidated Appropriations Act of 2012 (Pub. L. 112–74) as implemented by subparts A and B of 36 CFR part 218. In addition, the proposed forest plan amendments are subject to pre-decisional administrative review, pursuant to subpart B of the Planning Rule (36 CFR part 219).

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent eligibility to participate in subsequent administrative review.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–15077 Filed 7–15–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Commission will hold a briefing via web conference at 12:00 p.m. (EDT) on Monday, July 20, 2020. The purpose of the briefing will be to hear from presenters about COVID–19 in nursing homes in Connecticut and to review and vote on a statement on police reform.

DATES: Monday, July 20, 2020; 12:00 p.m. (EDT).

Public Call-In Information (audio only): Conference call-in number: 1–800–353–6461 and conference ID: 9640368.

Web Access Information (visual only): The online portion of the meeting may be accessed through the following link: *https://cc.readytalk.com/r/tzr2a26466pb&eom.*

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–353–6461 and conference ID: 9640368. If you want to see the presenters and follow any visuals they may share, you may join the visual portion of the briefing using the link provided above. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–800–353–6461 and conference ID: 9640368.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlqAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone numbers or email address.

Agenda

Monday, July 20, 2020 at 12:00 p.m. (EDT)

- Roll Call
- Welcome and Introductions
- Briefing: COVID–19 in Nursing Homes in Connecticut
- Review and Vote on Statement on Police Reform
- Open Comment
- Other Business
- Next Steps
- Adjournment

Dated: July 8, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–15060 Filed 7–15–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is partially rescinding the administrative review of the countervailing duty order on multilayered wood flooring (Wood flooring) from the People's Republic of China (China) for the period of review (POR) January 1, 2018 through December 31, 2018.

DATES: Applicable July 16, 2020.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Suzanne Lam, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–0783, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2019, Commerce published a notice of opportunity to request an administrative review of the countervailing duty order on wood flooring from China.[1] Pursuant to requests from interested parties, Commerce initiated an administrative review with respect to 166 companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[2] Subsequent to the initiation of the administrative review, the petitioner and a domestic interested party[3] timely withdrew their requests for an administrative review of 162 companies, as discussed below. As a result, all review requests were withdrawn for 91 of these 162 companies.[4] There are active review requests on the record for the remaining 71 companies.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation.[5] All requests for an administrative review were withdrawn by the established deadline, June 25, 2020, for the companies listed in the Appendix.[6] As a result, Commerce is rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1). The instant review will continue with respect to the remaining companies in our initiation notice.[7]

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For the companies for which this review is rescinded, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse for consumption, in accordance with 19 CFR 351.212(c)(l)(i).

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 66880 (December 6, 2019).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 6896 (February 6, 2020) (*Initiation Notice*).

[3] The petitioner is American Manufacturers of Multilayered Wood Flooring. The domestic interested party is AHF, LLC.

[4] We note that Riverside Plywood Corporation has reported that Suzhou Times Flooring Co., Ltd. (Suzhou Times) is a cross-owned company and Commerce has treated Suzhou Times as a cross-owned company of Riverside Plywood Corporation in previous administrative reviews. Therefore, because Riverside Plywood Corporation remains under review, we are not rescinding the administrative review for Suzhou Times based on the petitioner's request to rescind the review for Suzhou Times. *See* Riverside Plywood Corporation's June 4, 2020 Affiliation Response.

[5] On April 24, 2020, Commerce decided to toll all deadlines in administrative reviews by 50 days. *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020. Therefore, Commerce tolled the deadline for the withdrawal of the requests for this administrative review until June 25, 2020.

[6] *See* Domestic Interested Party's Letter, ''Multilayered Wood Flooring from the People's Republic of China: Withdrawal of Request for Review—CY 2018 CVD Review Period,'' dated May 6, 2020; and Petitioner's Letter, ''Multilayered Wood Flooring from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated June 25, 2020.

[7] *See Initiation Notice,* 85 FR at 6898.

Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to 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, which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 10, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Companies Rescinded From Review

1. A&W (Shanghai) Woods Co., Ltd.
2. American Pacific Plywood, Inc.
3. Anhui Suzhou Dongda Wood Co., Ltd.
4. Baishan Huafeng Wooden Product Co., Ltd.
5. Baiying Furniture Manufacturer Co., Ltd.
6. Changbai Mountain Development And Protection Zone Hongtu Wood Industrial Co., Ltd.
7. Chinafloors Timber (China) Co., Ltd.
8. Cheng Hang Wood Co., Ltd.
9. Dalian Dajen Wood Co., Ltd.
10. Dalian Deerfu Wooden Product Co., Ltd.
11. Dalian Guhua Wooden Product Co., Ltd.
12. Dalian Huade Wood Product Co., Ltd.
13. Dalian Jinda Wood Products Corporation
14. Dalian Jiuyuan Wood Industry Co., Ltd.
15. Dalian Meisen Woodworking
16. Dalian Xinjinghua Wood Co., Ltd.
17. Dongtai Zhangshi Wood Industry Co. Ltd.
18. Dunhua City Wanrong Wood Industry Co., Ltd.
19. Fu Lik Timber (HK) Co., Ltd.
20. Fujian Wuyishan Werner Green Industry Co., Ltd.
21. Furnco International Shanghai Company
22. Gaotang Weilong Industry and Trade
23. Gold Seagull Shanghai Flooring
24. GTP International Ltd.
25. Guangdong Fu Lin Timber Technology Limited
26. Guangdong Yihua Timber Industry Co., Ltd.
27. Guangzhou Panyu Kangda Board Co., Ltd.
28. Guangzhou Panyu Southern Star Co., Ltd.
29. HaiLin XinCheng Wooden Products, Ltd.
30. Hangzhou Dazhuang Floor Co., Ltd. (DBA Dasso Industrial Group Co., Ltd.)
31. Hangzhou Huahi Wood Industry Co., Ltd.
32. Henan Xingwangjia Technology Co., Ltd.
33. Hong Kong Easoon Wood Technology Co., Ltd.
34. Huaxin Jiasheng Wood Co., Ltd.
35. Huber Engineering Wood Corp.
36. Huzhou City Nanxun Guangda Wood Co., Ltd.
37. Huzhou Daruo Import And Export
38. Huzhou Fuma Wood Co., Ltd.
39. Huzhou Laike Import and Export Co.
40. Huzhou Muyun Wood Co., Ltd.
41. Jesonwood Forest Products ZJ
42. Jiafeng Wood (Suzhou) Co., Ltd.
43. Jiangsu Kentier Wood Co., Ltd.
44. Jiashan Fengyun Timber Co., Ltd.
45. Jiaxing Brilliant Import & Export Co., Ltd.
46. Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.
47. Kunming Alston (AST) Wood Products Co., Ltd.
48. Liaoning Daheng Timber Group
49. Linyi Bonn Flooring Manufacturing Co., Ltd.
50. Max Choice Wood Industry
51. Mudanjiang Bosen Wood Industry Co., Ltd.
52. Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.
53. Nanjing Minglin Wooden Industry Co., Ltd.
54. Ningbo Tianyi Bamboo and Wood Products Co., Ltd.
55. Power Dekor North America Inc.
56. PT. Tanjung Kreasi Parquet Industry
57. Qingdao Barry Flooring Co., Ltd.
58. Qingdao Wisdom International
59. Samling Riverside Co., Ltd.
60. Shandong Kaiyuan Wood Industry Co., Ltd.
61. Shandong Puli Trading Co., Ltd.
62. Shanghai Anxin (Weiguang) Timber Co., Ltd.
63. Shanghai Demeija Timber Co., Ltd.
64. Shanghai Eswell Timber Co., Ltd.
65. Shanghai Lairunde Wood Co., Ltd.
66. Shanghai Lizhong Wood Products Co., Ltd. (a/k/a The Lizhong Wood Industry Limited Company of Shanghai)
67. Shanghai New Sihe Wood Co., Ltd.
68. Shanghai Shenlin Corporation
69. Shenyang Haobainian Wooden Co., Ltd.
70. Shenyang Sende Wood Co., Ltd.
71. Shenzhenshi Huanwei Woods Co., Ltd.
72. Suifenhe Chengfeng Trading Co., Ltd.
73. Sunyoung Wooden Products
74. Suzhou Anxin Weiguang Timber Co., Ltd.
75. Tak Wah Building Material (Suzhou) Co.
76. The Greenville Flooring Co., Ltd.
77. Topocean Consolidation Service
78. Vicwood Industry (Suzhou) Co. Ltd.
79. Xuzhou Antop International Trade Co., Ltd.
80. Yixing Lion-King Timber Industry
81. Zhejiang Anji Xinfeng Bamboo And Wood Industry Co., Ltd.
82. Zhejiang Biyork Wood Co., Ltd.
83. Zhejiang Dadongwu Auto Elect Motor
84. Zhejiang Desheng Wood Industry Co., Ltd.
85. Zhejiang Fudeli Timber Industry Co., Ltd.
86. Zhejiang Fuma Warm Technology Co., Ltd.
87. Zhejiang Haoyun Wooden Co., Ltd.
88. Zhejiang Jesonwood Co., Ltd.
89. Zhejiang Jiaye Flooring
90. Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd.
91. Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd.

[FR Doc. 2020–15310 Filed 7–15–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–471–807]

Certain Uncoated Paper from Portugal: Notice of Court Decision Not in Harmony With Amended Final Results of Antidumping Duty Administrative Review; Notice of Amended Final Results of Review Pursuant to Court Decision; 2015–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 7, 2020, the U.S. Court of International Trade (CIT) sustained the final results of redetermination pertaining to the administrative review of the antidumping duty order on certain uncoated paper from Portugal covering the period of review (POR) August 26, 2015 through February 28, 2017. The Department of Commerce (Commerce) is notifying the public that the CIT's final judgement in this case is not in harmony with the final results of the administrative review, and that Commerce is amending the final results with respect to The Navigator Company, S.A. (Navigator).

DATES: Applicable July 17, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2018, Commerce published its *Final Results* in the 2015–2017 administrative review of certain uncoated paper from Portugal.[1] During the review, Commerce found that Navigator had failed to demonstrate that the allocation methodology for its U.S. brokerage and handling expenses did not create inaccuracies or distortions. Therefore, Commerce selected the

[1] *See Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2015–2017,* 83 FR 39982 (August 13, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

highest reported allocated U.S. brokerage and handling expense as adverse facts available (AFA) for the allocated U.S. brokerage and handling expenses.[2]

Navigator alleged, among other things, that Commerce made a ministerial error in the *Final Results* when applying AFA for Navigator's allocated U.S. brokerage and handling expenses.[3] Commerce agreed that it committed a ministerial error in its selection of the figure used as AFA; therefore, Commerce modified its calculations to select instead the highest transaction-specific, actual U.S. brokerage and handling expense.[4]

Navigator challenged Commerce's decision to base U.S. brokerage and handling expenses on AFA in the *Final Results.* In addition, The Packaging Corporation of America, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union, AFL–CIO, CLC and the Domtar Corporation (collectively, the petitioners) challenged the value selected as AFA in *Amended Final Results.* On November 22, 2019, the CIT issued its *Remand Order,* remanding, in part, the *Final Results* and *Amended Final Results* to Commerce, stating that, in the *Final Results,* Commerce permissibly used facts otherwise available, but that the use of an adverse inference was not supported by substantive evidence, and that in the *Amended Final Results,* Commerce did not correct an inadvertent clerical error. but rather made an impermissible substantive modification to the *Final Results.*[5]

On February 19, 2020, Commerce issued the *Final Redetermination Results,*[6] selecting a neutral facts available for allocated U.S. brokerage and handling expenses by calculating a weighted average of all positive allocated U.S. brokerage and handling expenses reported for the POR.[7] On July 7, 2020, the CIT sustained Commerce's *Final Redetermination Results.*[8]

Timken Notice

In its decision in *Timken,*[9] as clarified by *Diamond Sawblades,*[10] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Trade Act of 1970, as amended (the Act), Commerce must publish notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision.[11] The CIT's July 7, 2020 judgment sustaining the *Final Redetermination Results* constitutes a final decision of the CIT that is not in harmony with Commerce's *Amended Final Results.* This notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Results of Review

Because there is now a final CIT decision, Commerce is amending its *Amended Final Results* with respect to Navigator for the POR as follows:

Exporter	Weighted-average dumping margin (percent)
The Navigator Company, S.A. ...	1.63

Assessment Instructions

In the event the CIT's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by Navigator in accordance with 19 CFR 351.212(b)(1). Commerce will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[12] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The cash deposit rate for Navigator has been superseded by cash deposit rates calculated in intervening administrative reviews of the antidumping duty order on certain uncoated paper from Portugal. Thus, we will not alter Navigator's cash deposit rate as a result of these amended final results of review.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–15305 Filed 7–15–20; 8:45 am]

BILLING CODE 3510–DS–P

[2] *Id.* at Comment 2.

[3] *See Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2015–2017,* 83 FR 52810 (October 18, 2018) (*Amended Final Results*), and accompanying IDM.

[4] *See Amended Final Results* IDM at Allegation 2.

[5] *See The Navigator Company, S.A. (Navigator) and Packaging Corporation of America et al. and Domtar Corporation* v. *United States and Packaging Corporation of America et al.,* Consol. Court No. 18–00192, Slip Op. 19–146 (CIT November 22, 2019) (*Remand Order*).

[6] *See Final Results of Redetermination Pursuant to Court Remand in The Navigator Company, S.A. (Navigator) and Packaging Corporation of America et al. and Domtar Corporation* v. *United States and Packaging Corporation of America et al.,* Consol. Court No. 18–00192, Slip Op. 19–146, dated February 19, 2020 (*Final Redetermination Results*).

[7] *See Final Redetermination Results* at 5.

[8] *See The Navigator Company, S.A. (Navigator) and Packaging Corporation of America et al. and Domtar Corporation* v. *United States and Packaging Corporation of America et al.,* Consol. Court No. 18–00192, Slip Op. 20–94 (CIT July 7, 2020).

[9] *See Timken Co.* v *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[11] *See* sections 516A(c) and (e) of the Act.

[12] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA278]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public virtual meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel (OEAP) will hold a two-day public virtual meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION.**

DATES: The OEAP public virtual meeting will be held on August 4, 2020, from 12 p.m. to 3 p.m., and August 5, 2020, from 12 p.m. to 3 p.m. All meetings will be at Eastern Day Time.

ADDRESSES: You may join the OEAP public virtual meeting (via GoToMeeting) from a computer, tablet or smartphone by entering the following address:

Via Go To Meeting

August 4–5, 2020

Please join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/431849525.* You can also dial in using your phone. United States: +1 (646) 749–3112, Access Code: 431–849–525. You may download the app now and be ready for when the meeting starts: *https://global.gotomeeting.com/install/431849525.*

Note: If GoToMeeting crashes, the meeting will be continued using Google Meet.

Via Google Meet

August 4, 2020

Join with Goggle Meet, *meet.google.com/jzt-csus-hqn.*

August 5, 2020

Join with Google Meet, *meet.google.com/ezh-omig-bpz.*

FOR FURTHER INFORMATION CONTACT: Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

August 4, 2020, 12 p.m.–1 p.m.

—Call to Order
—Adoption of Agenda
—OEAP Chairperson's Report
—Updates:
  —CFMC Arrangements for Virtual Meetings
  —U.S.V.I. Activities
  —Fishery Ecosystem Based Management Plan (FEBMP)
  —Stakeholders Survey by Pew Charitable Trust

August 4, 2020, 1 p.m.–1:10 p.m.

—Break

August 4, 2020, 1:10 p.m.–3 p.m.

—Responsible Seafood Consumption Campaign
  —Recipe Cookbook for Puerto Rico and the U.S. Virgin Islands
—Distribution and Presentation of the Book: ''Marine Fisheries Ecosystem of Puerto Rico and the U.S. Virgin Islands'' to Fishers and General Public

August 5, 2020, 12 p.m.–1 p.m.

  —Outreach and Education Products to Highlight Women's Contribution to Fisheries in Puerto Rico and the U.S. Virgin Islands

August 5, 2020, 1 p.m.–1:10 p.m.

—Break

August 5, 2020, 1:10 p.m.–3 p.m.

—Island-Based Fishery Management Plans (IBFMP) Comment Period
—2021 Calendar
—CFMC Facebook, Instagram and YouTube Communications with Stakeholders
—Other Business

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on August 4, 2020, at 12 p.m. EST, and will end on August 5, 2020, at 3 p.m. EST. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair. In addition, the meeting may be completed prior to the date established in this notice.

Special Accommodations

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: July 13, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–15413 Filed 7–15–20; 8:45 am]

BILLING CODE 3510–22–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of a new system of records.

SUMMARY: The Better Utilization of Investments Leading to Development (BUILD) Act of 2018 created the U.S. International Development Finance Corporation (DFC) by bringing together the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) office of the U.S. Agency for International Development (USAID). Section 1466(a)–(b) of the Act provides that all completed administrative actions shall apply, while all pending proceedings shall continue, through the transition to the DFC. Accordingly, DFC is issuing a revised system of records modifying all the systems of records previously published under OPIC's authority.

DATES: The systems are effective upon publication in today's **Federal Register**, with the exception of changes to the routine uses, which are effective August 17, 2020, unless we receive comments that result in a contrary determination.

ADDRESSES: Written comments may be submitted by any of the following methods:

- *Mail:* Mark Rein, Office of the Chief Information Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the system name and number for the system to which the comments relate. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Chief Information Officer, Mark Rein, (202) 336–8404.

SUPPLEMENTARY INFORMATION:

I. *Background:* OPIC previously published System of Records Notices (SORN) at 64 FR 37152 (Jul. 9 1999), 69 FR 59279 (Oct. 4, 2004), 74 FR 16430 (Apr. 10, 2009), and 80 FR 30288 (May 27, 2015). These SORNs were transferred to DFC under the BUILD Act of 2018. In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DFC proposes to: Delete OPIC–3 as this has been replaced by GSA/GOVT–7. Delete OPIC–7 as this has been replaced by OPM/GOVT–3. Delete OPIC–9 and OPIC–14 as these have been replaced by OPM/GOVT–1. Delete OPIC–17 as this has been replaced by GSA/GOVT–4. Delete OPIC–1, OPIC–14, OPIC–19, and OPIC–22 as these have been replaced by DFC/03. Delete OPIC–10 as this has been replaced by DFC/04. Delete OPIC–2, OPIC–5, OPIC–6, OPIC–8, OPIC–12, OPIC–13, OPIC–15, OPIC–16, OPIC–20, and OPIC–21 as these files are no longer maintained. OPIC–4 is renumbered DFC/04 and amended to include records previously covered by OPIC–10. OPIC–11 is renumbered DFC/07. OPIC–12 is renumbered DFC/08 and renamed Executive Photographs. OPIC–18 is renumbered DFC/06 and renamed Board of Directors. OPIC–22 is renumbered DFC/03. OPIC–23 is renumbered DFC/02. Add DFC/01, Oracle E-Business Suite (EBS) and DFC/05, FedTalent.

II. *Privacy Act:* The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals;

these records are maintained in a ''system of records,'' which refers to a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or an alien lawfully admitted for permanent residence. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of the DFC by complying with Privacy Act regulations at 22 Code of Federal Regulations (CFR) Part 707 and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. In accordance with 5 U.S.C. 552a(r), the DFC has provided a report of this system of records to the Office of Management and Budget (OMB) and to Congress. As this revision is significant, a full list of the Agency's systems of records is set forth below.

SYSTEM NAME AND NUMBER:

Oracle E-Business Suite (EBS), DFC/01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

1100 New York Avenue NW, Washington, DC 20527.

SYSTEM MANAGER(S):

Business System Owner, Managing Director, Financial Management, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400. Technical System Owner, Business Information Systems Director, Office of the Chief Information Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Where applicable, electronic payments are required under Federal Acquisition Regulation 52.232–25. Electronic payments require a Taxpayer Identification Number (TIN) data element. Federal financial mandates and legal authorities govern financial management systems that support the collection of the information in EBS. These mandates and authorities include the Chief Financial Officers Act of 1990, Public Law 101–576, and the Federal Financial Management Improvement Act (FFMIA) of 1996, Public Law 104–208, as well as guidance issued by OMB: OMB Circular A–123, Management's Responsibility for Internal Control; OMB Memorandum 16–11, Improving Administrative Functions Through Shared Services; and OMB Memorandum 13–08, Improving Financial Systems Through Shared Services.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of Oracle EBS is to function as the financial system of record for the Agency. It is the primary application employed to record all financial transactions related to the Agency's administrative business accounting and working capital budgets.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals and entities covered by this system are identified as Federal government agencies and institutions; state and local government agencies and institutions; domestic private individuals, entities, and institutions conducting business with the Agency; full- and part-time employees of the Agency; Personal Services Contractors (PSC); foreign government agencies and institutions; foreign private individuals, entities, and institutions conducting business with the Agency; and foreign entities and institutions who act as participants or intermediaries in financial transactions with the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personally identifiable records that are stored in the system consist of individual or company names, points of contact, mailing addresses, remittance addresses, telephone numbers, contract/award numbers, email addresses, TIN, Social Security Numbers (SSN), Data Universal Numbering System (DUNS) numbers, and bank account information including routing numbers, account numbers, Society for Worldwide Interbank Financial Telecommunication (SWIFT) codes, International Bank Account Numbers (IBAN), and account titles.

RECORD SOURCE CATEGORIES:

Insight (*Salesforce.com*) (DFC/02): The Agency's back office software that collects data from external customers completing and submitting web-based business application electronic forms. Insight is DFC's back-office data collection system where business- and product specific information is processed. System for Award Management (SAM) (GSA/GOVT–9): The U.S. Government's official vendor portal where vendors self-maintain their business information. Carlson Wagonlit Sato Travel E2 Solutions System (E2) (GSA/GOVT–4): An electronic travel system that includes travel authorizations, travel vouchers, and miscellaneous reimbursements data that is directly received from the customer or employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside of DFC as a routine use under U.S.C. 552a(b)(3), as stated in the Notice and here for this modification. This modification includes a new routine use for the Do Not Pay initiative in compliance with Improper Payments, which is compatible with the following routine uses of this system of records of a financial management system: (1) The two required routine uses identified in OMB M–17–12 for notice and breach notification, which is compatible with the necessity of the government to deal with breaches; and (2) routine use for contractors, grantees, etc., and system support, which is compatible with the need of contractor support for Financial Systems. The other routine uses are compatible with the EBS system of records as a financial system. The routine use satisfies the compatibility requirement of the Privacy Act. The records or information contained therein may specifically be disclosed as a routine use, as stated below. The Agency will, when so authorized, make the determination as to the relevancy of a record prior to its decision to disclose:

A. To the Department of Treasury for Administering the Do Not Pay Initiative under the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA). As required by IPERIA, the Bipartisan Budget Act of 2013, and the Federal Improper Payments Coordination Act of 2015 (FIPCA), records maintained in this system will be disclosed to (a) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or, (b) a fiscal or financial agent designated by the Bureau of Fiscal Service or other Department of the Treasury bureau or office, including employees, agents, or contractors of such agent; or, (c) a contractor of the Bureau of Fiscal Service, for the purpose of identifying, preventing, and

recovering improper payments to an applicant for, or recipient of, Federal funds. Records disclosed under this routing use may be used to conduct computerized comparison to identify, prevent, and recover improper payments, and to identify and mitigate fraud, waste, and abuse in federal payments.

B. Disclosure for Enforcement, Statutory, and Regulatory Purposes. Information may be disclosed to the appropriate Federal, state, local, foreign, or self-regulatory organization or agency responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license.

C. Disclosure to Another Federal Agency When Requesting Information. Information may be disclosed to a Federal agency in the executive, legislative, or judicial branch of government in connection with the hiring, retaining, or assigning of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant, or other benefits by the receiving entity; or the lawful statutory, administrative, or investigative purpose of the receiving entity to the extent that the information is relevant and necessary to the receiving entity's decision on the matter.

D. Disclosure to a Member of Congress and Congressional Inquiries. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

E. Disclosure to the Department of Justice (DOJ), a Court, an Adjudicative Body or Administrative Tribunal, or a Party in Litigation. Information may be disclosed to DOJ, a court, an adjudicative body or administrative tribunal, a party in litigation, or a witness if the Agency (or in the case of an Office of Inspector General (OIG) system, the OIG) determines, in its sole discretion, that the information is relevant and necessary to the matter.

F. Disclosure to the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE), Equal Employment Opportunity Commission (EEOC), and Office of Special Counsel (OSC). Information may be disclosed to the EEOC, the MSPB, the OGE, or the OSC to the extent determined to be relevant and necessary to carrying out their authorized functions.

G. Disclosure to the EEOC, the Office of Personnel Management (OPM), or the Fair Labor Relations Authority (FLRA) In Response to a Formal Grievance, Complaint, or Appeal Filed by an Employee. Information may be disclosed to the EEOC, OPM, FLRA, or other agency grievance examiner, formal complaints examiner, arbitrator, or other duly authorized official engaged in the investigation or settlement of a grievance, complaint, or appeal filed by an employee.

H. Disclosure When Security or Confidentiality Has Been Compromised. Information may be disclosed when (1) it is suspected or confirmed that security or confidentiality of information has been compromised; (2) the Agency has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of the system or other systems or programs (whether maintained by the Agency or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

I. Disclosure to Contractors, Agents, and Others. Information may be disclosed to contractors, agents, or others performing work on a contract, service, cooperative agreement, job, or other activity for the Agency and who have a need to access the information in the performance of their duties or activities for the Agency.

J. Disclosure to Any Source from Which Additional Information Is Requested During the Acquisition and Procurement Contract Lifecycle Management Process. Information may be disclosed in connection with the requisitioning, commitments, obligations, invoicing, travel expense reimbursements, and reimbursements to employees for local travel expenses and other ancillary expenses.

K. Disclosure of Information in Connection with Business Transaction Activities to a Federal Agency. Information may be disclosed to the Treasury Department via electronic file to enable processing of business payment and payable commitments for the life of each business transaction.

L. Disclosure of Information in Connection with Business Transaction Activities to a Federal Agency. Information may be disclosed to a Federal agency in connection with initial due diligence processes in assessing new business transaction proposals and as part of the improper payment risk mitigation process that occurs for the life of each business transaction.

M. Disclosure of Information to Another Federal Agency, a Court, or a Third Party. Information may be disclosed where the counterparty to a business transaction has not remitted agreed upon and contracted fees for an extended period of time.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved by transaction record number, name, address, telephone numbers and other identifying information.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of as prescribed under the National Archives and Records Administration (NARA) General Records Schedule. The information used to enter data into EBS is maintained for seven years. Paper records are disposed of by shredding or pulping, and records maintained on electronic media are degaussed or erased in accordance with the applicable records retention schedule and NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in this system is controlled and managed pursuant to applicable policies and rules, including OPM's Information and Security & Privacy Policy. The use of password protection, system authentication, and other system protection methods also provides additional safeguards to restrict access. System access and access to the records contained within the system are limited to those individuals who have an official need for system access in order to perform their official responsibilities and duties.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

Salesforce Customer Relationship Management System (''Insight''); DFC/02.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is located in an Enterprise Government Cloud Service environment. The system is hosted at secured Salesforce General Services Administration (GSA) data centers (NA–21) located in Washington, DC and Chicago, IL; one site acts as the active host and the alternative site acts as the disaster recovery location operating under near-real time replication protocol.

SYSTEM MANAGER(S):

Business System Owner, Managing Director for Finance Program Systems and Procedures, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400. Technical Systems Owner, Business Information Systems Director, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers individuals representing, guaranteeing, sponsoring, owning, or managing a potential or actual DFC project under all DFC products. Information about these individuals is entered directly into the system by potential clients filling out application forms on the Agency's electronic forms web-portal or manually when DFC officers input data during a project's lifecycle.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the information needed for processing Agency projects and contains information about individuals and other entities involved in those projects. Depending on the level of connection of an individual to the project, personal information on the individual may be maintained. This includes full name, date of birth, country of birth, citizenship, personally identifying number, address, contact information, and professional experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

BUILD Act, 22 U.S.C. 9601 *et seq.;* 44 U.S.C. 3101, *et seq.*

PURPOSE OF THE SYSTEM:

This system will facilitate project lifecycle management from project intake to project closeout for all DFC products. The information in the system will be used to administer the projects as necessary, including internally tracking and managing client contact information and the status (but not the detailed results) of Know Your Customer (KYC) due diligence performed on businesses and individuals associated with each project. Data from this system may also be used for evaluating the effectiveness of DFC's products and programs and improving upon them.

RECORD SOURCE CATEGORIES:

Information is collected directly from clients using a public-facing web portal which collects customer and project data from applicants. Direct input: Some account, contact, and project data are input directly by DFC officers in the course of keeping project records up to date. Oracle EBS (DFC/01): Pertinent financial data is sent to Insight to provide DFC officers with accessible information related to project status.

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, these records of information contained therein may specifically be disclosed outside of the Agency. The records or information contained therein may specifically be disclosed as a routine use, as stated below. The Agency will, when so authorized, make the determination as to the relevancy of a record prior to its decision to disclose information under the following circumstances:

A. Disclosure for Enforcement, Statutory, and Regulatory Purposes. Information may be disclosed to the appropriate Federal, state, local, foreign, or self-regulatory organization or agency responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license.

B. Disclosure to a Member of Congress and Congressional Inquiries. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains.

C. Disclosure to DOJ, a Court, an Adjudicative Body or Administrative Tribunal, or a Party in Litigation. Information may be disclosed to DOJ, a court, an adjudicative body or administrative tribunal, a party in litigation, or a witness if the Agency (or in the case of an OIG system, the OIG) determines, in its sole discretion, that the information is relevant and necessary to the matter.

D. Disclosure When Security or Confidentiality Has Been Compromised. Information may be disclosed when (1) it is suspected or confirmed that security or confidentiality of information has been compromised; (2) the Agency has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of the system or other systems or programs (whether maintained by the Agency or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

E. Disclosure to Contractors, Agents, and Others. Information may be disclosed to contractors, agents, or others performing work on a contract, service, cooperative agreement, job, or other activity for the Agency and who have a need to access the information in the performance of their duties or activities for the Agency.

F. Disclosure to Any Source from Which Additional Information Is Requested During Commitment of Payments. As needed, Insight automatically transfers information to Oracle EBS (DFC/01) to commit payments from DFC as part of the Agency's core business transactions.

G. Disclosure of Information in Connection with Loan Payments to a Federal Agency. As needed, authorized DFC personnel manually input disbursement records into Oracle and the Treasury portal to enable loan payments.

H. Disclosure of Information in Connection with Business Transaction Activities to a Federal Agency. Information may be disclosed to a Federal agency in connection with initial due diligence processes in assessing new business transaction proposals and as part of the improper payment risk mitigation process that occurs for the life of each business transaction.

I. Disclosure of Information to Another Federal Agency, a Court, or a Third Party. Information may be disclosed where the counterparty to a business transaction has not remitted agreed upon and contracted fees for an extended period of time.

J. Disclosure of Credit to Credit Reporting Agencies. If deemed necessary, credit information will be disclosed as the running of credit checks is performed. These credit checks are conducted confidentially, following accepted best practices with widely known and reputable credit reporting agencies.

K. Disclosure of Non-Individual Information to Publicly Available websites: Authorized personnel utilize non-individual information from Insight (*e.g.,* project descriptions and primary place of performance) for the following publicly available websites: *USA Spending and Foreign Assistance.gov*.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

System records are stored within secured Salesforce GSA data centers (NA–21) located in Washington, DC and Chicago, IL; one site acts as the active host and the alternative site acts as the disaster recovery location operating under near-real time replication protocol.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records may be retrieved by the project name, project number, company name, associated individual's name, or reporting tools provided on the system dashboards. Access to sensitive personally identifiable information (SPII) in the records is restricted to a small group of authorized government personnel who perform the KYC due diligence in the system, as needed. Access to the rest of the system is available to any Agency personnel with system access. The DFC uses two-factor authentication for Agency-specific users to access Insight outside of the Agency network. Any changes to the system are implemented through a change management process.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained on an ongoing basis and updated by DFC staff assigned with managing the system. These records will follow the DFC's retention schedule based on project classification.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in this system is controlled and managed pursuant to applicable policies and rules, including OPM's Information and Security & Privacy Policy. These records and the technical hardware containing these records are maintained on premises in areas designated as restricted access. The use of password protection, system authentication, user profile restrictions, and other system protection methods also provides additional safeguards to restrict access. System access and access to the records contained within the system are limited to those individuals who have an official need for system access in order to perform their official responsibilities and duties.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

Payroll, Time and Attendance, Retirement, and Leave Records, DFC/03.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

1100 New York Avenue NW, Washington, DC 20527.

SYSTEM MANAGER(S):

Business System Owner: Vice President and Chief Administrative Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101, *et seq.,* Government Organization and Employees; 31 U.S.C. 3512, *et seq.,* Executive Agency Accounting and Other Financial Management Reports and Plans; 31 U.S.C. 1101, *et seq.,* the Budget and Fiscal, Budget, and Program Information; 5 CFR part 293, subpart B, Personnel Records Subject to the Privacy Act; 5 CFR part 297, Privacy Procedures for Personnel Records; Executive Order 9397 as amended by Executive Order 13478, relating to Federal Agency Use of Social Security Numbers; and Public Law 101–576 (Nov. 15, 1990), the Chief Financial Officers (CFO) Act of 1990.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to manage personnel and payroll functions; ensure proper payment for salary and benefits; track time and attendance, leave, and other absences for reporting and compliance purposes; and facilitate reporting requirements to other Federal agencies, including the Department of the Treasury and OPM, for payroll, tax, and human capital management purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include current and former DFC employees, emergency workers, volunteers, contractors, and applicants for Federal employment. This system may also include limited information regarding employee spouses, dependents, emergency contacts, beneficiaries, or estate trustees who meet the definition of ''individual'' as defined in the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records including: (1) Employee Biographical and Employment Information: Employee name, other names used, citizenship, gender, date of birth, age, group affiliation, marital status, SSN, truncated SSN, legal status, place of birth, records related to position, occupation, duty location, security clearance, financial information, medical information, disability information, education information, driver's license, race, ethnicity, personal or work telephone number, personal and work email address, military status and service, home or mailing address, TIN, bank account information, professional licensing and credentials, family relationships, involuntary debt

(garnishments or child support payments), employee common identifier (ECI), organization code, user identification, and any other employment information; (2) Third-Party Information: Spouse information, emergency contact, beneficiary information, savings bond co-owner name(s) and information, and family members and dependents information; (3) Salary and Benefits Information: Salary data, retirement data, tax data, deductions, health benefits, allowances, union dues, insurance data, Flexible Spending Account, Thrift Savings Plan information and contributions, pay plan, payroll records, awards, court order information, back pay information, debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee or emergency worker; and (4) Timekeeping Information: Time and attendance records and leave records. This system may also contain correspondence, documents, and other information required to administer payroll, leave, and related functions.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, supervisors, timekeepers, previous employers, the Internal Revenue Service and state tax agencies, the Department of the Treasury, other Federal agencies, courts, state child support agencies, employing agency accounting offices, and third-party benefit providers.

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) of the Privacy Act, all or a portion of the records or information maintained in this system may be disclosed to authorized entities outside DFC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To DOJ, including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) DFC or any component of DFC; (2) Any DFC employee or former employee acting in his or her official capacity; (3) Any DFC employee or former employee acting in his or her individual capacity when DFC or DOJ has agreed to represent that employee or pay for private representation of the employee; or (4) The United States Government or any agency thereof, when DFC determines that DFC is likely to be affected by the proceeding.

B. To the Department of the Treasury or other Federal agency as required for payroll purposes, for preparation of payroll and other checks and electronic funds transfers to Federal, State, and local government agencies, non-governmental organizations, and individuals.

C. To the Department of the Treasury, Internal Revenue Service, and state and local tax authorities for which an employee is or was subject to tax regardless of whether tax is or was withheld in accordance with Treasury Fiscal Requirements, as required.

D. To OPM or its contractors in connection with programs administered by that office, including, but not limited to, the Federal Long-Term Care Insurance Program, the Federal Dental and Vision Insurance Program, the Flexible Spending Accounts for Federal Employees Program, and the electronic Human Resources Information Program.

E. To another Federal agency to which an employee or DFC emergency worker has transferred or to which a DFC volunteer transfers in a volunteer capacity.

F. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

G. To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

H. To Federal, state, or local agencies where necessary to enable the employee's, DFC emergency worker's, or DFC volunteer's agency to obtain information relevant to the hiring or retention of that employee, DFC emergency worker, or DFC volunteer, or the issuance of a security clearance, contract, license, grant, or other benefit.

I. To appropriate Federal and state agencies to provide reports including data on unemployment insurance.

J. To the Social Security Administration to credit the employee or emergency worker account for Old-Age, Survivors, and Disability Insurance (OASDI) and Medicare deductions.

K. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 (Labor-Management Relations) for the purpose of providing information as to the identity of DFC employees contributing union dues each pay period and the amount of dues withheld from each contributor.

L. To employee or emergency worker associations to report dues deductions.

M. To insurance carriers to report employee or DFC emergency worker election information and withholdings for health insurance.

N. To charitable institutions when an employee designates an institution to receive contributions through salary deduction.

O. To the Department of the Treasury, Internal Revenue Service, or another Federal agency or its contractor, to disclose debtor information solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal Government through the offset of tax refunds.

P. To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States Government from an individual.

Q. To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the employee's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

R. To the Department of the Treasury, Internal Revenue Service, and state and local authorities for the purpose of locating a debtor to collect a claim against the debtor.

S. To the Federal Retirement Thrift Investment Board's record keeper, which administers the Thrift Savings Plan, to report deductions, contributions, and loan payments.

T. To the Office of Child Support Enforcement, within the Administration for Children and Families, within the Department of Health and Human Services, for the purposes of locating individuals to establish paternity; establishing and modifying orders of child support; identifying sources of income; and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

U. To an expert, consultant, grantee, or contractor (including employees of the contractor) of DFC who performs services requiring access to these

records on DFC's behalf to carry out the purposes of the system, including employment verifications, unemployment claims, W–2 processing services, leave and earning statements, and 1095–C Affordable Care Act statements.

V. To OPM Employee Express, which is an employee self-service system, to initiate personnel and payroll actions and to obtain payroll information.

W. To the Department of Labor for processing claims for employees, emergency workers, or volunteers injured on the job or claiming occupational illness.

X. To Federal agencies and organizations to support interfaces with other systems operated by the Federal agencies for which the employee or DOI emergency worker is employed, or the DFC volunteer is located, for the purpose of avoiding duplication, increasing data integrity, and streamlining government operations.

Y. To another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

Z. To NARA to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

AA. To OMB during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

BB. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing, or retention of an employee or contractor, regarding the issuance of a security clearance, license, contract, grant, or other benefit.

CC. To state, territorial, and local governments, and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

DD. To the Department of the Treasury to recover debts owed to the United States.

EE. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy (SAOP), where there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DFC or is necessary to demonstrate the accountability of DFC's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

FF. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

GG. To other Federal agencies and organizations to provide payroll and personnel processing services under a shared service provider cross-servicing agreement for purposes relating to DFC payroll and personnel processing.

HH. To OPM, the Merit System Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

II. To state offices of unemployment compensation to assist in processing an individual's unemployment, survivor annuity, or health benefit claim, or for records reconciliation purposes.

JJ. To Federal Employees' Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

KK. To any source from which additional information is requested by DFC relevant to a DFC determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

LL. To the Social Security Administration and the Department of the Treasury to disclose pay data on an annual basis, and as necessary to execute their statutory responsibilities for the effective administration of benefits programs, payroll, and taxes.

MM. To a Federal agency or in response to a congressional inquiry when additional or statistical information is requested relevant to a Federal benefit or program, such as the DFC Transit Fare Subsidy Program.

NN. To the Department of Health and Human Services for the purpose of providing information on new hires and quarterly wages as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

OO. To appropriate agencies, entities, and persons when: (1) DFC suspects or has confirmed that there has been a breach of the system of records; (2) DFC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DFC (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 DFC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

PP. To another Federal agency or Federal entity, when DFC 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.

QQ. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

RR. To a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of discovery, pursuant to appropriate court order or other judicial process in the course of criminal, civil, or administrative litigation.

SS. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when 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.

TT. Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in manual, microfilm, microfiche, electronic, imaged, and computer printout form. Original input documents are stored in standard office filing equipment and/or as imaged documents on magnetic media at all locations which prepare and provide input documents and information for data processing. Paper records are maintained in file folders stored within locking filing cabinets or

locked rooms in secured facilities with controlled access. Electronic records are stored in computers, removable drives, storage devices, electronic databases, and other electronic media under the control of DFC.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by employee name, SSN, TIN, ECI, birth date, organizational code, or assigned person number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with OPM's Guide to Recordkeeping; General Records Schedule (GRS) 1.0 ''Finance'' and GRS 2.0 ''Human Resources,'' which are approved by NARA. The system generally maintains temporary records, and retention periods vary based on the type of record under each item and the needs of the Agency. Paper records are disposed of by shredding or pulping, and records maintained on electronic media are degaussed or erased in accordance with the applicable records retention schedule and NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

During normal hours of operation, paper or micro format records are maintained in locked file cabinets in secured rooms under the control of authorized personnel. Information technology systems follow the National Institute of Standards and Technology (NIST) privacy and security standards developed to comply with the Privacy Act of 1974 as amended, 5 U.S.C. 552a; the Paperwork Reduction Act of 1995, Public Law 104–13; the Federal Information Security Modernization Act of 2014, Public Law 113–283, as codified at 44 U.S.C. 3551, *et seq.;* and the Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems. Computer servers on which electronic records are stored are located in secured DFC facilities with physical, technical, and administrative levels of security to prevent unauthorized access to the DFC network and information assets. Security controls include encryption, firewalls, audit logs, and network system security monitoring. Electronic data is protected through user identification, passwords, database permissions, and software controls. Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each person's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users for DFC are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training, and sign DFC Rules of Behavior.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

Staff Central; DFC/04.

SECURITY CLASSIFICATION:

Sensitive but Unclassified.

SYSTEM LOCATION:

1100 New York Avenue NW, Washington, DC 20527.

SYSTEM MANAGER(S):

Business System Owner: Vice President and Chief Administrative Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers individuals who are current and former employees of the DFC (including details, volunteers, and PSCs), as well as industrial contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These are (1) security records, including records indicating level of building and network access, security badge number, and security clearance level and adjudication date; (2) emergency contact information records, including home address, phone number and email, emergency contact person information, and whether they possess first-aid or cardiopulmonary resuscitation (CPR) certification; (3) transportation subsidy information, including commuting address, commuting days, smart trip card number, and daily commuting expenses; and (4) employee entry and exit process records, including signatures and date stamps reflecting whether department employees have been briefed on the government's classified information program, the Corporation's security program, and the Corporation's records policies and procedures; have been advised of, and fully understand, applicable ethics provisions; and certifying that all required clearances for entry onboard or release of the employee's final paycheck have been obtained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority for agency records management is provided by 5 U.S.C. 301, Departmental Regulations, and 44 U.S.C. 3101, Records Management by Agency Heads. Additional authority to maintain security records is provided by 5 U.S.C. 3301, Examination, Selection and Placement, E.O. 10450, Clearance for Federal Employment, April 17, 1953, as amended; E.O. 12968, Access to Classified Information, August 4, 1995. Additional authority to maintain emergency contact information records is provided by Federal Preparedness Circular 65, Federal Executive Branch Continuity of Operations (COOP), July 26, 1999; E.O. 12656, Assignment of Emergency Preparedness Responsibilities, November 18, 1988, as amended; and Presidential Decision Directive 67, Enduring Constitutional Government and Continuity of Government Operations, October 21, 1998. Additional authority to maintain employee exit process records is provided by E.O. 12958, Classified National Security Information, April 17, 1995; 32 CFR 2003.20, Classified Information Non-Disclosure Agreement: SF–312; 5 CFR part 2637, Regulations Concerning Post Employment Conflicts of Interest; and Pub. L. l104–134, Debt Collection Improvement Act of 1996.

PURPOSE(S):

These records are used (1) as an easy reference record to determine the suitability and/or eligibility of employees and contractors for access to facilities, information systems, and classified information; (2) to account for and/or communicate with employees and contractors or their designees in the event of an emergency or disaster; (3) to process existing employees and contractors when their tenure with the

DFC ends; and (4) to maintain a record of all debriefings and completed exit procedures for former employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Security records are used (1) by the DFC human resources and security managers to check the status, level, and date received of security clearances, and (2) by the DFC departmental security officers to confirm that employees who require access to classified information have the appropriate level of security clearance. Emergency contact information records are used by (1) the DFC human resources and security managers to notify an employee's designee of an emergency that affects the employee or to account for an employee's whereabouts, especially in the event of a disaster; (2) the DFC human resources managers to communicate with an employee's designee regarding survivor benefits or other benefits or employment information in the event an employee becomes incapacitated or dies; and (3) the DFC security managers for emergency management or continuity of operations purposes. Employee exit process records are used by the DFC Agency managers to (1) verify that all departing employees have completed the checkout process and returned government property to the DFC, (2) ensure the security of the DFC-related information, (3) ensure that employees are briefed concerning postemployment restrictions; and (4) certify that all required clearances for release of the employee's final paycheck have been obtained. The DFC may disclose information contained in a record in this system of records under the routine uses listed in this notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. Disclosures may be made as follows: (1) In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the DFC may disclose the relevant records to the appropriate agency, whether Federal, state, or local, charged with the responsibility of investigating or prosecuting that violation and/or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto; (2) in a proceeding before a court or adjudicative body before which the DFC is authorized to appear when any of the following is a party to litigation or has an interest in litigation and information in this system is determined by the DFC to be arguably relevant to the litigation: The DFC; any DFC employee in his or her official capacity, or in his or her individual capacity where DOJ agrees to represent the employee; or the United States where the DFC determines that the litigation is likely to affect it; (3) to a court, a magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings; (4) 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 written request of, the individual who is the subject of the record; (5) to another Federal agency or other public authority, in connection with the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter; (6) to NARA and to GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; (7) to the employees of entities with which the DFC contracts for the purposes of performing any function that requires disclosure of records in this system. Before entering into such a contract, the DFC shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and electronic form.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records related to post-employment conflict of interest debriefings are retained for six years following separation from employment. All other records are retained for one year, unless authorized, following separation from employment or contractual relationship with the DFC. All records are destroyed pursuant to existing General Records Schedules and the DFC's records disposition schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in this system is controlled and managed pursuant to applicable policies and rules, including OPM's Information and Security & Privacy Policy. These records and the technical hardware containing these records are maintained on premises in areas designated as restricted access. The use of password protection, system authentication, and other system protection methods also provides additional safeguards to restrict access. System access and access to the records contained within the system are limited to those individuals who have an official need for system access in order to perform their official responsibilities and duties.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

FedTalent, DFC/05.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

1100 New York Avenue NW, Washington, DC 20527.

SYSTEM MANAGER(S):

Business System Owner: Vice President and Chief Administrative Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400. System Owner: DFC has entered into an agreement with the Department of the Interior (DOI), Interior Business Center (IBC), a Federal agency shared service provider, to host the FedTalent System on behalf of the

DFC. DFC will retain ownership and control over its own data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101, *et seq.,* Government Organization and Employee Training; 5 U.S.C. 1302, 2951, 4118, 4506, 3101; 43 U.S.C. 1457; Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d); Executive Order 11348, Providing for Further Training of Government Employees, as amended by Executive Order 12107, Relating to Civil Service Commission and Labor Management in Federal Service; 5 CFR 410, Subpart C, Establishing and Implementing Training Programs; Americans with Disabilities Act (42 U.S.C. 12101); and the E-Government Act of 2002 (44 U.S.C. 3501, *et seq.*).

PURPOSE(S) OF THE SYSTEM:

The primary purposes of the system are to: (1) Manage training and learning programs; (2) plan and facilitate training courses including outreach, registration, enrollment, and payment; (3) maintain and validate training records for certification and mandatory compliance reporting; (4) meet Federal training statistical reporting requirements; (5) maintain class rosters and transcripts for course administrators, students, and learners; and (6) generate budget estimates for training requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers the following categories of individuals: (1) DFC employees, contractors, interns, emergency workers, volunteers, and appointees who receive training related to their official duties, whether or not sponsored by DFC divisions and offices; and (2) non-DFC individuals who participate in DFC-sponsored training and educational programs, or participate in DFC-sponsored meetings and activities related to training and educational programs. Non-DFC individuals may include individuals from other Federal, state, or local agencies, private or not-for-profit organizations, universities and other schools, and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training, educational, and learning management records may include course registration, attendance rosters, and course information including course title, class name, objectives, description, and who should attend; class status information including begin and end dates, responsible class instructor, completion status, and certification requirements; student transcripts (course(s) completed/not completed, test scores, acquired skills); and correspondence, reports, and documentation related to training, education, and learning management programs. These records may contain: Name, SSN, employee common identifier generated from the Federal Personnel and Payroll System (FPPS), login username, password, agency or organization affiliation, work or personal address, work or personal phone and fax number, work or personal email address, gender, date of birth, organization code, position title, occupational series, pay plan, grade level, supervisory status, type of appointment, education level, duty station code, agency, bureau, office, organization, supervisor's name and phone number, date of Federal service, date of organization or position assignment, date of last promotion, occupational category, race, national origin, and adjusted basic pay. Records may also include billing information such as responsible agency, TIN, DUNS number, purchase order numbers, agency location codes, and credit card information. Records maintained on non-DFC individuals are generally limited to name, agency or organization affiliation, address, work and personal phone and fax numbers, work and personal email addresses, supervisor name and contact information, position title, occupational series, and billing information. Note: Some of these records may also become part of the OPM/GOVT–1, General Personnel Records system.

RECORD SOURCE CATEGORIES:

Information about DFC employees is obtained directly from individuals on whom the records are maintained, supervisors, or existing DFC records. Historical employee training records may be obtained from other DFC learning management systems. Information from non-DFC individuals who register or participate in DFC-sponsored training programs is obtained from individuals through paper and electronic forms. Information may also be obtained by another agency, institution, or organization that sponsored the training event.

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) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the DFC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To release statistical information and training reports to other organizations who are involved with the training.

B. To disclose information to other Government training facilities (Federal, state, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

C. To provide transcript information to education institutions upon the student's request in order to facilitate transfer of credit to that institution, and to provide college and university officials with information about their students working in the Pathways Program, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience.

D. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing, or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant, or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

E. To an expert, consultant, grantee, or contractor (including employees of the contractor) of the DFC who performs services requiring access to these records on the DFC's behalf to carry out the purposes of the system.

F. To share logistical or attendance information with partner agencies (Government or non-Government) who, based on cooperative training agreements, have a need to know.

G. To DOJ, including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) The DFC or any component of the DFC; (2) any DFC employee or former employee acting in his or her official capacity; (3) any DFC employee or former employee acting in his or her individual capacity when the DFC or DOJ has agreed to represent that employee or pay for private representation of the employee; or (4) the United States Government or any agency thereof, when DOJ determines that the DFC is likely to be affected by the proceeding.

H. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

I. To an official of another Federal, state, or local government or tribal

organization to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained, or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

J. To representatives of NARA to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

K. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

L. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

M. To state, territorial, and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

N. To appropriate agencies, entities, and persons when: (1) The DFC suspects or has confirmed that there has been a breach of the system of records; (2) the DFC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DFC (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 DFC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

O. To another Federal agency or Federal entity, when the DFC 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.

P. To OMB during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

Q. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the SAOP, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

R. To OPM to disclose information on employee general training, including recommendations and completion, specialized training obtained, participation in government-sponsored training, or training history as required to provide workforce information for official personnel files. The collection of training data supports OPM's Government-wide reporting responsibilities and provides valuable input into the evaluation of human capital programs at numerous levels of Government. OPM's authority to require Federal agencies to report training data can be found in Title 5 United States Code, Chapter 4107 and part 410 of Title 5, CFR.

S. Pursuant to 5 U.S.C. 552a(b)(12), records may be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in systems, databases, electronic media on hard disks, magnetic tapes, compact disks, and paper media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information from this system is retrieved by either unique identifying fields (*e.g.,* student name or email address) or by general category (*e.g.,* course code, training location, class start date, registration date, affiliation, mandatory training compliance and payment status).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of as prescribed under the NARA General Records Schedule. Non-mission employee training program records are temporary and destroyed when three years old, or three years after superseded or obsolete, whichever is appropriate, but longer retention is authorized if required for business use. Individual employee training records are destroyed when superseded, three years old, or one year after employee separation, whichever comes first, but longer retention is authorized if required for business use. Ethics training records are destroyed when six years old or when superseded, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

During normal hours of operation, paper or micro format records are maintained in locked file cabinets in secured rooms under the control of authorized personnel. Information technology systems follow the NIST privacy and security standards developed to comply with 43 CFR 2.226, the Privacy Act of 1974 as amended, 5 U.S.C. 552a; the Paperwork Reduction Act of 1995, Public Law 104–13; the Federal Information Security Modernization Act of 2014, Public Law 113–283, as codified at 44 U.S.C. 3551, *et seq.;* and the Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems. Access to records in this system is controlled and managed pursuant to applicable policies and rules, including OPM's Information and Security & Privacy Policy. These records and the technical hardware containing these records are maintained on premises in areas designated as restricted access. The use of password protection, system authentication, and other system protection methods also provides additional safeguards to restrict access. System access and access to the records contained within the system are limited to those individuals who have an official need for system access in order to perform their official responsibilities and duties.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record

must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

Directors (Current and Former), DFC/06.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

SYSTEM MANAGER(S):

Corporate Secretary, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S) OF THE SYSTEM:

These records are used to track appointments to the Corporation's Board of Directors, and to maintain biographical information on Board Members to share among the groups identified under routine uses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system are identified as private and public sector members of DFC's Board of Directors, both current and former.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains (1) biographies of Board members; (2) photographs of Board members; (3) notices of commission dates or other types of appointment notices; (4) copies of **Federal Register** notices relating to members; and (5) resignation notices.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals on whom the records are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information may be used to distribute to the general public, communications media, the Board of Directors, and employees of the Corporation general biographical information on Board Members.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in file folders. Biographies of Board Members may be kept on the Corporation's internet web server and made available to the public at *www.dfc.gov.*

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Hard copy files are indexed alphabetically by surname. Electronic files are maintained on the Corporation's computer network.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained permanently.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records is limited to DFC employees who have an official need for the records. Internal procedures governing the use, transfer, and photocopying of the records have been established. Records in the system are maintained in a file cabinet located in the Corporate Secretary's Office. The office is locked each evening. Electronic records are protected from unauthorized access through password identification procedures and other system-based protection methods.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

Freedom of Information Act (FOIA) Requests and Appeals, DFC/07.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

SYSTEM MANAGER(S):

FOIA Director, Office of the General Counsel, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

PURPOSE(S) OF THE SYSTEM:

The records are used to respond to FOIA requests and appeals pursuant to 5 U.S.C. 552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system are identified as individuals requesting information under FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains letters, correspondence, relevant data provided or referenced and responses to FOIA requests and appeals.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals requesting information under FOIA, as well as assigned DFC attorneys or other pertinent DFC employees generating responses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information may be used to (1) process individuals' FOIA requests; (2) provide a record of communications between the requester and the Corporation; (3) ensure that all relevant, necessary, and accurate data are available to support any process for appeal; and (4) prepare annual reports to DOJ as required by FOIA.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored in electronic format on the Agency's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Files are indexed (1) numerically by fiscal year and the order they are received and (2) tagged with the name of the requester. Staff retrieves request files by both labels.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained: (1) For two years from the date of DFC's final response in cases where no adverse determination is

made; (2) for six years from the date of DFC's response in cases where an adverse determination is made or the response to an appeal in cases where an appeal is filed; or (3) for six years from the date of the court's final order in cases involving litigation.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Agency's network complies with Federal security requirements and the FOIA files are locked to anyone not on the FOIA Office staff.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

Executive Photographs, DFC/08.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

SYSTEM MANAGER(S):

Vice President, Office of External Affairs, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527; Phone: (202) 336–8400.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S) OF THE SYSTEM:

Photographs of Agency top leadership are retrieved by name to use in internal and external communications to publicize the Agency's mission and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system are identified as past and current Chief Executive Officers and Executive Vice Presidents, to include any officials in an acting capacity.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains (1) portrait shots and (2) candid shots of the relevant individuals taken while performing official functions or while involved in DFC-sponsored activities.

RECORD SOURCE CATEGORIES:

Photographs are taken by employees or agents of the Agency, or by third parties and submitted to the Agency for review by Agency staff before inclusion in the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Photographs are used (1) in releases to local, national, and international communications media, (2) as communication material at conferences and speaking engagements where Agency staff participate in their official capacity, (3) to provide background information on the individuals, including public biographies, via the Agency's website, (4) in social media and other online postings regarding the activities of the individuals in their official capacity, and (5) in the Agency's publications.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Photographs are kept in electronic format on the network drive of the Agency's Office of External Affairs.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Photographs are stored in an electronic file organized by the name of the individual. When a photograph is required, a staff member will access the electronic file for the relevant individual and retrieve an appropriate photograph from those available.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are updated as needed and retained until no longer needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records is limited to DFC employees who have an official need for the records. Electronic records are protected from unauthorized access through password identification procedures and other system-based protection methods.

NOTIFICATION PROCEDURES:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.23.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

Dated: July 13, 2020.

Mark Rein,

Chief Information Officer.

[FR Doc. 2020–15398 Filed 7–15–20; 8:45 am]

BILLING CODE 3210–02–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m., July 23, 2020.

PLACE: This meeting will be held via teleconference.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may

present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Tara Tadlock, Director of Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: July 14, 2020.

Joyce L. Connery,

Acting Chairman.

[FR Doc. 2020–15509 Filed 7–14–20; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Request for Information: Energy Storage Grand Challenge

AGENCY: Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy's (DOE or the Department), is issuing this Request for Information (RFI) solely for information and planning purposes and does not constitute a Request for Proposal (RFP). Information received may be used to assist the DOE in planning the scope of future technology studies, deployment, or technology commercialization efforts and may be shared with other federal agencies. The DOE may also use this RFI to gain public input on its efforts, expand and facilitate public access to the DOE's resources, and to mobilize investment in U.S. energy storage technologies as well as ancillary technologies and efforts that will enable commercialization and widespread adoption. The information collected may be used for internal DOE planning and decision-making to ensure that future activities maximize public benefit while advancing the Administration's goals for leading the world in building a competitive, clean energy economy; securing America's energy future; reducing carbon pollution; and creating domestic jobs.

DATES: Written comments and information are requested on or before August 21, 2020.

ADDRESSES: Comments must be submitted electronically to *rticstorage@hq.doe.gov. Responses must be provided as a Microsoft Word (.doc) or (.docx) attachment to the email with no more than 10 pages in length for each section listed in the RFI. Only electronic responses will be accepted.*

Response Guidance: Please identify your answers by responding to a specific question or topic if possible. Respondents may answer as many or as few questions as they wish.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be submitted electronically to Rima Oueid at *rticstorage@hq.doe.gov* at (202) 586–5000.

SUPPLEMENTARY INFORMATION:

Background

In September 2018, Congress passed the Department of Energy Research and Innovation Act (Pub. L. 115–242) No. 114–246, codifying the efforts of the DOE's Research and Technology and Investment Committee (RTIC). The Energy Storage Subcommittee of the RTIC is co-chaired by the Office of Energy Efficiency and Renewable Energy and Office of Electricity and includes the Office of Science, Office of Fossil Energy, Office of Nuclear Energy, Office of Technology Transitions (OTT), ARPA–E, Office of Strategic Planning and Policy, the Loan Programs Office, and the Office of the Chief Financial Officer.

In January of 2020, the DOE announced the Energy Storage Grand Challenge (ESGC), a comprehensive program to accelerate the development, commercialization, and utilization of next-generation energy storage technologies and sustain American global leadership in energy storage. The ESGC builds on the $158 million Advanced Energy Storage Initiative announced in President Trump's Fiscal Year 2020 budget request.

The vision for the ESGC is to create and sustain global leadership in energy storage utilization and exports with a secure domestic manufacturing supply chain that is independent of foreign sources of critical materials by 2030. While research and development (R&D) is the foundation of advancing energy storage technologies, the DOE recognizes that global leadership also requires addressing associated challenges that lead to commercialization and widespread adoption of energy storage technologies.

The ESGC is a cross-cutting effort managed by RTIC. The DOE established the RTIC in 2019 to convene the key elements of the DOE that support R&D activities, coordinate their strategic research priorities, identify potential cross-cutting opportunities in both basic and applied science and technology, and accelerate commercialization.

Using a coordinated suite of R&D funding opportunities, prizes, partnerships, and other programs, the ESGC established the following five cross-cutting tracks: (i) Technology R&D, (ii) Manufacturing and Supply Chain, (iii) Technology Transitions, (iv) Policy and Valuation, and (v) Workforce. These five cross-cutting tracks have developed a draft Roadmap that will be updated based on feedback from this RFI as well as other ongoing DOE efforts, such as workshops, webinars, and other engagements with stakeholders. The roadmap identifies six use cases as neutral guideposts to provide a framework for the ESGC. These use cases include (i) facilitating an evolving grid, (ii) serving remote communities, (iii) electrified mobility, (iv) interdependent network infrastructure, (v) critical services, and (vi) facility flexibility, efficiency and value enhancement. More information on the use cases and the draft Roadmap can be found here *https://www.energy.gov/energy-storage-grand-challenge/downloads/energy-storage-grand-challenge-roadmap.*

Each track has developed a set of RFI questions related to their respective areas and target audience. This RFI is divided into five sections that represent each track as follows:

The purpose of the Technology Development Track covered in *Section 1* is to develop and implement an R&D ecosystem that strengthens and maintains U.S. leadership in energy storage innovation. To help realize the vision of U.S. energy storage leadership, the Technology Development Track will establish user-centric use cases and technology pathways to guide near-term acceleration and long-term leadership in energy storage technologies. A set of future energy storage use cases, enabled by aggressive cost reductions and performance improvements, will help guide R&D objectives across a diversity of storage and enabling technologies. A full description of the use case framework is discussed in the draft Roadmap. After identifying a portfolio of technologies that have the potential to achieve major functional improvements, ensuring long-term leadership includes augmenting the R&D ecosystem to enable constant innovation. The ecosystem includes partnerships, consortia, infrastructure, and other long-term resources that accelerate the journey from concept to commercialization.

The purpose of the Manufacturing and Supply Chain Track covered in *Section 2* is to strengthen U.S. leadership in energy storage through strengthening the manufacturing supply chains that produce state-of-the-art and emerging energy storage technologies, including supporting technologies that

enable seamless integration into larger systems and the grid. Strengthening U.S. manufacturing of energy storage technologies occurs through commercializing and scaling innovations that make domestic manufacturers more competitive. Increasing U.S. manufacturing competitiveness can come through multiple ways, including directly lowering the cost of manufacturing, lowering the lifecycle cost of technologies through improved performance and/or longer service lifetimes, diversifying sources for critical materials—particularly increasing domestic sources—and through accelerating the process in which new materials or components are integrated into systems and reliably produced at commercial scales to meet rapid deployment/demand.

The purpose of the Technology Transitions Track discussed in *Section 3* is to support the ESGC and strengthen U.S. leadership in energy storage by accelerating commercialization and deployment of energy storage innovations through validation, financing, and collaboration. This Track focuses on potentially bankable business models that build off of the Technology R&D use cases, and may also consider other use cases that are ready for commercialization and could support widespread adoption of storage. These include behind the meter and utility-scale storage, as well as stationary and mobile storage. The approach will concentrate on addressing barriers to bankability and attracting private investment. Where appropriate, lessons learned will be leveraged from previous work on standardization of solar contracts and capital market access for renewables. For example, minimizing perceived risk, such as uncertain technology performance through formalized data sharing, can lower risk premiums, improve warranties, and spur new insurance products that may attract more cost effective investment. Policies, incentives, and analysis tools that support bankability will also be considered.

This track has identified a potential need for proactive market validation, demonstration, standards, and dissemination of information to give market participants confidence in energy storage assets, thus reducing project risk, lowering project costs, increasing investment, and accelerating market demand.

The purpose of the Policy and Valuation (P&V) Track discussed in *Section 4* is to provide information and analysis to appropriately value energy storage in the power, transportation, buildings, and industrial sectors. The P&V track will develop a coordinated, DOE-wide program that leverages the expertise and capabilities of the national laboratories to provide stakeholders with cutting-edge data, tools, and analysis to enhance their policy, regulatory, and technical decisions. Stakeholder engagement will be systematic and recurring to guarantee the DOE provides tailored solutions for high priority needs. Providing stakeholders with the necessary information and capabilities to make informed decisions will help ensure that storage is properly valued, effectively sited, optimally operated, and cost-effectively used to improve grid and end-user reliability and resilience.

The purpose of the Workforce Development Track covered in *Section 5* is to focus the DOE's technical education and workforce development programs to train and educate the workforce, who can then research, develop, design, manufacture, and operate energy storage systems widely within U.S. industry. The lack of trained workers has been identified as a concern for growth of the U.S. industrial base, including many areas of energy storage. To have world-leading programs in energy storage, a pipeline of trained research and development staff, as well as workers, is needed. For workforce development in energy storage, the DOE will support opportunities to develop the broad workforce required for research, development, design, manufacture and operation. The DOE can play a critical role in facilitating the development of a workforce that is necessary to carry out the DOE's specialized mission. Energy storage is a highly specialized area of work and yet not a focus of 2 or 4 year college curricula. Therefore, it is appropriate that the DOE take the lead in strengthening a pipeline of qualified individuals who can fulfill employment needs at all stages of energy storage development, production and deployment.

Purpose: The purpose of this RFI is to solicit feedback from interested individuals and entities, such as, industry, academia, research laboratories, government agencies, and other stakeholders to assist the ESGC with identifying market opportunities and challenges—both technical and financial—for the development, commercialization, production, and deployment of energy storage technologies. This is solely a request for information. In issuing this RFI, the DOE is not seeking to obtain or utilize consensus advice and/or recommendations. The DOE is not accepting applications at this time as part of the ESGC.

Disclaimer and Important Notes: This RFI is not a Funding Opportunity Announcement (FOA) or RFP for a procurement contract; therefore, the ESGC is not accepting applications or proposals at this time. The ESGC may develop programs in the future and solicit contracts based on or related to the content and responses to this RFI. However, the DOE may also elect not to incorporate responses into its programs and tool designs. There is no guarantee that an RFP or FOA will be issued as a result of this RFI. Responding to this RFI does not provide any advantage or disadvantage to potential applicants if the DOE chooses to issue a FOA or solicit a contract related to the subject matter.

Any information obtained through this RFI is intended to be used by the government on a non-attribution basis for planning and strategy development, and/or for information purposes. The DOE will review and consider all responses as it formulates program strategies related to the subjects within this request. In accordance with Federal Acquisition Regulations, 48 CFR 15.201(e), responses to this notice are not offers and cannot be accepted by the government to form a binding contract. The DOE will not provide reimbursement for costs incurred in responding to this RFI. Respondents are advised that the DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. Responses to this RFI do not bind the DOE to any further actions related to this topic.

The DOE will not respond to individual submissions or publish a public compendium of responses. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. However, responses will be used to assist the DOE with identifying market opportunities and challenges for the commercialization and deployment of energy storage technologies.

Respondents are requested to provide the following information at the start of their response to this RFI:

- Company/institution name;
- Company/institution contact;
- Contact's address, phone number, and email address.

Proprietary Information: Because information received in response to this RFI may be used to structure future programs and/or otherwise be made available to the public, *respondents should clearly mark any information in*

the response to this RFI that might be considered proprietary or confidential. Information labeled proprietary or confidential will not be released by the DOE, but may be used to inform the DOE's planning. Responses must be submitted with the understanding that their contents may be publicly disclosed unless properly labeled as proprietary or confidential. In the event of a public disclosure, the DOE will NOT notify respondents or provide any opportunity to revise or redact submitted information. Public disclosures by the DOE will not attribute content to a specific respondent.

Marketing Information: Any submissions that could be considered advertising or marketing for a specific product will be excluded.

Review by Federal and Non-Federal Personnel: Federal employees are subject to the non-disclosure requirements of a criminal statute, the Trade Secrets Act, 18 U.S.C. 1905. The government may seek the advice of qualified non-federal personnel. The government may also use non-federal personnel to conduct routine, non-discretionary administrative activities. The respondents, by submitting their response(s), consent to the DOE providing their response(s) to non-federal parties. Non-federal parties given access to responses must be subject to an appropriate obligation of confidentiality prior to being given the access. Submissions may be reviewed by support contractors and private consultants.

Section 1 Technology Development

Background/Context

To develop and maintain a guiding R&D framework for all storage technologies, the Technology Development Track is arranged around three main activities:

1. Develop stakeholder-informed use cases that identify and update technology-neutral performance and cost targets through 2030 and beyond.

2. Identify a portfolio of energy storage technologies that have a R&D pathway to achieve significant progress towards these cost targets by 2030.

3. Bolster all stages (from fundamental research to pre-commercial demonstrations) of the U.S. innovation ecosystem (including national labs, universities, startups) for these pathways through funding and support mechanisms appropriate to each stage.

Details of each activity are provided in the draft Roadmap. Stakeholders are invited to provide feedback on the draft Roadmap by addressing the questions below.

Information Requested

The following questions may guide, but should not restrict, responses:

D.1 Use Cases
D1.1 Scope
D.1.1.1 What are long term individual/business/local/state/regional energy and infrastructure goals with a major energy component?
D.1.1.2 What are the major technology barriers to achieving these goals?
D.1.1.3 Do any of these objectives or barriers align with the proposed DOE Use Cases?
D.1.1.3.1 How might the DOE modify or add to the use cases to better support achievement of these goals?
D.1.1.4 What kinds of ''boundary conditions'' for today's electric power system could increase in prominence by 2030?
D.1.1.5 What are other important storage uses or applications are not included in the use cases?
D1.2 Process and Evolution
D.1.2.1 What is an appropriate update frequency for the use cases, their functional requirements, and associated cost and performance targets?
D1.3 Cost, Value, and Market Sizing
D.1.3.1 If storage is not available, what other solutions or workarounds would be used to meet a use case? What are the costs of these alternatives?
D.1.3.2 Given today's market value and technology costs, what is the likely addressable market size for each use case?
D.1.3.3 How does the size of the addressable market change over time, with decreasing technology costs, changing conditions, or other factors?
D.1.3.4
D1.4 Specific Use Cases
D.1.4.1 Facilitating an Evolving Grid
D.1.4.1.1 What kinds of emerging individual/business/local/state/regional goals could be supported by this use case?
D.1.4.1.2 What performance requirements for storage would be required to achieve these goals?
D.1.4.1.3 How might the DOE modify or add to this case to better support achievement of these goals?
D.1.4.2 Serving Remote Communities
D.1.4.2.1 What kinds of emerging individual/business/local/state/regional goals could be supported by this use case?
D.1.4.2.2 What performance requirements for storage would be required to achieve these goals?
D.1.4.2.3 How might the DOE modify or add to this case to better support achievement of these goals?
D.1.4.3 Electrified Mobility
D.1.4.3.1 What kinds of emerging individual/business/local/state/regional goals could be supported by this use case?
D.1.4.3.2 What performance requirements for storage would be required to achieve these goals?
D.1.4.3.3 How might the DOE modify or add to this case to better support achievement of these goals?
D.1.4.4 Interdependent Network Infrastructure
D.1.4.4.1 What kinds of emerging individual/business/local/state/regional goals could be supported by this use case?
D.1.4.4.2 What performance requirements for storage would be required to achieve these goals?
D.1.4.4.3 How might DOE modify or add to this case to better support achievement of these goals?
D.1.4.5 Critical Service Resilience
D.1.4.5.1 What kinds of emerging individual/business/local/state/regional goals could be supported by this use case?
D.1.4.5.2 What performance requirements for storage would be required to achieve these goals?
D.1.4.5.3 How might DOE modify or add to this case to better support achievement of these goals?
D.1.4.6 Facility Flexibility
D.1.4.6.1 What kinds of emerging individual/business/local/state/regional goals could be supported by this use case?
D.1.4.6.2 What performance requirements for storage would be required to achieve these goals?
D.1.4.6.3 How might DOE modify or add to this case to better support achievement of these goals?
D.1.4.6.4 Are energy storage systems relevant for improving industrial facility operations?
D.1.4.6.5 If so, what measurable improvements are expected?
D.1.4.6.6 What are optimal storage time durations for adopting facility-based storage?
D.1.4.6.7 If a facility were to use its operational flexibility as a form of virtual energy storage, how much potential ''virtual storage'' capabilities are currently available across facility processes and immediate operational?
D.1.4.6.7.1 What are the opportunities for facility flexibility to provide or enable energy storage? For example: Operational changes process delay/sequencing, Material flows (from input to output)
D.1.4.6.8 What are the risks and limitation to the facility that limits a facility's adoption of energy storage?
D.1.4.6.9 What would it take to retool process equipment and/or core-processes to enable greater flexibility (with an energy impact)?
D.1.4.6.10 What technologies/strategies would be needed to make a particular manufacturing process more flexible in terms of production rate or saving energy or being able to produce a variety of products in rapid response to market forces?
D.1.4.6.10.1 Could the storage of energy or materials contribute to increased flexibility, and in what way?
D.2 Technology Portfolios
D2.1 Functionality

D.2.1.1 What are the unique performance, maintenance, environmental, safety, or other requirements of a specific use case?
D2.2 Metrics
D.2.2.1 How can the Levelized Cost of Storage metric be further refined to compare costs across technologies?
D.2.2.2 What other metrics would assist measuring technology advancement, cost, and value to the end user?
D.3 Technology Pathways
D3.1 The ESGC road map appendix identifies current R&D DOE activities on a variety of storage technologies. What additional technologies and R&D pathways have the potential to meet the use case requirements?
D3.2 For a given technology (*e.g.*, flow batteries, thermal storage, compressed air, balance of system/power conversion technologies etc.):
D.3.2.1 What are the major challenges to commercial viability?
D.3.2.2 What additional testing capacity or capabilities would help accelerate technology development?
D.3.2.3 What types of validation are required? See Appendix 2 in the Roadmap for criteria.
D.3.2.4 At what point does a new technology sufficiently diverge from existing technologies as to require validation through in-field demonstration? For a given technology pathway, what is the likely scale of a field demonstration? What are the limits of validation through simulation or extrapolation?
D.3.2.5 What is the scale (financial, energy/power capacity) required for the validation efforts above?
D.3.2.6 What is the half-life of a technology's competitive advantage? How often would to the new technology require more lab work and have to be jump-started?
D3.3 How does a technology and a vendor become ready to bid on commercial opportunities?

Section 2 Domestic Manufacturing

Background/Context

The DOE can play a critical role in accelerating the progress of emerging technologies through the development and deployment, bridging the many gaps in support that may arise from discovery to manufacturing, so innovations important to sustained competitiveness make it into the market. These activities advance development of materials and components that are applicable across multiple energy storage technologies and applications, advance platform technologies that enable the manufacturing of energy storage systems, establish partnerships to promote technology innovation, and transfer knowledge through dissemination of tools and training. The manufacturing and supply chain pillar of the ESGC aims to develop technologies, processes, and strategies for U.S. manufacturing that support and strengthen U.S. leadership in energy storage innovation and continued at-scale manufacturing of energy storage materials, components, and systems.

Different energy storage technologies face different sets of challenges to improving their manufacturability and strengthening their supply chains. Different uses will require different technologies, and the manufacturing & supply chain track will examine the manufacturing issues related to all of them. For each question in this section, please specify which of the energy storage technology class or classes—described in the ESGC Roadmap—the answers are addressing.

Information Requested

The following questions may guide, but should not restrict, responses:

M.1 Manufacturing Innovations for Materials & Components Questions
M.1.1 What materials or components represent the largest barriers to directly lowering the cost of production for total energy storage system?
M.1.1.1 What are their current manufacturing costs and/or throughput rates (units/day)?
M.1.1.2 What aspects of material or component sourcing or manufacturing are the cause of this (these) barrier(s)?
M.1.2 What existing manufacturing innovations for specific components or materials could have the largest impact on directly lowering the system production cost, if implemented?
M.1.2.1 What is the impact that their implementation would have?
M.1.3 Are there any new or emerging materials and/or components that could have major impacts on directly lowering the production cost of energy storage systems?
M.1.3.1 What are the likely impacts if these materials and/or components were to be integrated into existing state-of-the-art systems?
M.1.3.2 What are the most significant barriers to manufacturing at scale and integrating these materials and/or components into energy storage systems?
M.1.3.3 Using existing knowledge about current barriers and the resources and time likely required to overcome them, which new or emerging materials and/or component should be rated as being readily commercialized.
M.1.3.3.1 in the near-term (<2 years)
M.1.3.3.2 in the mid-term (2 years–6 years)
M.1.3.3.3 in the long-term (>6 years)
M.1.4 Which materials or components represent the largest barriers to lowering the total lifecycle cost for the energy storage system? Please specify if these are barriers to performance improvement, lifetime extension, or both.
M.1.4.1 If possible, please provide current baseline performance data and/or expected service lifetimes.
M.1.4.2 What about their design or manufacturing is the cause of this (these) barrier(s)?
M.1.5 Which existing manufacturing innovations for specific components or materials could have the largest impact on lowering the total system lifecycle cost, if implemented?
M.1.5.1 What impact would their implementation have? Please specify if this would be through performance improvement, through lifetime extension, or both.
M.1.6 Are there any new or emerging materials and/or components that could have major impacts on lowering the total system lifecycle cost?
M.1.6.1 What are the likely impacts if these materials and/or components were to be integrated into existing state-of-the-art systems? Please specify if impacts would be on performance improvement, lifetime extension, or both.
M.1.6.2 What are the most significant barriers to manufacturing at scale and integrating these materials and/or components into energy storage systems?
M.1.6.3 Using existing knowledge about current barriers and the resources and time likely required to overcome them, which materials and/or components should be rated as being readily commercialized.
M.1.6.3.1 in the near-term (<2 years)
M.1.6.3.2 in the mid-term (2 years–6 years)
M.1.6.3.3 In the long-term (>6 years)
M.2 System-Level Innovations
M.2.1 Outside of the material and component specific innovations covered in the previous category, are there any aspects of the system-level design, manufacturing, validation, and integration process that are major barriers to directly lowering the energy storage system cost?
M.2.1.1 If these barriers were eliminated, was is the estimated impact that would have?
M.2.2 Are there any new or emerging innovations in designing, manufacturing, or integrating energy storage systems—outside of individual materials and/or components—that could have major direct impacts on lowering the energy storage system cost?
M.2.2.1 What are the likely impacts of implementing/adopting these innovations?
M.2.2.2 What are the most significant barriers to implementing/adopting these innovations?
M.2.3 Outside of the material and component specific innovations covered in the previous category, are there any aspects of the system-level design, manufacturing, validation, and integration process that are major barriers to lowering the total lifecycle cost of the system?
M.2.3.1 If these barriers were eliminated, what is the estimated impact that would have? Please specify if the impact would be on performance, lifetime extension, another as-yet unspecified impact on lifecycle cost, or multiple impacts.

M.2.4 Are there any new or emerging innovations in designing, manufacturing, or integrating energy storage systems—outside of individual materials and/or components—that could have major impacts on lowering the total lifecycle cost of the system?
M.2.4.1 What are the likely impacts of implementing/adopting these innovations? Please specify if the impact would be on performance, lifetime extension, another as-yet unspecified impact on lifecycle cost, or multiple impacts.
M.2.4.2 What are the most significant barriers to implementing/adopting these innovations?
M.2.5 Are there any other innovations that would improve and/or accelerate the overall process of iterating and validating improved energy storage systems that have not yet been covered in this section?
M.3 Supply Chain Resilience
M.3.1 Does the manufacturing supply chain for the energy storage system have a strong, reliable, sustainable, U.S. presence?
M.3.1.1 If not, which sections of the supply chain have the weakest, or no U.S. presence?
M.3.2 What are the most pressing challenges to creating and/or growing a reliable U.S. presence in these supply chains?
M.3.3 Are U.S. storage manufacturing supply chains vulnerable to supply disruption of specific materials or components?
M.3.3.1 If so, which supply chains and which materials and components?
M.3.4 What R&D would help make material and component supply chains more resilient and robust?
M.4 Crosscutting Innovations
M.4.1 Which manufacturing methods would provide the greatest impact for energy storage technology?

Section 3 Technology Transitions

T.1 Stationary Grid Storage Business Model Questions

Background/Context

Stationary grid storage business model questions are meant to elicit ideas that consider a holistic approach to market access. For this section, stationary grid storage includes systems that can satisfy the functional requirements in the use cases: Facilitating an Evolving Grid, Resilience and Recovery, Interdependent Network Infrastructure, and Facility Flexibility. These systems can be connected at either the transmission level or the distribution level. For each question, please specify whether the answer applies to transmission level, distribution level, or both. Also, consider how responses may differ if the storage asset owner or provider is a utility, commercial and industrial entity (C&I), or residential entity. Please differentiate between commercial and industrial where appropriate. Although we encourage respondents to answer all questions, partial responses are welcome.

Information Requested

The following questions may guide, but should not restrict, responses:

T.1.1 Should and/or could stationary grid storage provide ancillary services or demand response to the power grid using any of these ownership/delivery models? Please include an explanation of why a choice was made or excluded. What other services could stationary storage provide in the short-, medium-, and long-term? How does ownership type affect these market opportunities?
T.1.1.1 Individually
T.1.1.2 Individually by a third-party
T.1.1.3 Aggregated by the utility including energy generation, transmission, or distribution.
T.1.1.4 Aggregated by a third-party.
T.1.2 What barriers impede market participation based on the models listed in the previous question?
T.1.3 Should and/or could stationary C&I sector storage provide ancillary services or demand response to the power grid using any of these ownership/delivery models? Please include an explanation of why a choice was made or excluded.
T.1.3.1 Individually
T.1.3.2 Individually by a third-party
T.1.3.3 Aggregated by the utility including energy generation, transmission, or distribution.
T.1.3.4 Aggregated by a third-party.
T.1.4 Should and/or could stationary residential sector storage provide ancillary services or demand response to the power grid using any of these ownership/delivery models? Please include an explanation of why a choice was made or excluded.
T.1.4.1 Individually
T.1.4.2 Individually by a third-party
T.1.4.3 Aggregated by the utility including energy generation, transmission, or distribution.
T.1.4.4 Aggregated by a third-party.
T.1.5 What barriers impede market participation based on the models listed in the previous question?
T.1.6 At what times and under what circumstances do utilities need grid support services (*e.g.,* ancillary services, load shifting, and demand response)? What is the magnitude of the need, by service? How do seasonality and geographic location affect grid support needs?
T.1.7 Under what conditions would owners be willing to offer their electric vehicle (EV) charging infrastructure to provide such stationary storage services? How might this differ depending on whether the owner is a utility, C&I entity, residential entity, or third-party? To the extent possible, consider how regionality and market structures may affect an answer.
T.1.7.1 How much additional storage would be needed?
T.1.7.2 What is the additional marginal cost for the variety of storage options available relative to the additional potential revenue stream opportunities?
T.1.7.3 How might this vary by region, market structure (*e.g.,* regulated vs unregulated markets), or location (*e.g.,* based on resource mix)?
T.1.8 What is the best way to assess the additional marginal cost for bi-directional electric vehicle charging infrastructure or other stationary storage to become a microgrid and what is the added benefit from the additional potential revenue stream opportunities?
T.1.9 Where on the grid is there greatest potential value from storage for reliability (*e.g.,* to offset intermittent renewables), resilience, and savings given current trends? For example, where would utilities and ISO/RTOs see value to help offset infrastructure upgrades? The following is a list of considerations:
T.1.9.1 Based on grid congestion
T.1.9.2 Based on other grid vulnerabilities
T.1.9.3 Based on access renewables (*e.g.,* heat maps)
T.1.9.4 Based on savings to utilities to offset
T.1.9.5 Other factors?
T.1.10 How is or could stationary grid storage be used for locational energy arbitrage?
T.1.10.1 Can charging infrastructure investments anticipate locational pricing? If not, what would be required for this to be possible in the future?
T.1.10.1.1 At the transmission level?
T.1.10.1.2 At the distribution level?
T.1.10.2 How would locational pricing for resilience affect the prospects for bi-directional electric vehicle charging infrastructure?
T.1.11 Stationary grid storage used for responding to emergencies and for restarting the grid. Can or should black-start be provided by C&I, residential, or third-parties?
T.1.11.1 Would such infrequent events justify the needed capital investment?
T.1.11.2 Are EV charging infrastructure owners likely to comply with grid operator requests in an emergency?
T.1.11.3 Could aggregators be deployed under such circumstances?
T.1.11.4 What level of risk should be considered in developing responses to emergencies (frequency and impact)?
T.1.12 How significant is the market for bi-directional storage relative to other energy storage markets, in the short-, medium-, and long-term? What factors will affect the size of this market?
T.1.13 Are there other use cases that could or should be considered for stationary storage from utility, C&I, residential, or third-party providers?
T.1.14 What other services could be part of the value stacking of combining various use cases and revenue?
T.1.14.1 Should a prioritized value list be developed, *e.g.,* emergency services, evacuation, medical services, water, wastewater, HVAC, etc.?

T.1.15 What other ancillary technologies are needed to support these use cases? For example, artificial intelligence for dynamic pricing, blockchain to support transactive services, software to enable aggregation or grid dispatch calls to stationary storage providers?
T.1.16 What options are there for stationary grid storage ownership? What are the pros and cons of each?
T.1.17 What are the different ownership models that exist or could ideally exist?
T.1.17.1 Could municipalities or other public entities either own or secure priority access to stationary storage for public services, residents, businesses, etc.?
T.1.18 Who should pay and for which component of the project (*e.g.* interconnection, operations, maintenance, etc.)? How does or should this differ depending on the sector providing the storage service (*e.g.,* utility, C&I, residential, or third-party)?
T.1.19 Who ultimately pays and who should pay for the upfront cost of stationary grid storage that is beneficial to the grid; end users, ratepayers, or market participants? Why? Who actually reaps the operational benefits?
T.1.20 What limits deployment of stationary storage currently? Which policy, technology, or regulatory barriers are likely to be the most significant in the short-, medium-, and long-term? How do they differ at the transmission or distribution level? What about based on ownership types or market segments?
T.1.21 In light of recent lithium-ion battery incidents, how significant are concerns regarding safety of any storage technology? What performance, safety, or other data would be necessary to restart resources or invest in new resources? What other safety measures would be helpful and could be standardized to reduce risk and increase investor confidence?
T.1.21.1 Will advancements in battery technology impact explosion risk?
T.1.22 How much and what data would be necessary to reduce investment risk premiums in stationary storage?
T.1.23 What are some other novel strategies, tools, or resources that the federal government or others could implement or provide to facilitate the market for innovative uses of stationary storage?

T.2 Mobile Grid Storage Business Model Questions

Background/Context

Mobile grid storage business model questions are meant to elicit ideas that consider a holistic approach to market access. For this section, mobile grid storage includes the Electrified Mobility use case. This includes bidirectional battery electric vehicles (BEV), plug-in hybrids (PHEV) or hydrogen fuel cell electric vehicles (FCEV), as well as any other mobility option that would require mobile storage technology. Vehicles could include passenger vehicles, utility vehicles, transit, medium-duty (MD) or heavy-duty (HD) trucks, or other advanced transportation systems. These mobile storage units could act independently or as aggregated fleets owned by one or more entities or individuals that can be called upon and dispatched by a system operator. These mobile systems can be connected at the transmission level, distribution level, or building level. For each question, if possible, please specify if the answer applies to transmission level, distribution level, building level, or some combination. Also, consider how responses may differ if the mobile storage provider is a utility, fleet owner, individual entity, public entity, or third-party aggregator. Third-party aggregators could be utilities, automobile or battery manufacturers (OEMs), or other public or private entities. Please consider and note if a distinction affects a response. Although we encourage respondents to answer all questions, partial responses are welcome.

Information Requested

The following questions may guide, but should not restrict, responses:

T.2.1 Should and/or could mobile grid storage provide ancillary services or demand response to the power grid or other facilities using any of these ownership/delivery models? Please include an explanation of why a choice was made or excluded. What other services could mobile storage provide in the short-, medium-, and long-term? How does ownership type affect these market opportunities?
T.2.1.1 Individual
T.2.1.2 Fleet owner
T.2.1.3 Utility
T.2.1.4 Aggregated by the utility including energy generation, transmission, or distribution.
T.2.1.5 Aggregated by a third-party.
T.2.2 How does the response to the previous question differ depending whether the mobile storage service is provided at the transmission level, distribution level, or building level?
T.2.2.1 Should and/or could we consider services between mobile storage units?
T.2.3 At what times and under what circumstances do utilities need grid support services (*e.g.,* ancillary services, load shifting, and demand response)? How do these differ by geographic location and seasons?
T.2.4 Under what conditions would owners or product warranty providers be willing to offer their mobile grid storage to provide such services? How does the response differ based on ownership (utility, fleet owner, individual entity, or third-party aggregator) or aggregator (utility vs third-party)?
T.2.5 Alternatively, given when mobile grid storage (*e.g.,* electric vehicles) are likely to be connected, what is the value of grid services at that time? How predictable is this trend? How likely are mobile grid storage owners willing to participate? Consider how the response may differ depending on the ownership or aggregator type.
T.2.6 How do mobile grid battery storage use cases affect battery life? Is there enough publicly available data to inform market decisions? If not, what would be useful?
T.2.7 How would participation in the provision of grid services affect battery warranties provided by vehicle manufacturers and suppliers? For example, (a) the auto maker and (b) the battery suppliers to the auto makers, or (c) other participants in the vehicle supply chain
T.2.7.1 Could impact to battery warranty be mitigated by adjusting discharge rates?
T.2.8 Will advancements in battery technologies reduce risk to battery life?
T.2.9 Assume batteries or vehicles are owned by a company, which are leased to the consumer. (Context: For electric vehicles, fuel cost is ~7% of overall vehicle cost per mile) (Lab, 2019). That leaves only a marginal incentive for owners to provide grid services. Company ownership may provide greater incentives for grid participation. Alternatively, companies could provide active management to extend battery life.)
T.2.9.1 At what price level would companies be willing to sacrifice battery life for grid services?
T.2.9.2 How might companies track the state of health of batteries leased to consumers?
T.2.9.3 Do OEMs see the provision of grid services as an appealing new revenue opportunity for electric vehicles? How do they think about this use case?
T.2.9.4 Are there other incentives companies could provide consumers, such as a fixed or variable monthly usage payment for grid services? Are these incentives likely to shift consumer behavior?
T.2.10 Under what conditions should or could mobile energy storage be used for locational energy arbitrage?
T.2.10.1 How do investors in charging infrastructure anticipate locational needs and pricing? How does the response differ at the generation, transmission, and distribution levels?
T.2.10.2 How might plans for locational pricing for resilience affect the prospects for bidirectional vehicles?
T.2.11 Should and/or could mobile energy storage be used for locational energy arbitrage at the building level? For example, to offset demand charges? Are there existing or planned examples?
T.2.12 Should and/or could mobile energy resources be used for responding to emergencies and for restarting the grid? Are there existing or planned examples?
T.2.12.1 Would such infrequent events justify the needed capital investment? Consider both frequency and potential impact in the response.

T.2.12.2 Are vehicle owners likely to comply to grid operator requests in an emergency? Could they be compelled to comply?
T.2.12.3 Could fleet operators be deployed under such circumstances? What technologies and infrastructure are needed to enable this? For example, artificial intelligence, digitization of substations?
T.2.13 Should and/or could mobile energy resources be used for responding to emergencies by providing back-up storage to critical facilities or buildings? Are there existing or planned examples?
T.2.13.1 Would such infrequent events justify the needed capital investment?
T.2.13.2 Are vehicle owners likely to comply in an emergency?
T.2.13.3 Could fleet operators be deployed under such circumstances? What technologies and infrastructure are needed to enable this? For example, artificial intelligence, mobile software?
T.2.14 Could fleet users of mobile grid storage such as bidirectional electric vehicles to maximize revenue by shifting from delivery of people and goods to grid services?
T.2.14.1 What types of fleet would have such scheduling flexibility?
T.2.14.2 What price is needed to persuade fleets to shift to grid services?
T.2.14.3 Are there times of the day when fleet operators would most likely shift? What grid services are needed at those times? Who are the most likely consumers, the grid, C&I, buildings, etc.?
T.2.15 What is the possibility that battery leasing or buy-back programs for mobile electric storage such as electric vehicles, degraded, but useable, batteries could be re-used for grid services?
T.2.15.1 What monitoring and modeling are needed for leasing companies to optimize the time of battery replacement? How do pricing structures affect those decisions? Are there any initial signs of an emerging secondary market for depleted batteries?
T.2.15.2 What could a ''certified pre-owned'' battery program look like to certify the state of health for batteries?
T.2.15.3 Would the ease and value of battery recycling be impacted?
T.2.15.4 What else is needed to enable this kind of business model?
T.2.16 What is the likelihood that business owners (including manufacturers) could pay employees to draw power from their electric vehicles to reduce demand charges?
T.2.16.1 How can employees be assured of having take-home power?
T.2.17 What evidence is there that bidirectional electric vehicle consumers are willing to consider different ownership models? If not currently available, what data and analysis could help understand this dynamic? What would it take for consumers to accept the levels of risk associated with different ownership models?
T.2.18 How willing are auto and battery makers to pursue new technologies and use cases? How might technology, policy, standardization or regulation mitigate those risks?
T.2.19 What public policies or regulation could encourage innovative uses for batteries? (For example, can consumers of electricity also be producers? Can utilities own generation? Is mobile energy storage classified as ''generation''?) Would mobile storage compensation be dynamic?
T.2.20 How do concerns regarding safety affect innovative use of mobile storage technologies? Would performance and safety data for mobile storage alleviate these concerns? How much and what data would be necessary for mobile storage and related fast charging infrastructure? Will advancements in electric vehicle battery technology impact safety?
T.2.21 What are some novel strategies, tools, or resources that the federal government or others could implement or provide to facilitate the market for innovative uses of mobile storage?

T.3 Finance Questions

Background/Context

Finance questions are meant to illicit ideas that will enable bankability and attract investment in stationary and mobile storage as described in the previous sections. If appropriate, consider whether there is a benefit to capital market access and how this would affect the overall cost of capital to support the various use cases and business models proposed for stationary and mobile storage technologies. Also, consider how the responses may differ for various ownership models (including third-party aggregators), market segments (*e.g.,* utility, C&I, residential or individual), and regions. As mentioned, we encourage respondents to answer all questions, however, partial responses are also welcomed.

Information Requested

The following questions may guide, but should not restrict, responses:

T.3.1 Are there useful publicly available business and finance models for storage, similar to what is available for solar? For example, to provide first-order approximation of the amount of revenue required by a non-residential stationary storage system under a variety of financing or ownership structures, sufficient for a comparative analysis.
T.3.2 What are the most commonly used finance models for taxable site hosts available thus far? Please note if any options are missing.
T.3.2.1 *Balance Sheet:* The site host finances the project on its balance sheet
T.3.2.2 *Operating Lease:* The site host finances the project through an operating lease
T.3.2.3 *Power Purchase Agreement (PPA):* The site host enters into a PPA, which in turn is financed by a partnership
T.3.3 What are the most common used finance models for tax-exempt site hosts? Please note if any options are missing or if other options should be explored.
T.3.3.1 *Balance Sheet:* The site host finances the project on its balance sheet
T.3.3.2 *Municipal Bonds:* The site host finances the project using municipal debt, or with reserve funds that have an opportunity cost of capital approximated by municipal debt interest rates
T.3.3.3 *CREBs:* The site host finances the project using CREBs
T.3.3.4 *Tax-Exempt Lease:* The site host finances the project using a tax-exempt lease
T.3.3.5 *Service Contract (Partnership):* The site host enters into a service contract/PPA, which in turn is financed by a partnership.
T.3.3.6 *Pre-Paid Service Contract:* The site host enters into a pre-paid service contract.
T.3.4 What are common drivers for storage adoption?
T.3.4.1 Emergency backup or resilience?
T.3.4.2 Energy arbitrage?
T.3.4.3 To reduce costs (*e.g.,* demand charges)?
T.3.4.4 Meeting state Renewable Portfolio Standard (*e.g.,* Resource Adequacy like in California)?
T.3.4.5 Other?
T.3.5 What premium are customers willing to pay for storage and do they vary by customer type?
T.3.5.1 If so, how?
T.3.5.2 Does the risk premium change whether it is stationary or mobile storage (*e.g.,* an electric vehicle, assuming it is UL certified and enabled for bidirectional use)?
T.3.6 Would standardization of utility scale stationary storage be useful? How should they be standardized? Similar to solar PPA's?
T.3.7 Would standardization of contracts for aggregated mobile storage be useful? How should they be standardized? Are there comparable models to use as a starting point?
T.3.8 What kinds of technology standards would be most helpful for stationary storage? Would any of these standards differ based on interconnection at the transmission level vs at the distribution level?
T.3.9 What kinds of technology standards would be most helpful to make mobile storage bankable?
T.3.10 What kinds of technology standards would be most helpful to make aggregated mobile storage bankable?
T.3.11 Are there good examples of interconnection standards that could be used for stationary storage?
T.3.12 What are reasonable interconnection standards that could be used for aggregated mobile storage?
T.3.12.1 Should this be done at the EV charging station level to provide grid services?
T.3.12.2 Would that standards differ if the connection is at the building or facility level to off-set demand charges?
T.3.13 What are the various risk premiums that apply to stationary

storage that could be reduced through contract standardization and data sharing?

T.3.14 Is there enough data and/or performance information to help inform investors and better ascertain investment risk for stationary storage? If not, what data is needed and who could provide it?

T.3.15 What data and/or performance information would be helpful to investors to determine investment risk for aggregated mobile storage? If not, what data is needed and who could provide it?

T.3.15.1 Would grid operators be willing to pay to third parties to aggregate the data?

T.3.15.2 Would the data be proprietary?

T.3.16 Are there scenarios or models that would lower the cost of capital for different types of storage projects, such as securitization? For example, what would work for large utility scale stationary storage vs aggregated mobile storage? What benefits would these approaches provide?

T.3.16.1 Will storage change capital investment trends in the energy sector?

T.3.17 What ownership structures for aggregated mobile storage would be conducive to securitization? For example, would a third-party aggregator need to own the batteries in electric vehicles to reduce risk premiums?

T.4 Open

Background/Context

OTT recognizes that there may be other ideas, concepts, or tools other than those discussed in this RFI that may be useful to helping improve bankability and commercialize stationary and mobile storage technologies. This category serves as an open call for suggestions on how to capture market input to inform the OTT and the DOE on the market needs and help advance the overarching Administration's goals.

Information Requested

The following questions may guide, but should not restrict, responses:

T.4.1 What are the greatest concerns with investing in the storage technology space? What sort of information/assistance would provide greater comfort with this investment area?

T.4.2 In general, how can the federal government most effectively help to catalyze further storage investment and market development beyond R&D? In particular, how can DOE most effectively advance the following goals:

T.4.2.1 Unlock new sources of capital and foster more effective investment models to scale storage technology and related technology companies;

T.4.2.2 Facilitate demand creation and/or match-making between early-stage companies and potential investors and customers;

T.4.2.3 Support the development of innovative new business models;

T.4.2.4 Facilitate coordination between OEMs, utilities, and other key stakeholders such as state DOTs or other potential government customers/partners;

T.4.2.5 Encourage more storage and related technology investment focused on U.S.-based companies with high potential for domestic economic benefit; and

T.4.2.6 Leverage existing programs (*e.g.,* SBIR, Opportunity Zones, New Market Tax Credits, Loan Guarantees) to be of best use to the storage investment community.

T.4.3 Is there any other information, other approaches, or other data that would be useful to investors, developers, customers, utilities, and OEMs to further business models and financing of storage?

T.4.4 Are there any other tools that would be useful to investors, customers or key stakeholders that were not discussed above?

T.4.5 What are the greatest challenges when it comes to investing in stationary or mobile storage?

T.4.6 Are there international models that the U.S. should review and consider?

T.4.7 Is there a need for international standardization?

T.4.8 Are there regulatory or permitting barriers?

Section 4 Policy and Valuation

Background/Context

Energy Storage can invigorate the U.S. economy as both an end-use product and a source of industrial competitiveness. Cost-effective energy storage can increase system and end-user resilience against a variety of threats, improve the operation and value of existing grid assets, reduce the cost of integrating new assets, catalyze new innovation and commercialization, create a new domestic manufacturing sector, and decrease the overall cost of energy for consumers. However, these impacts can only be realized if storage is appropriately valued, so that energy storage benefit the grid and end-users across the U.S. energy system. The ESGC's Policy and Valuation track will develop a coordinated, DOE-wide program to provide stakeholders with the information and tools to appropriately analyze and value energy storage. DOE will not promote or encourage specific policy objectives.

Information Requested

The following questions may guide, but should not restrict, responses:

P.1 Energy Storage Cost, Performance, and Financing

P.1.1 What current or future, stationary or transportation-related, energy storage cost, performance, and/or financing data would improve the decision-making processes, and why?

P.1.2 What is the most effective way for DOE to provide stakeholders data? For example, a centralized database updated annually, reports that provide additional analysis of the data, etc. How should data be validated?

P.1.3 How should DOE integrate private OEM and developer/owner data with modeled cost, performance, and financing data? What types of data need to come from the real world? How should data be anonymized and protected to encourage OEM and developer/owner participation?

P.2 Valuation Methodology

P.2.1 Do current valuation methodologies used by planners, regulators, grid operators, end-users, and policy makers accurately account for energy storage? If not, what other cost and value factors should be included in the methodologies, and why? How or do these valuation methodologies vary by region and market, and why?

P.2.2 How should the grid value long-duration (multi-day to seasonal) storage technologies relative to shorter-duration storage? What methodologies are needed to value long-duration storage, and what types of DOE/national lab data, tools, analysis would be useful for stakeholders?

P.3 Planning Tools and Processes

P.3.1 What tools/models are used today for near-term/operational planning (*e.g.,* power flow, system stability, optimal dispatch/production cost, system sizing and siting) and long-term planning and scenario analysis (*e.g.,* capacity and transmission expansion), in both macro- and micro- grid applications? Which are better? Do these existing tools offer the proper level of temporal and spatial granularity and/or accurately represent the cost and performance of all storage technologies? What improvements could be made?

P.3.2 How can DOE help enhance the tools and capabilities in the hands of stakeholders? E.g., should DOE build new open-source tools and offer trainings/support, should DOE work with vendors to improve existing tools, or should DOE provide some other type of support?

P.3.3 What methodologies, data, tools, and analysis would be needed to integrate power system, distribution, and transportation planning? What technology and system interactions are important to include when conducting integrated planning? How can DOE provide support to help stakeholders better integrate their planning processes?

P.3.4 Can demand-side resources be synergistically paired with energy storage technologies? Are they currently being properly evaluated together in planning processes? What new information would enable higher-levels of integration of demand- and supply-side flexibility options in planning processes?

P.3.5 What are critical future scenarios, assumptions, and technology-tradeoffs DOE/the national labs need to analyze?

P.4 Resilience

P.4.1 How have stakeholders started to value resilience related investments?

How do stakeholders measure an individual investment's contribution to system resilience?

P.4.2 How can stationary or transportation-related energy storage systems improve system-level or end-user resilience?

P.4.3 Is there a certain level of resilience against a certain group or probability of threats that stakeholders should plan for?

P.4.4 Does the United States need specific resilience standards that use standardized metrics? Would these vary by sector? What entities should lead that effort? Should DOE lead this effort, and if so, what entities should it collaborate with?

P.4.5 What types of data, tools, and analysis can DOE provide to support stakeholders' resilience decision making?

P.5 Transportation and Cross-Sectoral Issues

P.5.1 Transportation assets (electric and fuel cell vehicles) may be able to provide storage or other flexibility services to the grid. What new information, models, and/or analysis would enable this? For example, vehicle performance/degradation given duty cycle, charging/refueling cycles, infrastructure performance, optimal rate structures, consumer behavior, etc.

P.5.2 Current EV manufacturer warranty standards prohibit the use of EV batteries for grid applications. Is there a role for DOE to play in facilitating the development of standards that will allow for limited vehicle-to-grid applications?

P.5.3 Should DOE analyze manufacturing polices for stationary storage or transportation technologies that encourage domestic production, secure supply chains, and market growth? If so, what policies should be analyzed, and what types of information should DOE provide to stakeholders?

P.5.4 Are there specific gaps in existing transportation-related storage data, tools, and analysis that DOE can help fill?

P.5.5 Have stakeholders started to incorporate cross-sectoral storage feedbacks into their planning processes? *E.g.,* electric vehicle deployment with increased electricity demand/variable load profiles, or hydrogen being supplied for both long-duration grid services and as a fuel for transportation/industry? What types of data, tools, and analysis can help stakeholders incorporate cross-sectoral storage interactions into their planning processes?

P.5.6 End-use consumers may invest in storage that provides grid services or provide flexibility through load control. What new information, models, and/or analysis would enable this? What types of data, tools, and analysis can help stakeholders incorporate these interactions into their planning processes?

P.6 Policy, Regulatory, and Market Considerations

P.6.1 Are there specific federal, state, or local policies that could be enacted to help the U.S. become a leader in energy storage, and why? Please consider policies that might support storage deployment, and also policies to support supply-chain development. How should these policies be prioritized? How can DOE best inform policy development?

P.6.2 Are there near-, medium-, and long-term changes that competitive wholesale markets or electric utilities need to make to better enable storage to participate and/or be accurately compensated? How should these changes be prioritized? What types of data, tools, and analysis can DOE provide to assist stakeholders?

P.6.3 Energy storage is increasingly being coupled with generation technologies to create hybrid systems. What technical and/or market barriers do hybrid technologies face? What types of data, tools, and analysis can DOE provide to support the inclusion of hybrid systems in competitive markets and vertically integrated utilities?

P.6.4 Grid operations are generally divided into three functions: Generation, transmission, and distribution. Storage can provide services within any one of these functions, but does not neatly fit into the definition of any one of them. Should storage be a different asset class? If so, why?

P.6.5 Energy storage assets have generally been deployed as bolt-on additions to the grid to provide energy, capacity, and ancillary services. Some have argued that the true value of energy storage would be in acting as a buffer to decouple supply and demand on the grid, and that storage should therefore be viewed as an embedded grid asset similar to a substation or a transformer. Should storage be an embedded grid asset with shared costs? If so, why? What types of policies or standards would be needed to facilitate that treatment?

P.7 P&V Stakeholder Engagement

P.7.1 Reoccurring engagement with stakeholders is crucial for identifying and prioritizing key energy storage data, tools, and analysis needs related to policy and valuation issues. What is the best method for ensuring systematic engagement and preventing redundancy with existing or new DOE technical assistance programs? E.g., would annual DOE-sponsored workshops be helpful?

Section 5 Workforce Development

Background/Context

In order to maintain global leadership in energy storage, the United States will need to develop and maintain a well-qualified workforce in the right areas in a timely manner at all levels of education.

Innovate Here: In order to maintain global leadership in storage R&D, DOE's ongoing efforts will be leveraged to grow the pipeline of candidates qualified to lead the field in research. This includes supporting innovative research at universities and national laboratories, along with building and operating world-class user facilities, all of which help train the workforce of the future.

Build Here: As illustrated by the diversity of the use cases, there is a wide range of potential technology requirements spanning from small to large systems; factory built to bespoke, site-built installations; and chemically to thermally based storage. For the United States to lead in these technologies, there will be a need from trades (machinists, welders, designers), to engineers (mechanical, chemical, electrical), to research scientists (materials science, chemistry).

Deploy Everywhere: In order to build, use and maintain energy storage systems as an integrated part of our country's energy systems, there will need to be a workforce that can understand how these pieces fit together and can be optimized for the particular application. This will require not just technicians, operators and engineers but analysts who can model and optimize these systems.

Leadership in storage requires a skilled, nimble, and innovative workforce. The ESGC can impact the development of the workforce through a spread of activities such as skills development and enhanced employment opportunities. Similarly, the development of a workforce with the appropriate skill set can allow industries such as battery manufacturers, chemical producers and utilities to increase national leadership in these areas.

The industry and workforce must develop hand in hand. As the industry grows, there will be more opportunities for a skilled workforce across a wide range of skill sets. These will include trade professionals, chemical engineers, mechanical engineers and scientists from a host of disciplines. The ESGC will enable the development of an appropriate workforce of the future through programs across DOE targeted at the spread of workforce development needs.

Based on the concepts mentioned above, DOE seeks additional information from stakeholders across the spectrum to better understand areas in which there exists a current sufficient workforce, where there are gaps in skills or education, and thoughts on what activities DOE could help with that stakeholders would find useful for their needs as they seek to expand.

Information Requested

The following questions may guide, but should not restrict, responses:

W.1 Current Needs

W.1.1 Where are there gaps in the skills and education of the workforce for

existing and short-term technologies (development, manufacture and deployment)?

W.1.2 Are there workforce issues in the industry as a lack of broad-based skill sets or narrower gaps in specific areas?

W.2 Future Developments

W.2.1 As the industry grows to meet the needs spelled out in the ESGC, what are anticipated growth needs where the workforce pool is lacking?

W.3 Education and Workforce Programs

W.3.1 What current education and workforce development activities are worth noting? How effective are each of them?

W.3.2 What programs might be effective to support education and workforce development for energy storage and for which constituencies?

W.3.3 How much investment has been made in education and workforce development by the company? By the individual? Has it been enough?

W.3.4 Are there specific workforce development programs in energy storage that do not exist and should be developed?

Signing Authority

This document of the Department of Energy was signed on July 9, 2020, by Conner Prochaska Chief, Commercialization Officer, Office of Technology Transitions; Alex Fitzsimmons Deputy Assistant Secretary for Energy Efficiency, Office of Energy Efficiency and Renewable Energy; and Michael Pesin, Deputy Assistant Secretary, Office of Electricity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 10, 2020.

Treena V. Garrett,

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

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DEPARTMENT OF ENERGY

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[Docket No. CP20–488–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on June 30, 2020, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act and its blanket certificate issued in Docket No. CP83–4–000 for authorization to abandon in place one storage well in its Bennington Storage Field located in the town of Marilla, Erie County, New York. Specifically, this project will abandon in place Well 621_I and Well Line NW621. Well Line NW621 consists of approximately 770 feet of 4-inch diameter well line. National Fuel avers that construction of similar facilities today would cost approximately $800,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Meghan M. Emes, Attorney for National Fuel, 6363 Main Street, Williamsville, New York 14221, call at (716) 857–7004, or email *emesm@natfuel.com.*

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene, or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be

delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15355 Filed 7–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3023–014; Project No. 2972–027]

Blackstone Hydro, Inc.; City of Woonsocket, Rhode Island; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the Blackstone Hydroelectric Project No. 3023 (Blackstone Project), and the application for a subsequent license for the Woonsocket Falls Hydroelectric Project No. 2972 (Woonsocket Project), and has prepared an Environmental Assessment (EA) for both projects. The Blackstone Project is located on the Blackstone River in Providence County, Rhode Island and Worchester County, Massachusetts. The Woonsocket Project is located on the Blackstone River in the City of Woonsocket, Providence County, Rhode Island.

The EA contains staff's analysis of the potential environmental effects of the projects and concludes that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. On the first page of your filing, please put the docket number P–3023–014 for the Blackstone Project and/or the docket number P–2972–027 for the Woonsocket Project.

For further information, contact Erin Kimsey at (202) 502–8621 or by email at *erin.kimsey@ferc.gov.*

Dated: July 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15358 Filed 7–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–492–000]

Enable Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on July 2, 2020, Enable Gas Transmission, LLC (EGT), 910 Louisiana Street, Ste. 48040 (48th Floor), Houston, Texas 77002, filed in the above referenced docket a prior notice request pursuant to sections 157.205, 157.208, and 157.211 of the Commission's regulations under the Natural Gas Act and EGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 for authorization to: (i) Install a new 1,080-foot-long, 3-inch-diameter pipeline, to be named Line OT–38, that will provide transportation service from a new tap on EGT's existing Line OT–27 to a new meter location; and (ii) install a new meter location, to be named the Roland Meter, which will be sited within an existing town border station owned and operated by the Roland Development Authority. This project is a replacement for a similar request in Docket No. CP19–151–000 which has been requested to be vacated because the previous location has proved to be unsuitable. The project is located near the Town of Roland in Sequoyah County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review on the Commission's website 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020.

Any questions concerning this application may be directed to Lisa Yoho, Sr. Director Regulatory and FERC Compliance, Enable Gas Transmission, LLC, 910 Louisiana St., 48th Floor, Houston, Texas 77002, at (346) 701–2539, or at *lisa.yoho@enablemidstream.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15357 Filed 7–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–13–000]

Commission Information Collection Activities (FERC–603); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–603 (Critical Energy/Electric Infrastructure Information Data Request) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due August 17, 2020.

ADDRESSES: Comments should be submitted to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify OMB Control Number 1902–0197 in the subject line of your comments; comments should be sent within 30 days of publication of this notice in the **Federal Register**. OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

A copy of the comments should also be sent to the Commission, in Docket No. IC20–13–000, by the following methods:

- *eFiling at Commission's Website: http://www.ferc.govp.*
- *Mail by U.S. Postal Service:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426
- *Deliveries other than by U.S. Postal Service:* Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–603, Critical Energy/Electric Infrastructure Information Data Request.

OMB Control No.: 1902–0197.

Type of Request: Three-year extension of the FERC–603 information collection requirements with no changes to the current reporting and recordkeeping requirements, other than the signed statement from the requester attesting to the accuracy of the information provided in the request, which was inadvertently omitted from the prior version of the form.[1]

Abstract: The Commission published a 60-day Notice [2] in the **Federal Register** on March 27, 2020, requesting public comment. In addition, the Commission issued an Errata Notice on April 1, 2020, including the form.[3] The Commission received one comment from the Eastern Interconnection Planning Collaborative (EIPC) with recommendations for changes to the Form 603 and to the CEII process generally. EIPC states that the form does not adequately protect CEII, specifically the detailed grid information included in Parts 2, 3, and 6 of FERC Form No. 715. EIPC urges the Commission to revamp the statement of need section to ''require a demonstration that dissemination of the

[1] This requirement was inadvertently omitted from the previous form. *See* 18 CFR 388.113(g)(5)(i)(D).

[2] 85 FR 17326

[3] *See https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15501007* and *https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15501008.*

information would enhance the work of those entities charged with ensuring bulk power reliability of the electric grid.''

While the Commission acknowledges EIPC's comments and Commission staff will coordinate a meeting to hear EIPC's concerns, the purpose of the FERC–603 form review is to request comments on the burden on public requesters who need to complete the form to receive CEII. EIPC's comments do not address this issue and could result in additional burdens on CEII requesters. Accordingly, EIPC's concerns do not support modifying the CEII request form for purposes of the Paperwork Reduction Act. We emphasize and reiterate, however, that EIPC will have a subsequent opportunity to more fully express its concerns and to be heard in the appropriate forum and at the appropriate time.

FERC–603 is used by the Commission to implement procedures for individuals (including federal and state agencies, consultants, and others) with a valid or legitimate need for access to Critical Energy/Electric Infrastructure Information (CEII), which is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), subject to a non-disclosure agreement. Examples of the various non-disclosure agreements, and other agreements, that are used to ensure that the information is not improperly shared with individuals who have not been approved to receive the specific CEII by the Commission, are available at: *https://www.ferc.gov/enforcement-legal/ceii/electronic-ceii-request-form.*

On February 21, 2003, the Commission issued Order No. 630 (66 FR 52917) to address the appropriate treatment of CEII in the aftermath of the September 11, 2001, terrorist attacks and to restrict access due to the ongoing terrorism threat. Given that such information would typically be exempt from mandatory disclosure pursuant to FOIA, the Commission determined that it was important to have a process for individuals with a valid or legitimate need to access certain sensitive energy infrastructure information. As such, the Commission's CEII process is designed to limit the distribution of sensitive infrastructure information to those individuals with a need to know in order to avoid having sensitive information fall into the hands of those who may use it to attack the Nation's infrastructure.[4] This collection was prepared as part of the implementation of the CEII request process.

On December 4, 2015, the President signed the Fixing America's Surface Transportation Act (FAST Act) into law, which directed the Commission to issue regulations aimed at securing and sharing sensitive infrastructure information.[5] On November 17, 2016, in Order No. 833 (in Docket No. RM16–15), the Commission adopted a Final Rule implementing the FAST Act by amending its regulations that pertain to the designation, protection, and sharing of CEII. The Final Rule became effective on February 19, 2017.

The FERC–603, Critical Energy/Electric Infrastructure Information (CEII) request form, is largely unchanged from the previously approved versions. As in the previous versions, a person or entity seeking access to CEII must file a request for that information by providing information about their identity and the reason the individual needs the information. With that information, the Commission is able to assess the requester's need for the information against the sensitivity of the information. The updated form has been changed to include one additional requirement, a signed statement from the requester attesting to the accuracy of the information provided in the request. This requirement was inadvertently omitted from the previous form. *See* 18 CFR 388.113(g)(5)(i)(D).

The Request Form[6] is attached to this notice but will not be published in the **Federal Register**. It will be posted in the Commission's eLibrary system with this Notice.

Type of Respondent: Persons and organizations seeking access to CEII.

Estimate of Annual Burden:[7] The Commission estimates the total annual burden and cost[8] for this information collection as follows.

FERC–603: CRITICAL ENERGY/ELECTRIC INFRASTRUCTURE INFORMATION REQUEST

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours and cost ($) per response	Total annual burden hours and total annual cost ($)	Cost ($) per respondent
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
100	1	100	0.3 hrs.; $24	30 hrs.; $2,400	$24

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15353 Filed 7–15–20; 8:45 am]

BILLING CODE 6717–01–P

[4] The Commission defined CEII to include information about ''existing or proposed critical infrastructure that: (i) Relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, and (iv) does not simply give the location of the critical infrastructure. Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.''

[5] Fixing America's Surface Transportation Act, Public Law 114–94, 61,003, 129 Stat. 1312, 1773–1779 (2015) (to be codified at 16 U.S.C. 824 *et seq.*) (FAST Act).

[6] The Request Form (and sample non-disclosure agreements) and additional information about the CEII program are posted at: *https://www.ferc.gov/enforcement-legal/ceii/overview.*

[7] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[8] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon the FERC's 2019 average cost for salary plus benefits, the average hourly cost is $80/hour.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2017–0380; FRL–10012–50–OMS]

Proposed Information Collection Request; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (EPA ICR Number 2434.99, OMB Control Number 2010–0042) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2021. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 14, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OEI–2017–0380, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jamia Franklin, Office of Mission Support, Regulatory Support Division, Environmental Protection Agency, Mail Code 2822T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4236; email address: *franklin.jamia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The information collection activity 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. Qualitative feedback includes information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency 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 Agency's services will be unavailable. The Agency will only submit a collection for approval under this generic clearance if: The collections are voluntary; the collections are low burden for respondents and are low-cost for both the respondents and the Federal Government; the collections are noncontroversial 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 in the near future; personally identifiable information (PII) is collected only to the extent necessary and is not retained; information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency; information gathered will not be used for the purpose of substantially informing influential policy decisions; information gathered will yield qualitative information.

Form Numbers: None.

Respondents/affected entities: Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 180,000 (total).

Frequency of response: Once per request.

Total estimated burden: 45,000 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: There are no annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 15,000 hours annually in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase in hours are due to the increase in the use of surveys by the Agency.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–15394 Filed 7–15–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 31, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Mark R. Law, Sioux Falls, South Dakota, and Susan Berger Law, Oakland, California, each individually and together as a group acting in concert;* to acquire voting shares of DCNB Holding Company, and thereby indirectly acquire shares of DNB National Bank, both of Clear Lake, South Dakota.

Board of Governors of the Federal Reserve System, July 13, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–15406 Filed 7–15–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Ongoing Intermittent Survey of Households (FR 3016; OMB No. 7100–0150).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office, Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision of the Following Information Collection(s)

Report title: Ongoing Intermittent Survey of Households.

Agency form number: FR 3016.

OMB control number: 7100–0150.

Frequency: Monthly.

Respondents: Individuals and households.

Estimated number of respondents: 500.

Estimated average hours per response: 1.6 minutes.

Estimated annual burden hours: 160.

General description of report: The Board uses the Ongoing Intermittent Survey of Households survey to study consumer financial decisions, attitudes, and payment behavior. The Board has a contract with the University of Michigan's Survey Research Center (SRC) to include survey questions on behalf of the Board in an addendum to the SRC's regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and includes questions of special interest to the Board.

Legal authorization and confidentiality: The FR 3016 is authorized by sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) ''maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of the maximum employment, stable prices, and moderate long-term interest rates.'' [1] Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.'' [2] The information collection under the FR 3016 is used to fulfill these obligations. Survey submissions under the FR 3016 are voluntary.

Location information associated with individual responses to the FR 3016 will be kept confidential under exemption 6 of the Freedom of Information Act (''FOIA''),[3] which protects information ''the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'' Individual responses to other data fields from the FR 3016 may be kept confidential on a case-by-case basis. The Board will consider whether information collected through these surveys may be kept confidential under FOIA exemption 6, or any other applicable FOIA exemption.

Current actions: On April 13, 2020, the Board published a notice in the **Federal Register** (85 FR 20495) requesting public comment for 60 days

[1] 12 U.S.C. 225a.

[2] 12 U.S.C. 263(c).

[3] 5 U.S.C. 552(b)(6).

on the extension, without revision, of the Ongoing Intermittent Survey of Households. The comment period for this notice expired on June 12, 2020. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, July 13, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–15400 Filed 7–15–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 202 3110]

Marc Ching; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 17, 2020.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Marc Ching; File No. 202 3110'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tawana E. Davis (202–326–2755), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website (for July 10, 2020), at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 17, 2020. Write ''Marc Ching; File No. 202 3110'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Marc Ching; File No. 202 3110'' on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 17, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order with Marc Ching, individually and doing business as Whole Leaf Organics (''respondent''). The proposed consent order (''order'') has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondent's advertising for Thrive, CBD–EX, CBD–RX, and CBD-Max. The complaint alleges that respondent violated Sections 5(a) and 12 of the FTC Act by disseminating false and unsubstantiated advertisements claiming that: (1) Thrive treats, prevents, or reduces the risk of COVID–19; (2) CBD–EX, CBD, RX, and CBD-Max treat cancer; (3) Thrive is clinically or scientifically proven to treat, prevent, or reduce the risk of COVID–19; and (4) CBD–EX, CBD, RX, and CBD-Max are clinically or scientifically proven to treat cancer.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct. The product coverage would apply to any dietary supplement, drug, or food the respondent sells, markets, promotes, or advertises.

Part I prohibits respondent from making any representation about the efficacy of any covered product, including that such product will: (1) Treat, prevent or reduce the risk of COVID–19; (2) treat cancer; or (3) cure, mitigate or treat any disease in humans, unless the representation is non-misleading, including that, at the time such representation is made, he possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Provision, ''competent and reliable scientific evidence'' means human clinical testing of the covered product or of an essentially equivalent product that is sufficient in quality and quantity, based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

Part II prohibits respondent from making any representation, other than representations covered under the Provision titled Prohibited Disease Claims, expressly or by implication, about the health benefits, performance, or efficacy of any covered product, unless the representation is non-misleading, including that, at the time such representation is made, he possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Provision, ''competent and reliable scientific evidence'' means tests, analyses, research, or studies that (1) have been conducted and evaluated in an objective manner by experts in the relevant disease, condition, or function to which the representation relates; (2) that are generally accepted by such experts to yield accurate and reliable results; and (3) that are randomized, double-blind, and placebo-controlled human clinical testing of the covered product, or of an essentially equivalent product, when such experts would generally require such human clinical testing to substantiate that the representation is true.

Part III requires that with regard to any human clinical test or study (''test'') upon which the respondent relies to substantiate any claim covered by the order, the respondent must secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of a test.

Part IV prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or other research or that any benefit of any covered product is scientifically or clinically proven. Part V provides respondent a safe harbor for making claims approved by the Food and Drug Administration (''FDA'').

Part VI requires respondent to send notices to consumers who purchased Thrive, CBD–EX, CBD–RX, and CBD-Max informing them about the settlement. Part VII requires respondent to send notices to resellers and retailers informing them about the settlement.

Part VIII requires respondent to submit an acknowledgement of receipt of the order, to serve the order on certain individuals, including all officers or directors of any business respondent controls and employees having managerial responsibilities for conduct related to the subject matter of the order, and to obtain acknowledgements from each individual or entity to which respondent has delivered a copy of the order.

Part IX requires respondent to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations. Part X contains recordkeeping requirements for accounting records, personnel records, consumer correspondence, advertising and marketing materials, and claim substantiation, as well as all records necessary to demonstrate compliance or non-compliance with the order. Part XI contains other requirements related to the Commission's monitoring of the respondent's order compliance. Part XII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

By direction of the Commission, Commissioner Chopra dissenting, Commissioner Slaughter not participating.

April J. Tabor,

Secretary.

[FR Doc. 2020–15316 Filed 7–15–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve proposed updates to the approved information collection project ''Safety Program in Perinatal Care (SPPC)-II Demonstration Project.''

DATES: Comments on this notice must be received by 60 days after date of publication of this notice.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by emails at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Safety Program in Perinatal Care (SPPC)-II Demonstration Project

The SPPC–II Demonstration Project has the following goals:

(1) To implement the integrated AIM–SPPC II program in birthing hospitals in

OK and TX in coordination with the Alliance for Innovation on Maternal Health program (AIM) and the respective state PQC (Perinatal Quality Collaborative);

(2) To assess the implementation of the integrated AIM–SPPC II program in these hospitals; and

(3) To ascertain the short- and medium-term impact of the integrated AIM–SPPC II program on hospital (*i.e.,* perinatal unit) teamwork and communication, patient safety, and key maternal health outcomes.

The information collected for this Demonstration Project will be used to evaluate the implementation and impact of the SPPC–II program overlaid with AIM patient safety bundles in birthing hospitals in OK and TX. More specifically, the project will:

(a) Provide information on whether the proposed integration of AIM and SPPC–II programs can be implemented as intended, *i.e.,* through the use of a two-tier approach for training all clinical staff in all hospitals, coordination by the AIM Team Lead of the rollout of training clinical staff using e-modules on teamwork and communication, facilitation by AIM Team Leads of in-person sessions to practice teamwork and communication tools and strategies; or, what changes are needed to better facilitate program implementation;

(b) provide information regarding the impact of the integrated AIM–SPPC II program on use of teamwork and communication tools and strategies, teamwork and communication metrics, patient safety culture changes, AIM bundle implementation, and key maternal health outcomes; and

(c) provide information regarding the sustainability of the integrated AIM–SPPC II program 18 months after implementation.

Due to pandemic-related impacts on the SPPC–II study population, we propose updating the SPPC–II data collection by (1) adding questions to the approved qualitative interview guide at 3–4 months to include pandemic-related questions to better understand the implementation context, (2) adding an additional qualitative interview collection at 15–16 months with a new interview guide to better understand the implementation context, and (3) increasing the total number of qualitative interview participants from 25 to 30 participants to account for the two qualitative interview collections at 3–4 months and 15–16 months. The total estimated annual burden hours for SPPC–II will increase from 54,654 hours in the previous clearance to 54,659 hours in this clearance request, an increase of 5 hours.

This study is being conducted by AHRQ through its contractor, Johns Hopkins University (JHU), and through JHU's subcontractor, AIM, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following updates to the data collections will be implemented:

(a) Qualitative, semi-structured interviews with AIM Team Leads will be conducted by phone about 3–4 months and 15–16 months after the SPPC–II implementation start date to assess the perceived utility of the training and assistance needed with the rollout of training to all frontline clinical staff using the e-modules and facilitation sessions to consolidate the information, and to better understand the implementation context (including barriers, facilitators, and strategies). An interview guide developed based on the Consolidated Framework for Implementation Research framework will be used to conduct the interviews, together with a corresponding consent form.

Estimated Annual Respondent Burden

Exhibit 1 shows only the estimated annualized burden hours for the respondents' time to participate in updates to the information collection of the SPPC–II Demonstration Project.

One-hour qualitative interviews will be conducted with a total of 30 AIM Team Leads in the 2 states about 3–4 months and 15–16 months after the SPPC–II implementation start date.

The total annual burden hours are estimated to be 54,659 hours, an increase of 5 hours from the previous clearance request.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form Name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Qualitative semi-structured interviews with AIM Team Leads at 3–4 months and 15–16 months	30	1	1.00	30
Total	30	NA	NA	30

Exhibit 2 shows only the hours and cost of updates to the collection. The cost burden of the updated collection is estimated to be $1,494.90 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form Name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Qualitative semi-structured interviews with AIM Team Leads at 3–4 months and 15–16 months	30	30	$49.83	$1,494.90
Total	30	30	.....	1,494.90

* National Compensation Survey: Occupational wages in the United States May 2017 "U.S. Department of Labor, Bureau of Labor Statistics."

[a] Hourly wage for nurse-midwives ($48.36; occupation code 29–1161).

[b] Weighted mean hourly wage for obstetrician-gynecologists ($113.10; occupation code 29–1064; 30%); nurse-midwives ($49.83; occupation code 29–1161; 30%); registered nurses ($35.36; occupation code 29–1161; 20%); and nurse practitioners ($51.86; occupation code 29–1171; 20%).

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 13, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–15369 Filed 7–15–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Alzheimer's and Dementia Program Data Reporting Tool (ADP–DRT) OMB #0985–0022

AGENCY: Administration for Community Living, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a 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 Proposed Revision and solicits comments on the information collection requirements related to Alzheimer's and Dementia Program Data Reporting Tool (ADP–DRT).

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by September 14, 2020.

ADDRESSES: Submit electronic comments on the collection of information to: Erin Long (*Erin.Long@acl.gov*). Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Erin Long.

FOR FURTHER INFORMATION CONTACT: Erin Long, Administration for Community Living, Washington, DC 20201, *Erin.Long@acl.gov,* 202–795–7389.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates; (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.

The Older American's Act requires ACL to evaluate ''demonstration projects that support the objectives of this Act, including activities to bring effective demonstration projects to scale with a prioritization of projects that address the needs of underserved populations, and promote partnerships among aging services, community-based organizations, and Medicare and Medicaid providers, plans, and health (including public health) systems. (Section 201 (42 U.S.C. 3011) Sec. 127. Research and Evaluation).

To fulfill the evaluation requirements and allow for optimal federal and state-level management of ACL's Alzheimer's Disease Program, specific information must be collected from grantees.

The current reporting tool is set to expire June 22, 2020. The Alzheimer's and Dementia Program (ADP) Project Officer has reviewed the current data collection procedures to ensure the acceptability of these items as appropriate and thorough evaluation of the program, while minimizing burden for grantees.

The result of this process is the proposed modifications to the existing data collection tool. ACL is aware that different grantees have different data collection capabilities. It is understood that, following the approval of the modified data collection tool, ACL will work with its grantees to offer regular training to ensure minimal burden.

The proposed data collection tools may be found on the ACL website for review at *https://nadrc.acl.gov/node/226.*

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Local Program Site	180	2	3.03	1,090.8
Grantee	90	2	6.93	1,247.4
Total				2,338.2

Dated: July 8, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–15279 Filed 7–15–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Information on Federal Coordination To Promote Economic Mobility for All Americans

AGENCY: Office of the Assistant Secretary for Planning and Evaluation (ASPE), U.S. Department of Health and Human Services (HHS).

ACTION: Request for Information.

SUMMARY: HHS is publishing this Request for Information (RFI) to seek public input on the development of a federal interagency Council on Economic Mobility (Council). HHS and the Council will analyze information collected in this RFI to gather feedback from our stakeholders to better inform the Council's priorities and how the Council can promote economic mobility, recovery, and resilience.

DATES: Submit written comments at the address provided below no later than October 2, 2020.

ADDRESSES: Written comments should be submitted to *CouncilTeam@hhs.gov.* HHS encourages the early submission of comments.

FOR FURTHER INFORMATION CONTACT: The ASPE Council team at *CouncilTeam@hhs.gov.*

SUPPLEMENTARY INFORMATION: *Invitation to Comment:* HHS invites comments regarding the questions included in this notice. To ensure that your comments are clearly stated, please identify the specific question, or other section of this notice, that your comments address.

1.0 Background

As announced in HHS's 2020 Congressional Justification, HHS is leading the development and establishment of an interagency Council on Economic Mobility (Council). The Council is composed of the heads of member agencies (HHS; the U.S. Departments of Agriculture, Education, Labor, Housing and Urban Development [HUD], and Treasury; the Social Security Administration [SSA]; and the Council of Economic Advisors [CEA]) or their delegates. HHS will also serve as the first Council chair.

As an administratively established group, the Council is constrained to activities and authorities contained in current law. As an interagency group, the Council is focusing on areas that are crosscutting, issues that cannot be accomplished by a single agency on its own, seeking to create an accountable and effective structure for interagency collaboration and using federal authorities to promote family-sustaining careers and economic mobility for low-income Americans. The Council aims to promote economic recovery and build resilience in the face of the COVID–19 pandemic, learning from the response to build a more integrated and effective long-term federal strategy to promote economic mobility and help individuals sustain their economic success.

Many federal workforce and work support programs and services are overseen by the Council member agencies, such as the Child Care and Development Fund, Medicaid, Supplemental Nutrition Assistance Program Employment and Training, the Family Self-Sufficiency program, the Jobs Plus program, Vocational Rehabilitation programs, and Workforce Innovation and Opportunity Act programs, among others. For examples of more potential programs, go to *https://tinyurl.com/CouncilonEconomicMobility.*

2.0 Request for Information

Through this RFI, HHS and its interagency partners (Agriculture, Education, Labor, HUD, Treasury, SSA, CEA, the Office of Management and Budget, and the Domestic Policy Council) seek to gather feedback from our stakeholders—state and local government agencies, local program operators, and the people that we serve. The information gathered in response to the RFI will be used to better inform the Council's priorities, working group activities, stakeholder engagement, and federal programs. Council members and the entire U.S. government are committed to a healthy and resilient America. COVID–19 has touched individuals and families in every corner of America—with communities across the country experiencing the pandemic in different ways. Feedback on the specific economic mobility, recovery, and resilience challenges in local communities in the short, medium, and long term is welcome.

3.0 Key Questions

3.1 What priorities would you identify for the new federal Council on Economic Mobility?

3.2 As a state, community, or provider, what are your suggestions for how to make federal workforce and work support programs work better together in your state or community at this time and in the long-term? Please share any examples of effective federal program coordination.

3.3 As a state, community, or provider, what do you think are the immediate barriers preventing federal workforce and work support programs from collaborating in your state or community? What are the long-term barriers?

3.4 How can federal agencies collaborate and coordinate to help program operators foster participant economic mobility, recovery, and resilience, using administrative authorities such as joint communications, technical assistance, and program guidance? What are specific examples based on your experience?

3.5 How are program cliff effects and high effective marginal tax rates impacting the economic mobility of individuals and families in your community? What methods are being used to address these challenges?

NOTE: An effective marginal tax rate is the proportion of new earnings owed in taxes or needed to offset reductions in program benefits and quantifies the share of new earnings not available to families. For example, if a family earns an additional $400 during the year which prompts a $200 reduction in program benefits, this is an effective marginal tax rate of 50 percent on their new earnings. A program ''cliff effect'' refers to a marginal tax rate of 100 percent or more. This results from a loss

of benefits that equals or exceeds the earnings gain. That is, 100 percent or more of new earnings are eclipsed by benefit losses.

3.6 What kind of federal operational systems—such as data interoperability, grant, and contract mechanisms—would make it easier to meet your goals related to economic mobility?

3.7 What are the most significant challenges that prevent participants/recipients of federal workforce, work support, and housing programs from fully participating in such programs? Do these challenges present obstacles for participants in meeting their economic and employment goals? For example, are there barriers related to child care, transportation, health, disability, caring for a family member, substance use disorder, etc.?

3.8 How can federal agencies better work together to help participants, including those facing multiple barriers, overcome these barriers in the short term and achieve economic mobility and resilience in the long term?

3.9 What federal rules do you wish had more flexibility? What flexibilities do you need to respond to economic crises?

3.10 What do you wish government officials knew about your work?

3.11 What workforce and work support programs more easily align with others?

3.12 What are your suggestions for how to proactively support workforce preparation prior to an individual needing to participate in a federal workforce or work support program, such as programs focused on youth?

3.13 Are there existing workforce programs or strategies that have not historically been widely accessible to lower income individuals and families that could help them achieve economic mobility, recovery, and resilience if they had better access to them? If so, please identify.

3.14 How does your program define and measure economic mobility? What data do you use?

3.15 Do you have recommendations for how to define and measure economic mobility that could be used across different programs?

Dated: July 9, 2020.

Brenda Destro,

Deputy Assistant Secretary for Planning and Evaluation, Office of Human Services Policy.

[FR Doc. 2020–15319 Filed 7–15–20; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records

AGENCY: Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is establishing a new system of records, 09–90–2002, ''COVID–19 Insights Collaboration Records.'' HHS will use the records in this system of records to create and maintain a new database to be used by HHS to understand, track, and respond to the novel coronavirus known as SARS–CoV–2 and the outbreak of COVID–19 (the disease caused by SARS–CoV–2) which the Secretary of Health and Human Services declared a public health emergency effective January 27, 2020, and the World Health Organization (WHO) declared a pandemic on March 11, 2020. Creating and maintaining the new database may include retrieving identifiable records about patients by the patients' personal identifiers in order to connect, combine, or de-duplicate records that are about the same individual; however, at this time, HHS does not plan to retrieve records by personal identifier when using the resulting database for research, analysis, or other public health activities.

DATES: The new system of records is applicable July 16, 2020, subject to a 30-day period in which to comment on the routine uses.

ADDRESSES: The public should address written comments by email to *beth.kramer@hhs.gov* or by mail to Beth Kramer, HHS Privacy Act Officer, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs, 200 Independence Ave. SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: General questions about the new system of records may be submitted by email to *beth.kramer@hhs.gov* or by mail to Beth Kramer, HHS Privacy Act Officer, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs, 200 Independence Ave. SW, Washington, DC 20201, (202) 690–6941.

SUPPLEMENTARY INFORMATION: The new system of records will cover any identifiable records about patients that are retrieved by personal identifier for the purpose of creating and maintaining a new database that HHS will use for research, analysis, or other public health activities to understand, track, and respond to the novel coronavirus, SARS–CoV–2, which causes the disease known as COVID–19. The Department of Energy (DOE) will create and maintain the database for HHS at DOE's Oak Ridge National Laboratory (ORNL).

HHS will create the new database using certain existing patient records at federal agencies, and potentially at state agencies and private sector entities, about patients who have and, for control purposes, have not, tested positive for COVID–19 or antibodies to same. The new database will also include geospatial records, population density records, and other types of existing records that are not individually identifiable but that HHS determines are useful to include. However, the Privacy Act system of records only governs individually identifiable records that are retrieved by a personal identifier.

Custodians of the records that HHS, as a public health authority, determines are useful for COVID–19-related public health activities will donate data to ORNL for inclusion in the new database. At the time of publication, HHS anticipates that the COVID Insights Collaboration Database will include records from the Department of Veterans Affairs' (DVA) Veterans Health Administration (VHA) Corporate Data Warehouse and from the Department of Defense's (DoD) Military Health Information System. Other sources of records may be added later.

HHS is relying on its status as a public health authority under 42 U.S.C. 241 and 247d to obtain, compile, and analyze these data. In the course of creating and maintaining the database, ORNL may retrieve identifiable records by patients' personal identifiers in order to connect, combine, or de-duplicate records that are about the same individual. At this time, HHS does not plan to retrieve records by personal identifier when using the resulting database for research, analysis, or other public health activities.

HHS provided advance notice of the new system of records to the Office of Management and Budget and Congress as required by 5 U.S.C. 552a(r) and OMB Circular A–108.

Beth Kramer,

HHS Privacy Act Officer, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs.

SYSTEM NAME AND NUMBER:

COVID–19 Insights Collaboration Records, 09–90–2002.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the HHS component responsible for this system of records is:

• Office of the Assistant Secretary for Health (OASH), 200 Independence Ave. SW, Washington, DC 20201.

The address of the service provider that will create and maintain the database for HHS is:

• Oak Ridge National Laboratory, P.O. Box 2008, Oak Ridge, TN 37831.

SYSTEM MANAGER(S):

The System Manager is:

• Deputy Chief Information Officer, Office of the Assistant Secretary for Health (OASH), 200 Independence Ave. SW, Washington, DC 20201, (202) 821–5116, *donald.burgess@hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 247d.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system of records is to create and maintain a single database for HHS to use for analysis, research, and other public health activities related to the study of COVID–19. The system of records will be composed of certain existing records about patients who have tested positive for the novel coronavirus, SARS–CoV–2, which causes the disease known as COVID–19, or for antibodies to same; and, for control purposes, about patients who have not tested positive for same. The Department of Energy (DOE) will create and maintain the database for HHS at DOE's Oak Ridge National Laboratory (ORNL). In the course of creating and maintaining the database, ORNL may retrieve identifiable records by patients' personal identifiers in order to connect, combine, or de-duplicate records from contributed datasets that are about the same individual. At this time, HHS does not plan to retrieve records from the resulting database by personal identifier when using the database for research, analysis, or other public health activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about patients identified as having tested positive for COVID–19 or antibodies to same, and, for control purposes, about patients who have not tested positive for same, in existing records at DVA, DoD, and other federal, state, local or tribal agencies or private sector entities which those custodians donate to HHS for inclusion in the COVID Insights Collaboration Database. Examples of such patients include:

• Veterans and others who received care at VA facilities or through VA community care programs.

• Uniformed service medical beneficiaries who received care at DoD facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records are existing datasets containing patient medical records and related records, which may include any of the following information about each patient, as applicable:

• Patient identifying information (*e.g.,* name, address, date of birth, social security number, medical record number) and family information (*e.g.,* next of kin; family medical history information).

• Service information (*e.g.,* dates, branch and character of service, service number).

• Occupational and environmental exposure data.

• Medical and dental resources data.

• Sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric information compiled by health care providers.

• Information pertaining to the individual's medical, surgical, psychiatric, dental, and/or psychological examination, evaluation, and/or treatment (*e.g.,* diagnostic, therapeutic special examinations; clinical laboratory, pathology and x-ray findings; operations; medications; allergies; consultations), including COVID–19 illness or antibody status.

RECORD SOURCE CATEGORIES:

HHS will obtain the donated datasets from federal, state, and local agencies, and private sector entities. The datasets will contain patient data which the donating agencies and entities may have originally collected from the patient; a representative of the patient; the patient's treating physicians and other health care providers, laboratories, and treatment facilities; and program personnel at the donating agency or entity or at another agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1) and (2) and (b)(4) through (11), HHS may disclose records about an individual from this system of records to parties outside HHS as described in these routine uses, without the subject individual's prior written consent.

1. To HHS contractors, consultants, agents, or others (including DOE or another federal agency) engaged by HHS to assist with creating and maintaining the COVID–19 Insights Collaboration Database and who need to have access to the records to provide that assistance. Records that HHS discloses to another federal agency under this routine use may also be re-disclosed to contractors and others engaged by that agency that are assisting that agency with creating and maintaining the COVID–19 Insights Collaboration Database.

2. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for HHS or its agent, DOE, who do not technically have the status of agency employees, if they are assisting HHS or DOE with creating and maintaining the COVID–19 Insights Collaboration Database and need access to the records to perform those agency functions.

3. To the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings when:

a. HHS or any of its component thereof, or

b. any employee of HHS acting in the employee's official capacity, or

c. any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or

d. the United States Government, is a party to the proceeding or has an interest in such proceeding and, by careful review, HHS determines that the records are both relevant and necessary to the proceeding.

4. To representatives of the National Archives and Records Administration in records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

5. To appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (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 HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

6. To another federal agency or federal entity, when HHS 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:

The records will be stored on electronic media, but paper printouts may be generated.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records will be retrieved by the patient's name, Social Security number, or other assigned identification number, if any, or combination of identifiers, to disaggregate duplicate records and to combine records that are about the same individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The datasets used to create and maintain the COVID–19 Insights Collaboration Database will be retained in accordance with N1–514–92–001, Item 26, which provides for records of OASH program activities having significant historical and/or research value and relating to matters such as studies to be permanently retained.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards will conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html,* the HHS Information Security and Privacy Policy (IS2P), and security and privacy requirements specified in a services agreement between HHS and DOE. Agreements governing the data will ensure that information is safeguarded in accordance with applicable federal laws, rules, and policies, including: The E-Government Act of 2002, which includes the Federal Information Security Management Act of 2002 (FISMA); 44 U.S.C. 3541–3549, as amended by the Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551–3558; all pertinent National Institutes of Standards and Technology (NIST) publications; and OMB Circular A–130, Managing Information as a Strategic Resource.

HHS and DOE will protect the records from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards will include protecting the facilities where records are stored or accessed with security guards, badges and cameras; securing any hard-copy records in locked file cabinets, file rooms or offices during off-duty hours; controlling access to physical locations where records are maintained and used by means of combination locks and identification badges issued only to authorized users; requiring contractors to maintain appropriate safeguards and comply with the Privacy Act with respect to the records; limiting authorized users' access to electronic records based on roles and either two-factor authentication or password protection; requiring passwords to be complex and to be changed frequently; using a secured operating system protected by encryption, firewalls, and intrusion detection systems; maintaining an activity log of users' access; requiring encryption for records stored on removable media; training personnel in Privacy Act and information security requirements; and reviewing security controls on an ongoing basis.

RECORD ACCESS PROCEDURES:

The records in this system of records will be used solely to create and maintain a database from which records will not be retrieved by personal identifiers but will be used to study patients' characteristics; therefore, no Privacy Act purpose would be served by allowing subject individuals access rights with respect to the records in this system of records. Nevertheless, an individual may request access to records about that individual in this system of records by submitting a written access request to the System Manager identified in the ''System Manager'' section of this SORN. The request must contain the requester's full name, address, and signature, and should also include helpful identifying particulars that may be in the records, such as: The requester's date of birth and any assigned identification number (if known). To verify the requester's identity, the signature must be notarized or the request must include the requester's written certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000. HHS will direct any access request that HHS receives to the agency or entity that provided the extract to HHS, for consultation purposes; and HHS will respond to the request as the providing agency directs.

CONTESTING RECORD PROCEDURES:

The records in this system of records will be used solely to create and maintain a database from which records will not be retrieved by personal identifiers but will be used to study patients' characteristics; therefore, no Privacy Act purpose would be served by allowing subject individuals amendment rights with respect to the records in this system of records. Nevertheless, an individual may seek to amend a record about that individual in this system of records by submitting an amendment request to the System Manager identified in the ''System Manager'' section of this SORN, containing the same information required for an access request. The request must include verification of the requester's identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. HHS will direct any amendment request that HHS receives to the agency or entity that provided the extract to HHS, for consultation purposes; and HHS will respond to the request as the providing agency directs.

NOTIFICATION PROCEDURES:

The records in this system of records will be used solely to create and maintain a database from which records will not be retrieved by personal identifiers but will be used to study patients' characteristics; therefore, no Privacy Act purpose would be served by allowing subject notification rights with respect to the records in this system of records. Nevertheless, an individual who wishes to know if this system of records contains records about that individual should submit a notification request to the System Manager identified in the ''System Manager'' section of this SORN. The request must contain the same information required for an access request, and must include verification of the requester's identity in the same manner required for an access request. HHS will direct any notification request that HHS receives to the agency or entity that provided the extract to HHS, for consultation purposes; and HHS will respond to the request as the providing agency directs.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2020–15380 Filed 7–15–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Gene Therapy for Treatment or Prevention of Niemann-Pick Disease Type C1, Subject to Existing Three Non-Exclusive Licenses

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Human Genome Research Institute is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the United States, European and Canadian Applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice to AveXis, Inc., located in Bannockburn, Illinois, USA.

DATES: Only written comments and/or applications for a license which are received by the National Human Genome Research Institute's Technology Transfer Office on or before July 31, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Anna Solowiej, Ph.D., J.D., Senior Licensing and Patenting Manager, NHGRI Technology Transfer Office, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817 (for business mail); Telephone (301) 435–7791; Email: *anna.solowiej@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

Group A, HHS Reference No.: E–185–2014–0: ''Viral Gene Therapy as Treatment for Cholesterol Storage Disease or Disorder''

I. U.S. Provisional Application 62/144,702, filed April 8, 2015, expired (HHS Reference No.: E–185–2014–0–US–01).

II. PCT Application PCT/US2016/026524, filed April 7, 2016, expired (HHS Reference No.: E–185–2014–0–PCT–02).

III. U.S. Application 15/565,065, filed October 6, 2017 (HHS Reference No.: E–185–2014–0–US–04).

IV. Canadian Application 2,982,129, filed October 6, 2017 (HHS Reference No.: E–185–2014–0–CA–05).

V. European Application 16717228.7 filed November 8, 2017, issued as EP 3280451, validated in Italy, Spain, France, UK, and Germany (HHS Reference No.: E–185–2014–0–EP–06).

Group B, HHS Reference No.: E–100–2017–0: ''Codon-Optimized Human NPC1 Genes for the Treatment of Niemann-Pick Type C1 Deficiency and Related Conditions''

I. U.S. Provisional Application U.S. 62/522,677, filed June 20, 2017, expired (HHS Reference No.: E–100–2017–0–US–01).

II. PCT Application PCT/US2018/038584, filed June 20, 2018, expired (HHS Reference No.: E–100–2017–0–PCT–02).

III. U.S. Application U.S. 16/623,863 filed December 19, 2019 (HHS Reference No.: E–100–2017–0–US–05).

IV. Canadian Application 3,068,010, filed December 19, 2019 (E–100–2017–0–CA–03).

V. European Application 18740403.3 filed January 20, 2020 (HHS Reference No.: E–100–2017–0–EP–04).

The patent rights in these inventions have been assigned or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide and in fields of use that may be limited to manufacture and commercialization of pharmaceutical products for the treatment and/or prevention of Niemann Pick disease, Type C1 (NPC1) using gene therapy in humans that incorporate the Licensed Product(s), in combination with AAV9, subject to three existing non-exclusive licenses for this technology.

Above listed patent portfolio cover inventions directed to gene therapy and specifically, expression vectors and therapeutic methods of using such vectors in the treatment of Niemann-Pick Disease Type C1.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Human Genome Research Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 7, 2020

Claire T. Driscoll,

Director, Technology Transfer Office, National Human Genome Research Institute.

[FR Doc. 2020–15342 Filed 7–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Gene Therapy for Ocular Disease

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Eye Institute, the National Institute on Deafness and Other Communication Disorders, and the National Heart, Lung, and Blood Institute, institutes of the National Institutes of Health, Department of Health and Human Services, are contemplating the grant of an exclusive patent license to VegaVect, Inc., a start-up company spun-off from the University of Pittsburgh Medical Center Enterprises and incorporated as a C corporation under the laws of the state of Delaware, to practice the inventions covered by the patent estate listed in the **SUPPLEMENTARY INFORMATION** section of this notice. This is a second notice intended to apprise the public of a change in prospective licensee of the subject intellectual property rights in the stated field of use from a first notice: Prospective Grant of An Exclusive Patent License: Gene Therapy for Ocular Disease, published in the **Federal Register** on November 26, 2019.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center (representing the National Eye Institute and the National Heart, Lung, and Blood Institute (representing the National Institute on Deafness and Other Communication Disorders) on or before July 31, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and

comments relating to the contemplated an exclusive patent license should be directed to: Michael Shmilovich, Esq., Senior Licensing and Patent Manager, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479, phone number 301–435–5019, or *shmilovm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

INTELLECTUAL PROPERTY

NIH ref No.	Title	Patent application No.	Filing date	Issued patent No.	Issue date
E–284–2012–0–US–01	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	61/765,654	February 15, 2013.		
E–284–2012–1–US–01	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	61/815,636	April 24, 2013.		
E–284–2012–2–PCT–01 ...	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	PCT/US2014/16389 ..	February 14, 2014.		
E–284–2012–2–AU–02	AAV8 retinoschisin expression vector for treating X-linked retinoschisis.	2014216160	February 14, 2014	2014216160	July 13, 2017.
E–284–2012–2–CA–03	AAV8 retinoschisin expression vector for treating X-linked retinoschisis.	2900231	February 14, 2014	2900231	July 30, 2019.
E–284–2012–2–JP–04	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	2015–558144	February 14, 2014	6449175	December 14, 2018.
E–284–2012–2–US–05	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	14/766,842	February 14, 2014	9,873,893	January 23, 2018.
E–284–2012–2–US–07	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	15/876,821	February 14, 2014	10,350,306	July 16, 2019.
E–284–2012–2–EP–06	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	14708176.4	February 14, 2014.		
E–284–2012–2–PCT–08 ...	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	PCT/US2019/14418 ..	January 21, 2019.		
E–164–2018–0–US–01	Intraocular Delivery Of Gene Therapy Expression Vectors.	62/701,267	July 20, 2018.		
E–164–2018–1–US–01	Intraocular Delivery Of Gene Therapy Expression Vectors.	62/724,480	August 29, 2018.		
E–164–2018–2–US–01	Intraocular Delivery Of Gene Therapy Expression Vectors.	62/768,590	November 16, 2019.		
E–164–2018–3–PCT–01 ...	Intraocular Delivery Of Gene Therapy Expression Vectors.	PCT/US2019/042365	July 18, 2019.		

All U.S. and foreign patents and applications claiming priority to any member of the above.

The patent rights in these inventions have been assigned or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide and in fields of use that may be limited to human therapeutics for (1) X-linked juvenile retinoschisis and (2) schisis cavity associated ocular disease or injury.

The aforementioned patent estates cover inventions directed to gene therapy and specifically, expression vectors and therapeutic methods of using such vectors in the treatment of ocular diseases resulting from failure to produce or the defective production of an ocular protein. This invention is also directed to methods of administering expression vectors capable of modulating a target gene or gene product for the treatment of ocular disease.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Heart, Lung, and Blood Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 2, 2020.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute.

[FR Doc. 2020–15340 Filed 7–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences 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 Center for Advancing Translational Sciences Special Emphasis Panel; NTU Bench Testing.

Date: August 12, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1078, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1078, Bethesda, MD 20892, 301–594–7319, *khanr2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15375 Filed 7–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SARS–COV–2 Serological Sciences Centers of Excellence.

Date: August 17–18, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Associate Director, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20850, 240–276–6442, *ss537t@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; K22 Transition Career Development Award.

Date: September 22, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W234, Rockville, MD 20850, 240–276–6368, *stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) I Review.

Date: September 22–23, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20892, 240–276–5415 *paul.cairns@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) II Review.

Date: September 23–24, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W116, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer,Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W116Rockville, MD 20850, 240–276–5413 *klaus.piontek@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project I (PO1).

Date: September 24–25, 2020.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, MD 20850, 240–276–6611 *mukesh.kumar3@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) III Review.

Date: September 24–25, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850, 240–276–5085, *tandlea@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: October 15–16, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850, 240–276–6132, *tushar.deb@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review Meeting II.

Date: October 15–16, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, MD 20850, 240–276–6457, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project III (P01).

Date: October 20–21, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, MD 20850, 240–276–5735, *mike.lindquist@nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: October 21–22, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Delia Tang, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer

Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20892, 240–276–6456, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular and Cellular Analysis Technologies.

Date: November 4–5, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850, 240–276–5460, *jfang@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 2020.

Melanie J. Pantoja,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15379 Filed 7–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Biennial Progress Report: 2018–2019; Availability of Report

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces availability of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Biennial Progress Report: 2018–2019. This report, prepared in accordance with requirements of the ICCVAM Authorization Act of 2000, describes activities and accomplishments from January 2018 through December 2019.

ADDRESSES: The report is available at *http://ntp.niehs.nih.gov/iccvamreport/2019/index.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Nicole Kleinstreuer, Acting Director, NICEATM, Division of NTP, NIEHS, P.O. Box 12233, K2–17, Research Triangle Park, NC 27709. Phone: 984–287–3150, Email: *nicole.kleinstreuer@nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2032, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background: The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*-3), established ICCVAM as a permanent interagency committee of the National Institute of Environmental Health Sciences (NIEHS) under NICEATM. ICCVAM's mission is to facilitate development, validation, and regulatory acceptance of new and revised regulatory test methods that reduce, refine, or replace the use of animals in testing while maintaining and promoting scientific quality and the protection of human health, animal health, and the environment.

A provision of the ICCVAM Authorization Act states that ICCVAM shall prepare ''reports to be made available to the public on its progress under this Act.'' The tenth ICCVAM biennial progress report describing ICCVAM activities and accomplishments from January 2018 through December 2019 is now available.

Summary of Report Contents: Key ICCVAM, ICCVAM agency, and NICEATM accomplishments summarized in the report include:

- Publication in January 2018 of a strategic roadmap for incorporating new approaches into safety testing of chemicals and medical products in the United States, and progress toward goals described in the strategic roadmap.
- Development of the Collaborative Acute Toxicity Modeling Suite, an online resource for screening organic chemicals for acute oral toxicity, and expansion of NICEATM's Integrated Chemical Environment, which provides curated data and tools for safety assessment of chemicals.
- Initiatives by the U.S. Environmental Protection Agency to reduce animal use: A draft science policy to reduce animal use for skin sensitization testing for pesticide registration, a plan to reduce vertebrate animal testing for chemical safety information required under the Toxic Substances Control Act, and an agency-wide directive to reduce mammal study requests and funding 30% by 2025 and completely eliminating them by 2035.
- Development of a strategic roadmap by the Department of Defense to help its laboratories better define their chemical assessment needs and collaborate on development or refinement of appropriate non-animal approaches for testing.
- Implementation by the U.S. Food and Drug Administration of its predictive toxicity roadmap for integrating predictive toxicology methods into safety and risk assessments.

Availability of Report: The report is available at *http://ntp.niehs.nih.gov/iccvamreport/2019/index.html.* Links to this report and all past ICCVAM annual and biennial reports are available at *http://ntp.niehs.nih.gov/go/iccvam-bien.*

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 16 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability and promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of NIEHS and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at *http://ntp.niehs.nih.gov/go/iccvam.*

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. Federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative testing approaches for validation studies and technical evaluations. Additional information about NICEATM can be found at *http://ntp.niehs.nih.gov/go/niceatm.*

Dated: July 7, 2020.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2020–15341 Filed 7–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute 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 Advisory Council for Human Genome Research.

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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: August 11, 2020.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700–B Rockledge Drive, Room 3184, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700–B, Rockledge Drive, Room 3184, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/council,* where an agenda and any additional information for the meeting will be posted when available. Any member of the public may submit written comments no later than 15 days after the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15377 Filed 7–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0183; OMB Control Number 1625–0025]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0025, Carriage of Bulk Solids Requiring Special Handling; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before August 17, 2020.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0183]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0183], and must be received by August 17, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for

alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0025.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 23838, April 29, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148.

OMB Control Number: 1625–0025.

Summary: As specified in 46 CFR part 148, the petition for a Special Permit allows the Coast Guard to determine the manner of safe carriage for unlisted materials. The information required by Dangerous Cargo Manifests and Shipping Papers permit vessel crews and emergency personnel to properly and safely respond to accidents involving hazardous substances. See 46 CFR 148 Subpart B and §§ 148.60 and 148.70.

Need: The Coast Guard administers and enforces statutes and rules for the safe transport and stowage of hazardous materials, including bulk solids.

Forms: Not applicable.

Respondents: Owners and operators of vessels that carry certain bulk solids.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 850 hours to 910 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 10, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–15345 Filed 7–15–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0182; OMB Control Number 1625–0007]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before August 17, 2020.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0182]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0182], and must be received by August 17, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://*

www.regulations.gov. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0007.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 23839, April 29, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB Control Number: 1625–0007.

Summary: Chemical manufacturers submit chemical data to the Coast Guard. The Coast Guard evaluates the information for hazardous properties of the chemical to be shipped via tank vessel. A determination is made as to the kind and degree of precaution which must be taken to protect the vessel and its contents.

Need: 46 CFR parts 30 to 40, 151, 153, and 154 govern the transportation of hazardous materials. The chemical industry constantly produces new materials that must be moved by water. Each of these new materials has unique characteristics that require special attention to their mode of shipment.

Forms: None.

Respondents: Manufacturers of chemicals.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden of 600 hours a year remains unchanged.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 10, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–15346 Filed 7–15–20; 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.
Colorado:					
Larimer (FEMA Docket No.: B–2021).	City of Fort Collins (19–08–0751P).	The Honorable Wade Troxell Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522.	Utilities Department, 700 Wood Street, Fort Collins, CO 80522.	Jun. 15, 2020	080102
Larimer (FEMA Docket No.: B–2021).	Unincorporated areas of Larimer County (19–08–0751P).	The Honorable Steve Johnson, Chairman, Larimer County Board of Commissioners, 200 West Oak Street, Fort Collins, CO 80521.	Larimer County Engineering Department, 200 West Oak Street, 3rd Floor, Fort Collins, CO 80521.	Jun. 15, 2020	080101
Florida:					
Monroe (FEMA Docket No.: B–2021).	Village of Islamorada (20–04–0572P).	The Honorable Mike Forster, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	Jun. 18, 2020	120424
Orange (FEMA Docket No.: B–2021).	City of Orlando (19–04–3438P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	City Hall, 400 South Orange Avenue, Orlando, FL 32801.	Jun. 17, 2020	120186
Volusia (FEMA Docket No.: B–2021).	City of New Smyrna Beach (19–04–6280P).	The Honorable Russ Owen, Mayor, City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, FL 32168.	Engineering Department, 2650 North Dixie Freeway, New Smyrna Beach, FL 32168.	Jun. 26, 2020	125132
Georgia: Bryan (FEMA Docket No.: B–2021).	Unincorporated areas of Bryan County (19–04–3361P).	Mr. Carter Infinger, Chairman, Bryan County Board of Commissioners, P.O. Box 430, Pembroke, GA 31321.	Bryan County Department of Community Development, 66 Captain Matthew Freeman Drive, Suite 201, Richmond Hill. GA 31324.	Jun. 19, 2020	130016
Montana:					
Butte-Silver Bow (FEMA Docket No.: B–2021).	Unincorporated areas of Butte-Silver Bow County (19–08–0805P).	The Honorable Dave Palmer, Chief Executive, Butte-Silver Bow County, 155 West Granite Street, Room 106, Butte, MT 59701.	Butte-Silver Bow County Planning Department, 155 West Granite Street, Room 108, Butte, MT 59701.	Jun. 25, 2020	300077
Gallatin (FEMA Docket No.: B–2021).	City of Bozeman (19–08–0850P).	Mr. Dennis M. Taylor, City of Bozeman Manager, P.O. Box 1230, Bozeman, MT 59771.	City Hall, 20 East Olive Street, Bozeman, MT 59715.	Jun. 22, 2020	300028
Gallatin Montana: Gallatin (FEMA Docket No.: B–2021).	Unincorporated areas of Gallatin County (19–08–0850P).	The Honorable Joe P. Skinner, Chairman, Gallatin County Commission, 311 West Main Street, Room 306, Bozeman, MT 59715.	Gallatin County Department of Planning and Community Development, 311 West Main Street, Room 108, Bozeman, MT 59715.	Jun. 22, 2020	300027
North Dakota: Cass (FEMA Docket No.: B–2021).	City of Fargo (19–08–0515P).	The Honorable Tim Mahoney, Mayor, City of Fargo, 225 4th Street North, Fargo, ND 58102.	City Hall, 225 4th Street North, Fargo, ND 58102.	Jun. 9, 2020	385364
Oklahoma: Tulsa (FEMA Docket No.: B–2023).	City of Tulsa (19–06–3205P).	The Honorable G.T. Bynum, Mayor, City of Tulsa, 175 East 2nd Street, Tulsa, OK 74103.	Development Services Department, 175 East 2nd Street, Suite 450, Tulsa, OK 74103.	Jun. 25, 2020	405381
Pennsylvania:					
Lancaster (FEMA Docket No.: B–2021).	Township of East Hempfield (19–03–0983P).	The Honorable H. Scott Russell, Chairman, Township of East Hempfield Board of Supervisors, 1700 Nissley Road, Landisville, PA 17538.	Township Hall, 1700 Nissley Road, Landisville, PA 17538.	Jun. 23, 2020	420548
Montgomery (FEMA Docket No.: B–2021).	Township of Whitemarsh (19–03–1803P).	The Honorable Laura Boyle-Nester, Chair, Township of Whitemarsh Board of Supervisors, 616 Germantown Pike, Lafayette Hill, PA 19444.	Township Hall, 616 Germantown Pike, Lafayette Hill, PA 19444.	Jun. 23, 2020	420712
South Carolina: Georgetown (FEMA Docket No.: B–2021).	Unincorporated areas of Georgetown County (19–04–6539P).	Mr. Sel Hemingway, Georgetown County Administrator, 716 Prince Street, Georgetown, SC 29440.	Georgetown County Building Department, 129 Screven Street, Georgetown, SC 29440.	Jun. 11, 2020	450085
Tennessee:					
Shelby (FEMA Docket No.: B–2023).	Town of Collierville (18–04–7494P).	The Honorable Stan Joyner, Jr., Mayor, Town of Collierville, 500 Poplar View Parkway, Collierville, TN 38017.	Department of Public Services, 500 Keough Road, Collierville, TN 38017.	May 8, 2020	470263
Shelby (FEMA Docket No.: B–2023).	Unincorporated areas of Shelby County (18–04–7494P).	The Honorable Lee Harris, Mayor, Shelby County, 160 North Main Street, Memphis, TN 38103.	Shelby County Department of Engineering, 6463 Haley Road, Memphis, TN 38134.	May 8, 2020	470214
Texas:					
Bell (FEMA Docket No.: B–2023).	City of Harker Heights (18–06–3437P).	The Honorable Spencer H. Smith, Mayor, City of Harker Heights, 305 Millers Crossing, Harker Heights, TX 76548.	Building and Permits Department, 305 Millers Crossing, Harker Heights, TX 76548.	Jun. 17, 2020	480029
Bexar (FEMA Docket No.: B–2023).	City of San Antonio (19–06–1390P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	Jun. 22, 2020	480045
Bexar (FEMA Docket No.: B–2023).	Unincorporated areas of Bexar County (19–06–3386P).	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.	Jun. 15, 2020	480035
El Paso (FEMA Docket No.: B–2023).	City of El Paso (19–06–2053P).	Mr. Tommy Gonzalez, Manager, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Development Department, 801 Texas Avenue, El Paso, TX 79901.	Jun. 16, 2020	480214

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
El Paso (FEMA Docket No.: B–2023).	Unincorporated areas of El Paso County (19–06–2053P).	The Honorable Ricardo A. Samaniego, El Paso County Judge, 500 East San Antonio Street, Suite 301, El Paso, TX 79901.	El Paso County Public Works Department, 800 East Overland Avenue, Suite 200, El Paso, TX 79901.	Jun. 16, 2020	480212
Kendall (FEMA Docket No.: B–2023).	Unincorporated areas of Kendall County (19–06–2192P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Engineering Department, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	Jun. 24, 2020	480417
Tarrant (FEMA Docket No.: B–2021).	City of Fort Worth (19–06–3049P).	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.	Jun. 18, 2020	480596
Travis (FEMA Docket No.: B–2021).	City of Austin (19–06–1200P).	The Honorable Stephen Adler, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Protection Department, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.	Jun. 29, 2020	480624
Virginia: Prince William (FEMA Docket No.: B–2021).	Unincorporated areas of Prince William County (19–03–0954P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	Jun. 18, 2020	510119

[FR Doc. 2020–15368 Filed 7–15–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R2–ES–2020–0065; FXES111602C0000–201–FF02ENEH00]

Environmental Assessment for a Candidate Conservation Agreement With Assurances for the Dunes Sagebrush Lizard (Sceloporus arenicolus); Andrews, Gaines, Crane, Ector, Ward, and Winkler Counties, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, intend to prepare an environmental assessment (EA) on a proposed candidate conservation agreement with assurances (CCAA) that will support an application for an enhancement of survival permit under the Endangered Species Act. The potential permit would cover the dunes sagebrush lizard *(Sceloporus arenicolus)* in six Texas counties. The CCAA would cover oil and gas exploration and development, sand mining, renewable energy development and operations, pipeline construction and operations, agricultural activities, general construction activities, and the conservation, research, and monitoring activities that are integral to meeting the CCAA net conservation benefit standard. The intended effect of this notice is to gather information from the public to develop and analyze the effects of the potential issuance of the permit, which would facilitate economic activities in the planning area, while providing a net conservation benefit to the dunes sagebrush lizard. We provide this notice to describe the proposed action, advise other Federal and State agencies, potentially affected tribal interests, and the public of our intent to prepare an EA, announce the initiation of a 30-day public scoping period, and obtain suggestions and information on the scope of issues and possible alternatives to be included in the EA.

DATES: To ensure consideration, written comments must be received or postmarked on or before 11:59 p.m. eastern time on August 17, 2020. We may not consider any comments we receive after the closing date in the final decision on this action.

ADDRESSES:

Obtaining Documents for Review: You may obtain copies of the CCAA in the following formats:

Internet:

- *http://www.regulations.gov* (search for Docket No. FWS–R2–ES–2020–0065)
- *http://www.fws.gov/southwest/es/AustinTexas/*

Hard copies or CD–ROM:

- Contact Field Supervisor by phone or U.S. mail (see **FOR FURTHER INFORMATION CONTACT**; reference the notice title and docket number FWS–R2–ES–2020–0065).

Email: fw2_HCP_Permits@fws.gov.

Reviewing Public Comments: View submitted comments on *http://www.regulations.gov* in Docket No. FWS–R2–ES–2020–0065.

Submitting Comments: You may submit written comments by one of the following methods:

Internet: http://www.regulations.gov. Follow the instructions for submitting comments on Docket No. FWS–R2–ES–2020–0065.

Hard Copy: Submit by U.S. mail to Public Comments Processing, Attn: FWS–R2–ES–2020–0065; U.S. Fish and Wildlife Service, MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you submit comments by only the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means we will post any personal information you provide us (see Public Availability of Comments).

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, by mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758; via phone at 512–490–0057, ext. 248.; or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened, or candidate species, respectively, are found in title 50 of the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Permit Application

The U.S. Fish and Wildlife Service (Service) received an application for an enhancement of survival (EOS) permit under section 10(a)(1)(A) of the ESA, supported by the proposed CCAA. The potential EOS permit, which would be in effect for a period of approximately 22 years, would authorize incidental take of the dunes sagebrush lizard *(Sceloporus arenicolus),* a species that has been petitioned for listing under the ESA. The dunes sagebrush lizard is the only covered species in this potential EOS permit. The proposed incidental take would result from:

- Activities associated with otherwise lawful activities, including oil and gas exploration and development, sand mining, renewable energy development and operations, pipeline construction and operations, agricultural activities, general construction activities, and conservation, research, and monitoring activities;
- Habitat loss and fragmentation from construction, operation, and maintenance of roads, oil pads, sand mines, transmission lines, and pipelines;
- Crushing by vehicles and heavy equipment during road use and mining;
- Water withdrawal for sand processing that may impact dune stabilizing vegetation, and
- Disruption of normal lizard behaviors—breeding, feeding, and shelter—during conservation actions.

Alternatives

Proposed Action

The proposed action involves the issuance of an EOS permit by the Service for the covered activities in the permit area, under section 10(a)(1)(A) of the ESA. The EOS would cover ''take'' of the covered species associated with oil and gas exploration and development, sand mining, renewable energy development and operations, pipeline construction and operations, agricultural activities, and general construction activities within the permit area. The CCAA associated with this potential EOS permit describes the conservation measures the applicant has agreed to undertake to minimize and mitigate for the impacts of the proposed taking of covered species to meet the net conservation benefit standard of the CCAA policy. The terms of the CCAA and EOS permit will also ensure that these activities will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

No Action Alternative

As part of the process of developing an environmental assessment (EA), we will consider at least one alternative to the proposed action: No Action. Under a No Action alternative, the Service would not issue the potential EOS permit and the applicant would not be authorized for incidental taking of the covered species, should the dunes sagebrush lizard be listed as threatened or endangered. Therefore, the applicant would not be required to implement the conservation measures described in the CCAA.

Public Comments

We are requesting information from other interested government agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning the following areas of analysis in the draft EA:

- Vegetation,
- Wildlife and aquatic resources,
- Special status species,
- Surface waters and floodplains,
- Hydrology and groundwater,
- Wetlands and waters of the United States,
- Archeology,
- Architectural history,
- Sites of religious and cultural significance to Tribes,
- Noise and vibration,
- Visual resources and aesthetics,
- Economics and socioeconomics,
- Environmental justice,
- Air quality (including greenhouse gas emissions and climate change),
- Geology and soil,
- Land use,
- Transportation,
- Infrastructure and utilities,
- Hazardous materials and solid waste management, and
- Human health and safety.

In addition to the topics above, we are seeking comments on additional alternatives to potentially consider when drafting the EA.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not provide information useful in determining the issues and the impacts to the human environment in the draft EA. The public will also have a chance to review and comment on the draft EA when it is available.

You may submit your comments and materials by one of the methods described above under **ADDRESSES**.

Next Steps

We will develop an EA concerning the impacts of EOS permit issuance on the human environment based on our evaluation of the CCAA and the information and comments we receive in response to this notice. We will announce the availability of a draft EA, CCAA, and EOS permit application for public review and comment. The comments on the draft EA will assist in our determination as to the lack or presence of significant impacts on the human environment.

At that time, if we can sign a finding of no significant impact (FONSI), we would then evaluate the application, including the CCAA, as to its ability to meet the requirements of section 10(a) of the ESA. We will also evaluate whether issuance of a section 10(a)(1)(A) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue an EOS permit.

If all necessary requirements are met, we will issue the EOS permit to the applicant. If we cannot sign a FONSI, we will take all comments from this scoping period and the comment period on the draft EA to develop a draft environmental impact statement (EIS), which would be noticed for review and comment before we would finalize the EIS and sign a record of decision.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its

implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Albuquerque, New Mexico.

[FR Doc. 2020–14452 Filed 7–15–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–30536; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before July 27, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by July 31, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on property or proposed district name, (County) State.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 27, 2020. Pursuant to § 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

CONNECTICUT

Middlesex County

High Street Historic District, 7 Central Ave., 19–114 High St., and 1–62 John St., Clinton, SG100005404

GEORGIA

Fulton County

Whitehall Street Retail Historic District, Centered on Peachtree St. and Martin Luther King Jr. Dr. including Forsyth, Broad, Peachtree, and Mitchell Sts., Atlanta, SG100005409

MONTANA

Blaine County

St. Paul's Mission Church, 1 Mission Dr., Hays vicinity, SG100005403

WEST VIRGINIA

Kanawha County

St. Albans Railroad Industry Historic District, 4th and 5th Aves., 2nd-6th Sts., St. Albans, SG100005412

A request for removal has been made for the following resources:

IOWA

Crawford County

East Soldier River Bridge (Highway Bridges of Iowa MPS), 120th St. over East Soldier R., Charter Oak vicinity, OT98000798

Beaver Creek Bridge (Highway Bridges of Iowa MPS), 180th St. between B and C Aves. over Beaver Cr., Schleswig vicinity, OT98000799

Henry County

Smith and Weller Building, 100 East Main St., New London, OT03000830

Additional documentation has been received for the following resource):

WEST VIRGINIA

Greenbrier County

Mountain Home (Additional Documentation), SW of White Sulphur Springs on U.S. 60, White Sulphur Springs vicinity, AD80004020

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 30, 2020.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–15343 Filed 7–15–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Vaporizer Cartridges and Components Thereof, DN 3471;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Juul Labs, Inc. on July 10, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vaporizer cartridges and components thereof. The complaint names as respondents: 101 Smoke Shop, Inc. of Los Angeles, CA; 2nd Wife Vape of Haslet, TX; Access Vapor LLC of Orlando, FL; All Puff Store of Middleburg Heights, OH; Alternative Pods of Palatine, IL; Ana Equity LLC of Orlando, FL; Aqua Haze LLC of Farmers Branch, TX; Cali Pods of Houston, TX; Canal Smoke Express, Inc. of New York, NY; CaryTown Tobacco of Richmond, VA; Cigar Road, Inc. of Woodland Hills, CA; Cloud 99 Vapes of New York, NY; DripTip Vapes LLC of Plantation, FL; Shenzhen Azure Tech USA LLC f/k/a DS Vaping P.R.C. of China; eCig-City of Riverside, CA; Ejuicedb, of Farmingdale, NY; eLiquid Stop of Glendale, CA; Eon Pods LLC of Jersey City, NJ; Evergreen Smokeshop of Oakland, CA; EZFumes of Bedford, TX;

Guangdong Cellular Workshop Electronic Technology Co., Ltd. of China; JC Pods of Elk Grove Village, IL; Jem Pods, U.S.A. of Snellville, GA; JUULSite Inc. of Bensenville, IL; Keep Vapor Electronic Tech. Co., Ltd. of China; Limitless Accessories, Inc. of Tinley Park, IL; Midwest Goods, Inc. of Bensenville, IL; Modern Age Tobacco of Gainesville, FL; Mr. Fog of Bensenville, IL; Naturally Peaked Health Co. of Brewster, NY; Nilkant 167 Inc. of Boston, MA; Perfect Vape LLC of Oklahoma City, OK; Price Point NY of Farmingdale, NY; Puff E-Cig of Imlay City, MI; Shenzhen Apoc Technology Co., Limited of China; Shenzhen Bauway Technology Ltd. of China; Shenzhen Ocity Times Technology Co., Ltd. of China; Shenzhen Yark Technology Co., Ltd. of China; Sky Distribution LLC of Addison, IL; Smoker's Express of Auburn Hills, MI; The Kind Group LLC of Ocean, NJ; Tobacco Alley of Midland of Midland, TX; Valgous of Bensenville, IL; Vape Central Group of Hallandale, FL; Vape 'n Glass of Streamwood, IL; Vaperistas of Wood Dale, IL; Vapers&Papers, LLC of Schenectady, NY; WeVapeUSA of Brooklyn, NY; and Wireless N Vapor Citi LLC of Lexington, KY. The complainant requests that the Commission issue a permanent general exclusion order, cease and desist orders, and impose a bond upon the vaporizer cartridges alleged infringing asserted patents during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3471'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 13, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–15366 Filed 7–15–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–648 and 731–TA–1521–1522 (Preliminary)]

Walk-Behind Lawn Mowers From China and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of walk-behind lawn mowers (''walk-behind mowers'') from China and Vietnam provided for in subheading 8433.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

be subsidized by the government of China.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 26, 2020, MTD Products, Inc., Valley City, Ohio, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of walk-behind mowers from China and LTFV imports of walk-behind mowers from China and Vietnam. Accordingly, effective May 26, 2020, the Commission instituted countervailing duty investigation No. 701–TA–648 and antidumping duty investigation Nos. 731–TA–1521–1522 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference through written submissions to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 2, 2020 (85 FR 33710). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on July 10, 2020. The views of the Commission are contained in USITC Publication 5091 (July 2020), entitled *Walk-Behind Lawn Mowers from China and Vietnam: Investigation Nos. 701–TA–648 and 731–TA–1521–1522 (Preliminary).*

By order of the Commission.

Issued: July 10, 2020.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2020–15317 Filed 7–15–20; 8:45 am]

BILLING CODE 7020–02–P

[2] 85 FR 37426 (June 22, 2020), 85 FR 37417 (June 22,2020).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–986–987 (Third Review)]

Ferrovanadium From China and South Africa; Scheduling of Expedited Five-Year Reviews

AGENCY: 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 revocation of the antidumping duty orders on ferrovanadium from China and South Africa would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: April 6, 2020.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), 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 April 6, 2020, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 122, January 2, 2020) 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).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of these reviews will be placed in the nonpublic record on July 13, 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 § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to these reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to these reviews may file written comments with the Secretary on what determinations the Commission should reach in these reviews. Comments are due on or before

[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 response submitted on behalf of the Vanadium Producers and Reclaimers Association to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

July 20, 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 these reviews by July 20, 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 §§ 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 §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these reviews must be served on all other parties to these 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.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 13, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–15407 Filed 7–15–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0058]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Investigator Integrity Questionnaire—ATF Form 8620.7

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0058 (Investigator Integrity Questionnaire—ATF Form 8620.7) is being renamed Investigator Quality Survey. Additional fields were included in the form to improve user experience when providing feedback about an investigator's conduct during a background investigation interview. The proposed information collection (IC) is also being published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until September 14, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Matthew Varisco, Chief, Personnel Security Division, either by mail at 99 New York Avenue NE, Washington, DC 20226, by email at *Matthew.Varisco@atf.gov,* or by telephone at 202–648–9260.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (*check justification or form 83): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Investigator Integrity Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 8620.7.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: Persons interviewed by ATF contract investigators are randomly selected to complete the Investigator Integrity Questionnaire—ATF Form 8620.7, which measures the effectiveness, efficiency and professionalism of investigators while conducting interviews for a Federal background investigation. Individuals may voluntarily participate in this survey by providing an email address during their interview.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,500 respondents will utilize the survey annually, and it will take each respondent approximately 5 minutes to complete their response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 208 hours, which is equal to 2,500 (# of respondents) * .083 (5 minutes or the time taken to complete each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 10, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–15311 Filed 7–15–20; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on June 25, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Woodward Inc., Fort Collins, CO; Techman Robot, Taiwan, PEOPLE'S REPUBLIC OF CHINA; and New Power Plasma Co. Ltd., Pyeongtaek-si, Gyeonggi-do, SOUTH KOREA, have been added as parties to this venture.

Also, Diatrend Corporation, Osaka, JAPAN; CKD Nikki Dens Co., Ltd., Kanagawa-ken, JAPAN; Columbus McKinnon Corporation, Buffalo, NY; Willowglen Systems Inc., Edmonton, AB, CANADA; Reno Subsystems, Reno, NV; and Dialight, Farmingdale, NJ, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on April 6, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 17, 2020 (85 FR 21461).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–15374 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on July 1, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alabama State Department of Education, Montgomery, AL; California Community Colleges Technology Center (CCCTC), Oroville, CA; Burke County Board of Education, Waynesboro, GA; DegreeData, Brownsville, VT; Headstream Technologies, LLC, Charlotte, MI; IDatafy, Little Rock, AR; North Dakota Information Technology, Bismarck, ND; UChicago Impact, Chicago, IL; Vigilo AS, Karsmund, NORWAY; Wake County Public School System, Cary, NC; and Zoom Video Communications, San Jose, CA, have been added as parties to this venture.

Also, Edgenuity, Scottsdale, AZ, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on April 14, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2020 (85 FR 23064).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–15382 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Manufacturing Design Innovation Institute

Notice is hereby given that, on June 30, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Digital Manufacturing Design Innovation Institute (''DMDII'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Markforged, Watertown, MA; VLC Solutions, Schaumburg, IL; Arizona State University (ASU), Tempe, AZ; National Center for Defense Manufacturing and Machining, Blairsville, PA; Analatom, Santa Clara, CA; Freedman Seating, Chicago, IL; Logistics Management Institute (LMI), Tysons, VA; Cuesta Partners LLC, Chicago, IL; Dragos Inc., Hanover, MD; Olenick & Associates, Chicago, IL; Intel Corporation, Santa Clara, CA; General Tool Company, Cincinnati, OH; Quibit Networks, LLC, La Porte, IN; H2L Solutions, Huntsville, AL; Midwest Filtration, Cincinnati, OH; Rye Consulting, Chicago, IL; Purdue University, West Lafayette, IN; University of Michigan, Ann Arbor, MI; Sidechannel, Shrewsbury, MA; Gener8tor, Madison, WI; Drexel University, Philadelphia, PA; Elementary Robotics, Los Angeles, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DMDII intends to file additional written notifications disclosing all changes in membership.

On January 5, 2016, DMDII filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 9, 2016 (81 FR 12525).

The last notification was filed with the Department on April 1, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 17, 2020 (85 FR 21461).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–15386 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Consortium for Battery Innovation

Notice is hereby given that, on June 16, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Battery Innovation (''CBI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, KGHM Polska Miedz S.A., Lubin, POLAND has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CBI intends to file additional written notifications disclosing all changes in membership.

On May 24, 2019, CBI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2019 (84 FR 29241).

The last notification was filed with the Department on December 23, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 27, 2020 (85 FR 4706).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–15350 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on June 29, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Object Computing, Inc., St. Louis, MO, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on June 15, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 25, 2020 (85 FR 38159).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–15376 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on May 29, 2020 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between February 10, 2020, and May 19, 2020, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification with the Department was filed on February 18, 2020. A notice was filed in the **Federal Register** on February 27, 2020 (85 FR 11394).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–15348 Filed 7–15–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on June 25, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Etere Pte Lte, Singapore, SINGAPORE; Library of Congress, Washington, DC; and TF1, Paris, FRANCE, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research

project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 20, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 10, 2020 (85 FR 20302).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–15356 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Resource Conservation and Recovery Act and The Emergency Planning and Community Right-To-Know Act

On July 9, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Wyoming in the lawsuit entitled *United States of America* v. *J.R. Simplot Company, et al.,* Civil Action No. 20–CV–125–F. If approved by the court, the consent decree would resolve the claims of the United States against J.R. Simplot Company and Simplot Phosphates, LLC (Simplot) for injunctive relief and civil penalties for alleged violations of the Resource Conservation and Recovery Act (RCRA), and for civil penalties for alleged violations of the Emergency Planning And Community Right-To-Know Act (EPCRA), at Simplot's phosphoric acid and fertilizer manufacturing plant located near Rock Springs, Wyoming. The consent decree would require Simplot to (1) implement compliance projects at the Rock Springs facility; (2) comply with specified requirements for management of wastes or other materials at the facility and in the facility's phosphogypsum stack system, (3) comply with specified requirements for the eventual closure and long-term care of the facility, and provide financial assurance to cover the estimated cost of such obligations; and (4) continue monitoring the groundwater at and near the facility pursuant to an existing order of the State of Wyoming and, if needed in the future based on the monitoring, implement corrective action to address any groundwater contamination. The consent decree would also require Simplot to revise the annual Toxic Chemical Release Inventory Reporting Forms it submitted under EPCRA for years 2004–2013 to include estimates of compounds that previously were not included in those reports. In addition, the consent decree would require Simplot to pay a civil penalty of $775,000. In return for Simplot's compliance with these requirements, the consent decree would resolve past RCRA and EPCRA violations at the Rock Springs facility that the United States' complaint alleges. Provided that Simplot remains in compliance with consent decree's requirements for the management of wastes or other materials, under the consent decree the United States would also covenant not to sue Simplot under RCRA for its management of wastes or other materials at the Rock Springs facility.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *J.R. Simplot Company, et al.,* D.J. Ref. No. 90–7–1–08388/8. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $123.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the Appendices and signature pages, the cost is $15.00.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–15303 Filed 7–15–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0008]

Agency Information Collection Activities; Proposed Collection Comments Requested; Extension Without Change, of a Currently Approved Collection; Monthly Return of Arson Offenses Known to Law Enforcement

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 14, 2020.

FOR FURTHER INFORMATION CONTACT: All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mrs. Amy Blasher, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the

information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1–725. The applicable component within the Department of Justice is the CJIS Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, state, county, city, and tribal law enforcement agencies.

Abstract: Under 34 U.S.C. 41303, Uniform Federal Crime Reporting Act;, the Anti-Arson Act of 1982; and Federal Bureau of Investigation, General Functions, 28 CFR 0.85 (f), this collection request the number of reported arson offenses from federal, state, county, city, and tribal law enforcement agencies in order for the Federal Bureau of Investigation Uniform Crime Reporting Program to serve as the national clearinghouse for the collection and dissemination of arson data and to publish these statistics in the Preliminary report and *Crime in the United States.*

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 8,054 law enforcement agency respondents that submit monthly for a total of 88,637 responses with an estimated response time of 9 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection.* There are approximately 13,296 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 10, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–15315 Filed 7–15–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Currently Approved Collection; Age, Sex, Race, and Ethnicity of Persons Arrested Under 18 Years of Age; Age, Sex Race, and Ethnicity of Persons Arrested 18 Years of Age and Over

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 14, 2020.

FOR FURTHER INFORMATION CONTACT: All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Age, Sex, Race, and Ethnicity of Persons Arrested Under 18 Years of Age; and Age, Sex, Race, and Ethnicity of Persons Arrested 18 Years of Age and Over.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1–708 and 1–708a. The applicable component within the Department of Justice is the CJIS Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, state, county, city, and tribal law enforcement agencies.

Abstract: Under 34 U.S.C. 41303, Uniform Federal Crime Reporting Act;, 34 U.S.C. 41309, William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008; and Federal Bureau of Investigation, General Functions, 28 CFR 0.85 (f), this collection requests the number of arrests from federal, state, county, city, and tribal law enforcement agencies in order for the FBI Uniform Crime Reporting Program to serve as the national clearinghouse for the collection and dissemination of arrest data and to publish these statistics in *Crime in the United States.*

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 8,054 law enforcement agency respondents that submit monthly for a total of 88,637 responses; calculated estimates indicate 12 minutes per response for form 1–708a and 15 minutes per response for form 1–708.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 39,886 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 10, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–15314 Filed 7–15–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

RIN 1290–ZA03

Request for Information; Paid Leave

AGENCY: Women's Bureau, U.S. Department of Labor.

ACTION: Request for Information.

SUMMARY: The Department of Labor (Department) seeks information from the public regarding paid leave. For purposes of this Request, paid leave refers to paid family and medical leave to care for a family members, or for one's own health.

The Department is publishing this Request for Information (RFI) to gather information concerning the effectiveness of current state- and employer-provided paid leave programs, and how access or lack of access to paid leave programs impacts America's workers and their families. The information provided will help the Department identify promising practices related to eligibility requirements, related costs, and administrative models of existing paid leave programs.

DATES: Submit written comments on or before September 14, 2020.

ADDRESSES: To facilitate the receipt and processing of written comments on this RFI, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1290–ZA03, by either of the following methods:

Electronic Comments: Follow the instructions for submitting comments on the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Address written submissions to Joan Harrigan-Farrelly, Deputy Director, Room S–3002, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This RFI is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via the Women's Bureau (WB) website at *http://www.dol.gov/wb/.* All comment submissions must include the agency name and Regulatory Information Number (RIN 1290–ZA03) for this RFI. Response to this RFI is voluntary and respondents need not reply to all questions listed below. The Department requests that no business proprietary information, copyrighted information, individual medical information, or personally identifiable information be submitted in response to this RFI. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal or medical information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this RFI; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Harrigan-Farrelly, Deputy Director, Room S–3002, 200 Constitution Avenue NW, Washington, DC 20210; email: *RFIpaidleave@dol.gov;* telephone: (202) 693–6710 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889–5627 to obtain information.

SUPPLEMENTARY INFORMATION:

I. Background

The Department is committed to fostering, promoting, and developing the welfare of wage earners, job seekers, and retirees of the United States; improving working conditions; advancing opportunities for profitable employment; and assuring work-related benefits and rights. Within the Department, the Women's Bureau's mission is to formulate standards and policies that promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment. As part of its commitment to promote the welfare and equality of working women, the Department seeks public input regarding paid leave policy.

In 2019, a Bureau of Labor Statistics report found that 18 percent of U.S. private sector workers had access to paid family leave through their employers.[1] A number of studies have linked paid family leave of differing types to increases in a mother's likelihood of being employed after childbirth, female labor force participation, and women's wage earnings and work hours. For example, a 2011 Census Bureau report found that women using paid parental leave were twice as likely to return to work within three months, and most returned with similar hours and pay.[2] Whether studies finding benefits from paid family leave merely identify correlation or can develop a causal connection remains the subject of debate.

Some employers believe that paid leave is a valuable tool to recruit and retain talented workers, but the availability of paid leave is mainly concentrated among high-skilled and highly-compensated industries. A 2017 study by the Boston Consulting Group found that employer-provided paid family leave has grown most in private sector jobs that recruit highly skilled workers. Employees in the top income quartile were three and a half times more likely to have access to paid leave than employees in the bottom income quartile.[3] According to a report commissioned by the Department, in 2012 more than half of low-income workers did not receive paid leave from their employers. About 18 percent of individuals in higher-income families received no pay during leave compared with 53 percent of low-income workers who received no pay during leave.[4] A 2017 Pew report identified that many workers with household incomes under

[1] Bureau of Labor Statistics. 2019. National Compensation Survey: Employee Benefits in the United States, March 2019. Table 31, *https://www.bls.gov/ncs/ebs/benefits/2019/ownership/private/table31a.pdf.*

[2] Lynda Laughlin. 2011. ''Maternity Leave and Employment Patterns of First-Time Mothers: 1961–2008.'' U.S. Census Bureau Current Population Report P70–128, *https://www.census.gov/prod/2011pubs/p70-128.pdf.*

[3] Trish Stroman et al. 2017. *Why Paid Family Leave Is Good Business.* Boston Consulting Group, *http://media-publications.bcg.com/BCG-Why-Paid-Family-Leave-Is-Good-Business-Feb-2017.pdf.*

[4] Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, 2014. *Family and Medical Leave in 2012: Technical Report,* Abt Associates Inc., *https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf.*

$30,000 who took leave without full pay for the birth or adoption of a child faced financial challenges as a result.[5]

According to the 2012 Department-commissioned report, 59 percent of all workers had access to unpaid leave through the Family and Medical Leave Act (FMLA),[6] which requires covered employers to provide eligible employees up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons, including the employee's own serious health condition; to care for a spouse, son, daughter, or parent who has a serious health condition; the birth of a child; the placement of a child for adoption or foster care; and to care for a newborn or newly-placed child.[7] (The FMLA also provides certain military family leave entitlements, *i.e.,* an employee may take FMLA leave for specified reasons related to certain military deployments, and up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.) Requirements for employee eligibility for unpaid FMLA leave include firm size (50 employees within 75 miles of the employee's worksite), employee tenure (12 months with the firm), and employee hours of service (1,250 in the past year).[8] According to a survey, nearly half of all workers eligible for FMLA leave who chose not to take it cited lack of pay as the reason.[9]

Some states and localities, including California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington, have enacted *paid family and medical leave laws* that provide covered workers with the right to partial wage replacement through a state-run insurance program when they are not working due to their own or a family member's serious health needs or bonding with a new child.

Federal employees are now eligible for paid parental leave as well. On December 20, 2019, President Trump signed into law a new paid parental leave policy for eligible federal workers as part of the 2020 National Defense Authorization Act.[10] Under the new law, eligible federal workers are entitled to 12 weeks of paid parental leave for the birth, adoption, or fostering of a child that occurs on or after October 1, 2020.[11] The rate of pay during the leave period will be at 100 percent of the employee's salary. To be eligible, employees must have completed 12 prior months of federal service, and must return to duty for a minimum of 12 weeks after taking the leave.[12] In addition, the President's 2021 Budget includes ''a proposal to provide at least six weeks of paid family leave to new mothers and fathers, including adoptive parents, so all families can afford to take time to recover from childbirth and bond with a new child.'' [13]

The Families First Coronavirus Response Act (FFCRA) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID–19.[14] The Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. These provisions will apply from April 1, 2020 through December 31, 2020.[15]

II. Request for Public Comment

The Department seeks information about the need for, benefits of, and specific strategies to implement paid leave. Information from members of the general public, employers, employees, and the research community on paid leave policy and practice can inform the Women's Bureau in documenting, developing, and reporting on promising paid leave practices and provide valuable input for state and federal implementation of paid leave policies, including the benefits and costs associated with different approaches to paid leave.

As such, the Department seeks input from stakeholders, employers, and employees on the benefits of paid leave for workers and their families within the following general framework, as well as responses to the specific questions listed below.

In broad terms, the Department is seeking to understand the following:

- The benefits of paid leave, the costs of paid leave, and the measurement of costs and benefits.
- The beneficiaries of paid leave and the bearer of the costs.
- The unique needs of workers and employers in regard to paid time off for care obligations.
- The features of the existing public (*e.g.,* state-administered) and private (employer-provided) programs that work well, reasons those features work well, and features and provisions that make a paid leave program successful for all stakeholders.
- The features of the existing public and private programs that do not work well or are burdensome, the reasons why, and any features and provisions that present challenges for stakeholders.
- Answers to the following questions: Are there barriers to implementing or improving paid leave? Are there regulatory barriers to providing paid leave? What could be done to improve existing programs, which include state and employer-sponsored paid options? What are the impediments, costs and otherwise, faced in implementing those improvements?
- The challenges of balancing costs and benefits with paid leave and the differences in costs and benefits among types and sizes of employers, including small businesses.

The Department invites interested parties who have knowledge of and/or experience with workplaces and states with and without paid leave to submit comments, information, and data. The Department has provided the questions above as suggestions to frame the responses, but they are not the Department's sole interest. Comments on other paid leave issues are also welcome.

The Women's Bureau is looking for an assessment of paid leave in the U.S. from the general public and from a diverse array of stakeholders. Stakeholders include state and local officials, employers, unions, workers, individuals who are not currently employed, faith-based and other

[5] Juliana Menasce Horowitz et al. 2017. *Americans Widely Support Paid Family and Medical Leave, but Differ over Specific Policies.* Pew Research Center, *http://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/.*

[6] Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak. 2014. *Family and Medical Leave in 2012: Technical Report.* Abt Associates Inc., *https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf.*

[7] *https://www.dol.gov/agencies/whd/fmla.*

[8] *https://www.dol.gov/agencies/whd/fmla.* Due to non-traditional work schedules, airline flight attendants and flight crew members are subject to a special hours of service eligibility requirement.

[9] Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak. 2014. *Family and Medical Leave in 2012: Technical Report.* Abt Associates Inc., *https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf.*

[10] Federal Employee Paid Leave Act, *in* National Defense Authorization Act for Fiscal Year 2020 (2020 NDAA), Public Law 116–92, §§ 7601–7606, 133 Stat. 1198, 2304–08.

[11] Eligible federal workers are employees covered by Title 5 of the United States Code. Legislation has been introduced to include those covered by Title 38 as well. *See* S. 3104, 116th Cong. (Dec. 18, 2019), *https://www.congress.gov/116/bills/s3104/BILLS-116s3104is.pdf.*

[12] *See* 2020 NDAA, §§ 7602(a)(3)(E), (F); *see also* U.S. Office of Personnel Management. *Memorandum for Heads of Executive Departments and Agencies.* Paid Parental Leave for Federal Employees. December 27, 2019. *https://www.chcoc.gov/content/paid-parental-leave-federal-employees.*

[13] Fiscal Year 2021 Department of Labor Budget in Brief. *https://www.dol.gov/sites/dolgov/files/general/budget/2021/FY2021BIB.pdf.*

[14] Public Law 116–127, 134 Stat 178 (Mar. 18, 2020); 29 CFR part 826.

[15] U.S. Dep't of Labor, Wage & Hour Div., *Temporary Rule: Paid Leave under the Families First Coronavirus Response Act, https://www.dol.gov/agencies/whd/ffcra https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave.*

community organizations, universities and other institutions of higher education, foundations, chambers of commerce, and other interested parties with experience or expertise in paid leave. DOL recognizes that some questions may be more relevant to particular respondents, but seeks as much information as respondents can provide on all questions in the request. Commenters should identify the question to which they are responding where possible.

Although the term ''paid leave'' may be used to refer to different types of policies, for the purposes of this information collection, paid leave means absence from work, during which an employee receives compensation, to care for a spouse, parent, child, or his or her own health. Specifically, paid leave is limited to circumstances such as the following:

- The birth of a child and to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- Caring for the employee's spouse, child, or parent who has a serious health condition; or
- A serious health condition that makes the employee unable to perform the essential functions of his or her job.

We request commenters to identify barriers or policies and to indicate, with a citation if possible, the source/level (*e.g.,* federal, state, local) of the barrier or policy, as well as the types of leave (*e.g.,* parental leave for the birth or adoption of a child, care for a seriously ill family member, the employee's own serious illness, and/or other leave) that is impacted. If you are a business or organization, please include the number of employees at each worksite and in the organization/business as a whole when answering the questions below.

The Department suggests the following questions to frame the responses:

1. Who benefits from paid leave and who bears the costs?

2. What are the needs of workers and employers when it comes to paid time off for care obligations? What elements of the existing public (*e.g.,* state-administered) and private (employer-provided) options work well? Why do they work well? Are there any features and provisions that make a paid leave program successful for all stakeholders?

3. What does not work well and why; and what are the existing gaps? What could be done to improve the existing patchwork of programs, which include state and employer-sponsored paid options? What are the impediments, costs and otherwise, faced in implementing those improvements?

4. How do costs and benefits balance with paid leave? Are there differences in costs and benefits among types and sizes of employers? What are the primary drivers of both costs and benefits? For example, are costs correlated with the duration of leave? Do the benefits of paid leave decrease after a certain duration of leave?

5. Are individual businesses, localities, states, or the government best equipped to provide standards for paid leave? Are employer-based or state-based programs more effective in the administration of paid leave programs?

6. Do employer-provided paid leave programs offer more generous benefits than state paid leave programs?

7. Do employers who already offer paid leave programs continue to do so when state mandates or programs are instituted, or does the state mandate standardize the paid leave program offered by employers in the state, leading some employers to drop more generous programs?

8. What are the features of an ideal paid leave program, from the perspective of a worker or employer? For example:

i. What would be the ideal duration?

ii. How much pay should be replaced? Should the rate of replacement vary depending on how long leave has lasted?

iii. Should it be permissible to take leave intermittently? Should there be a time period within which intermittent leave must be taken?

iv. Are there other program elements not listed here that are important to consider?

9. What are the benefits and/or burdens of having access to paid leave for yourself and your family?

10. If you do not have access to paid leave, have you experienced individual or family circumstances for which you would have taken paid leave if it had been available? How might paid leave have effected those particular situations or outcomes?

11. Do workers who take paid leave have difficulty reintegrating into the workplace?

12. What components currently make up or would make up a successful paid leave program at your business? (For example: Job protection, wage replacement level, duration of leave, minimum employment tenure allowed prior to accessing paid leave.)

13. What is your company's current paid leave policy? Include specific components such as job protection, wage replacement level, duration of leave, and minimum employment tenure allowed prior to accessing paid leave.

14. What are the benefits and costs of paid leave to your company and how are those benefits measured? Can they be quantified?

15. Are there impediments to making adjustments to your company's paid leave policy?

16. Does your company have established strategies for backfilling extended absences by employees out on paid leave, owing to circumstances like medical illness and treatment, the birth or adoption of a child, accident recovery, etc.? Please describe.

17. What are the benefits and/or burdens of operating a business in a jurisdiction that has paid leave laws?

18. What are the barriers to your company establishing a paid leave program?

19. Different types and sizes of businesses may face unique challenges to providing paid leave. Please describe unique challenges to your businesses, industry, or locale in offering paid leave.

20. What questions could be added to existing surveys, such as the American Time Use Survey or FMLA survey, that might inform paid leave policy?

21. What additional cost-benefit research for different sizes of employers, different localities, for state-mandated compared to employer-provided plans, or for employers and workers would be helpful to inform policy?

22. How will requirements for paid leave economically impact small businesses, small non-profits, or small governmental jurisdictions with a population of under 50,000? What are the costs, benefits, and are there alternatives that would minimize these impacts?

23. Are there key insights to be taken from FFCRA?

III. Conclusion

The Department invites interested parties to submit comments, information, and data based on the questions provided in this RFI. The Department is requesting information on a number of paid leave topics, including the effectiveness of current state- and employer-provided paid leave programs, how access or lack of access to paid leave programs has impacted women and their families, and challenges faced by employers. The information provided by workers, employers, researchers and other stakeholders will help the Department identify promising practices

for models of existing paid leave programs.

Laurie Todd-Smith,

Director, Women's Bureau.

[FR Doc. 2020–14874 Filed 7–15–20; 8:45 am]

BILLING CODE 4510–HD–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 (NEH) will hold thirteen meetings, by videoconference, of the Humanities Panel, a Federal advisory committee, during August 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.

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: August 3, 2020

This video meeting will discuss applications on the topics of Medieval Studies and European Literature, for the Fellowships grant program, submitted to the Division of Research Programs.

2. Date: August 4, 2020

This video meeting will discuss applications on the topics of Philosophy and Religion, for the Fellowships grant program, submitted to the Division of Research Programs.

3. Date: August 4, 2020

This video meeting will discuss applications on the topics of Religious Studies and American Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

4. Date: August 5, 2020

This video meeting will discuss applications on the topics of European Studies, Political Science, and Jurisprudence, for the Fellowships grant program, submitted to the Division of Research Programs.

5. Date: August 5, 2020

This video meeting will discuss applications on the topics of Music, Dance, Theater, and Film, for the Fellowships grant program, submitted to the Division of Research Programs.

6. Date: August 6, 2020

This video meeting will discuss applications on the topics of Ancient World and Art History, for the Fellowships grant program, submitted to the Division of Research Programs.

7. Date: August 6, 2020

This video meeting will discuss applications on the topic of Digital Preservation, for the Research and Development grant program, submitted to the Division of Preservation and Access.

8. Date: August 7, 2020

This video meeting will discuss applications on the topics of American Literature and Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

9. Date: August 7, 2020

This video meeting will discuss applications on the topic of Literature, for the Fellowships grant program, submitted to the Division of Research Programs.

10. Date: August 11, 2020

This video meeting will discuss applications on the topic of Digital Heritage, for the Research and Development grant program, submitted to the Division of Preservation and Access.

11. Date: August 12, 2020

This video meeting will discuss applications on the topic of Material Culture, for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

12. Date: August 13, 2020

This video meeting will discuss applications on the topic of Services, for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

13. Date: August 18, 2020

This video meeting will discuss applications on the topics of Media and Technology, for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

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: July 13, 2020.

Caitlin Cater,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2020–15397 Filed 7–15–20; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0149]

Information Collection: NRC Form 629, ''Authorization for Payment by Credit Card''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a renewal for an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 629, ''Authorization for Payment by Credit Card.''

DATES: Submit comments by August 17, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone:

301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0149 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0149.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19295G760. The supporting statement is available in ADAMS under Accession No. ML20155K809.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 629, ''Authorization for Payment by Credit Card.''

The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 20, 2020, 85 FR 16148.

1. *The title of the information collection:* ''Authorization for Payment by Credit Card.''

2. *OMB approval number:* 3150–0190.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 629.

5. *How often the collection is required or requested:* As needed.

6. *Who will be required or asked to respond:* NRC licensees.

7. *The estimated number of annual responses:* 400.

8. *The estimated number of annual respondents:* 400.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 10 minutes.

10. *Abstract:* The Nuclear Regulatory Commission (NRC) bills licensees, applicants, and individuals for the payment of civil penalties, full cost licensing fees, inspection fees, and other fees. The four methods used to pay bills owed to the NRC are: (1) Payment by Automated Clearinghouse Network (ACH); (2) Payment by Credit Card; (3) Payment by Electronic Funds Transfer/FedWire; and (4) Payment by Check. NUREG/BR–0254, ''Payment Methods'' provides instructions on how to transfer monies owed to the NRC; no information is collected by the NRC in using this brochure. NRC Form 629, ''Authorization for Payment by Credit Card'' is an optional form used to authorize payment by credit card.

Dated: July 10, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–15302 Filed 7–15–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–87; CP2020–67]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 20, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–87; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 507, Filed Under Seal; *Filing Acceptance Date:* July 10, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 20, 2020.

2. *Docket No(s).:* CP2020–67; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 36, Filed Under Seal; *Filing Acceptance Date:* July 10, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 20, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–15372 Filed 7–15–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89291; File No. SR–CboeEDGA–2020–019]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Applicable to Its Equities Trading Platform To Introduce a Flat Charge for the Execution of MDOs That Are Entered With the QDP Instruction

July 10, 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 July 1, 2020, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fee schedule applicable to its equities trading platform to introduce a flat charge for the execution of MDOs that are entered with the QDP instruction. 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/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 4, 2020, the Commission approved the Exchange's proposed introduction of a new order instruction, Quote Depletion Protection (''QDP''), that is available for Midpoint Discretionary Orders (''MDOs'').[3] QDP, which was launched by the Exchange on June 10, 2020, is designed to provide enhanced protections to MDOs by tracking significant executions on the EDGA Book, and facilitating the ability of Users to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered. The Exchange now proposes to introduce a flat charge for the execution of MDOs that are entered with the QDP instruction.

EDGA operates pursuant to an inverted pricing model where orders that add liquidity are generally charged a fee, and orders that remove liquidity are generally provided a rebate. Unlike MDOs entered on the Exchange's affiliate, Cboe EDGX, Exchange, Inc. (''EDGX''), MDOs entered on the Exchange pursuant to EDGA Rule 11.8(e) are allowed to execute both on entry and also after resting on the EDGA Book. MDOs that are executed on the Exchange may therefore be subject to a fee, rebate, or in some instances free executions, depending on whether the order is executed as the adder or remover of liquidity, and whether or not the order is executed within its discretionary range. Specifically, an MDO that adds liquidity is currently charged a fee of $0.00300 per share for securities priced at or above $1.00.[4] This fee applies to MDOs that are executed either within the order's discretionary range or at its displayed or non-displayed ranked price.[5] Conversely, for MDOs that remove liquidity in securities priced at or above $1.00, the Exchange's pricing depends on whether the order is executed within its discretionary range or at its displayed or non-displayed ranked price. Specifically, the Exchange currently provides a rebate of $0.00240 per share for MDOs that remove liquidity at the order's displayed or non-displayed ranked price,[6] but instead offers free executions for MDOs that remove liquidity within the order's discretionary range, in each case for securities priced at or above $1.00.[7] For all MDOs executed in securities priced below $1.00, the Exchange provides free executions, regardless of whether the order is executed as the adder or remover of liquidity, or whether or not

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89016 (June 4, 2020), 85 FR 35488 (June 10, 2020) (SR–CboeEDGA–2020–005).

[4] *See* EDGA Fee Schedule, Fee Codes DA and DM.

[5] *Id.*

[6] *See* EDGA Fee Schedule, Fee Code DR.

[7] *See* EDGA Fee Schedule, Fee Code DT.

the order is executed within its discretionary range.[8]

The Exchange now proposes to instead introduce a small flat fee for the execution of an MDO that is entered with a QDP instruction. As proposed, MDOs entered with a QDP instruction would be subject to a fee of $0.00040 per share for securities priced at or above $1.00, or 0.30% of the dollar value of the trade for securities priced below $1.00.[9] This charge would apply to the execution of MDOs that are entered with a QDP instruction, regardless of whether a QDP Active Period has been enabled in the security. MDOs entered without the optional QDP instruction would continue to be subject to current pricing. The Exchange's affiliate, Cboe EDGX Exchange, Inc. (''EDGX'') is simultaneously proposing a similar flat fee pricing model for MDOs entered with a QDP instruction that are executed on that exchange.[10]

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 other persons using its facilities. Specifically, the Exchange believes that the proposed rule change is consistent with the requirements of the Act as it is designed to compensate the Exchange for the development of new and innovative market features, *i.e.,* QDP, while continuing to provide a pricing model that the Exchange believes is competitive with pricing models offered by other national securities exchanges and off-exchange venues that offer similar protective features to their customers. 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. The proposed rule change reflects a competitive pricing structure designed both to compensate the Exchange for the introduction of innovative features and allow it to continue to compete aggressively with other market centers.

As discussed, the proposed rule change would introduce pricing that is specific to MDOs entered with the recently-introduced QDP instruction. Although such MDOs would be subject to a small flat fee instead of a fee, rebate, or free execution under the current pricing model, the Exchange believes that the proposed pricing is reasonable given the enhanced benefits provided to Users that choose to utilize the protective features provided by the QDP instruction. QDP, which was introduced on the Exchange in June, is designed to facilitate the ability for market participants, including buy-side and other investors, to avoid potentially unfavorable executions in an MDO's discretionary range by preventing the exercise of discretion for two milliseconds following the execution of the EDGA best bid or offer on the same side of the market as the MDO below one round lot. While market participants that use this instruction would be subject to a small flat charge, including when the order adds or removes liquidity, the Exchange believes that the value of the protection provided by this feature outweighs the small fee that would be charged by the Exchange. Further, the proposed pricing may actually be beneficial to market participants that primarily add liquidity with MDOs as the proposed flat fee would be lower than the fee charged under the current MDO pricing model. In this respect, the Exchange notes that although MDOs entered on the EDGA Book may remove liquidity, both MDOs and the associated QDP instruction are designed primarily to facilitate liquidity provision by buy-side and other investors that are seeking protection from potential adverse selection risks. As a result, the Exchange believes that the benefits of more attractive pricing for adding liquidity may outweigh, in many respects, the costs of paying a fee when removing liquidity.

The Nasdaq Stock Market LLC (''Nasdaq'') similarly charges special fees for the use of orders that are designed to offer certain protections to market participants. Specifically, Nasdaq charges a fee of $0.0004 per share to members that trade using its Midpoint Extended Life Order (''M–ELO'') in securities priced at or above $1.[13] The Exchange believes that the proposed fees would be competitive with the fees that Nasdaq charges for M–ELO executions, as well as the fees charged by other national securities exchanges and off-exchange venues that provide various protective features.[14] QDP is offered on a voluntary basis, and therefore market participants that would prefer to operate under the current pricing structure can continue to enter MDOs without the QDP instruction. The Exchange believes, however, that market participants may find value in the use of the QDP instruction, and—similar to firms that trade using Nasdaq M–ELO, IEX Discretionary Peg, or other similar trading mechanisms—would be willing to pay a small flat fee to benefit from the protections that this instruction is designed to provide to investors.

The Exchange also believes that the proposed fee change is equitable and not unfairly discriminatory because it would apply equally to all MDOs entered with a QDP instruction. As discussed, QDP is an optional order instruction that a market participant can choose to include on an MDO entered on the Exchange in order to benefit from enhanced protections at times when recent executions on the EDGA Book suggest that the market may be about to move against the resting MDO. Both the MDO order type and the associated QDP instruction are available to all Users on an equal and non-discriminatory basis, and any User that chooses to use the QDP instruction would be subject to the same fee. As proposed, any MDO entered with a QDP instruction would be charged a small flat fee, regardless of how the order is ultimately executed. That is, an MDO entered with a QDP instruction would always be subject to a small transaction fee, whether or not the order acts as the adder or remover of liquidity, whether or not the MDO is executed within its discretionary range or at its displayed or non-displayed ranked price, and irrespective of whether or not the MDO is executed during a QDP Active Period where executions within the order's discretionary range are prevented.

Although MDOs that include the new QDP instruction would be subject to a simplified pricing model compared to MDOs that do not include this instruction, the Exchange does not believe that this is inequitable or unfairly discriminatory within the meaning of the Act. All similarly

[8] *See* EDGA Fee Schedule, Fee Codes DA, DM, DR, and DT.

[9] To effect this change, the Exchange would introduce a new fee code ''DQ'' to its fee schedule that applies to MDOs entered with a QDP instruction.

[10] *See* SR–CboeEDGX–2020–032 (pending publication).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 118(a)(1),(2),(3). Nasdaq does not charge a fee for M–ELO executions in securities priced below $1. *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 118(b).

[14] For example, Investors Exchange LLC (''IEX''), charges a fee of $0.0009 or $0.0003 per share for adding or removing non-displayed or displayed liquidity, respectively. *See* IEX Fee Schedule, Fee Codes I and L. Although IEX does not have special pricing for its Discretionary Peg Orders, which are similar in certain respects to an MDO entered with a QDP instruction, firms that trade such orders on IEX would be subject to the general transaction fees described above.

situated market participants would be subject to consistent and non-discriminatory pricing based on the instructions that they include on their MDOs, with Users that include the optional QDP instruction paying a small fee that the Exchange believes is modest in relation to the value provided by the QDP instruction in avoiding potentially unfavorable executions. The proposed pricing is designed to be attractive to Users that enter MDOs with a QDP instruction, notwithstanding the fact that market participants would be subject to a fee in all circumstances. Further, the Exchange believes that the ability to charge a flat fee for the execution of such orders would appropriately compensate the Exchange for the development of this feature, while allowing the Exchange to offer pricing that is competitive with other national securities exchanges and off-exchange venues that may offer competing features. To the extent that any particular User believes that the benefits of the QDP instruction are outweighed by the proposed pricing, such Users would be free to enter MDOs without the QDP instruction, in which case their orders would be subject to the same pricing offered today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed changes to its fees would promote continued competition between the Exchange, other national securities exchanges, and off-exchange venues that must continuously compete to offer both competitive pricing and services to members and investors. As proposed, the Exchange would charge a small flat fee for the use of its recently-introduced QDP instruction. Charging fees for the use of this instruction would both compensate for the development and introduction of new and innovative features, and provide continued incentives for the Exchange to compete on both cost and the quality of its products and services.

Intramarket Competition

The Exchange believes the proposed rule change would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees would apply to all members equally in that all members would be subject to the same flat fee for the execution of orders that include a QDP instruction. The Exchange and other national securities exchanges (*e.g.,* Nasdaq) offer pricing that is based on the characteristics of the order that is executed on the Exchange. Although MDOs entered with the QDP instruction would be subject to the pricing described in this proposed rule change, the Exchange does not believe that pricing would impose any significant burden on intramarket competition as this fee would be applied in the same manner to the execution of any MDO entered with this instruction. Both MDO and the associated QDP instruction discussed in this filing are available to all Users on an equal and non-discriminatory basis. As a result, any User can decide to use (or not use) the QDP instruction based on the benefits provided by that instruction in potentially avoiding unfavorable executions, and the associated charge that the Exchange proposes to introduce for its use. As discussed, any firm that chooses to use the QDP instruction would be charged the same flat fee for the execution of orders that are entered with this instruction.

Intermarket Competition

The Exchange also believes the proposed fees would not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed, the Exchange operates in a highly competitive market where members can direct their orders to a number of different market centers. These include 12 live U.S. equities exchanges, as well as a large number of off-exchange venues that trade NMS stocks. In addition, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 20% of U.S. equities market share.[15] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable, or if they believe that the products and services that they offer are better serve their trading needs. Since competitors are free to modify their own pricing in response, and as market participants may readily adjust their order routing practices, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited.

Conclusion

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share to competing exchanges and off-exchange venues as a result. Accordingly, the Exchange does not believe that the proposed changes would impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Indeed, 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.'' [16]

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'. . . .''.[17] Accordingly, the Exchange does not believe the proposed fees impose 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

No written comments were either solicited or received.

[15] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 28, 2020), available at *http://markets.cboe.com/us/equities/market_share/.*

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[17] *See* NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

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 [18] and paragraph (f) of Rule 19b–4 [19] 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–CboeEDGA–2020–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2020–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2020–019, and should be submitted on or before August 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15304 Filed 7–15–20; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89286; File No. SR–ICC–2020–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Risk Management Framework, ICC Risk Management Model Description, ICC Risk Parameter Setting and Review Policy, ICC Stress Testing Framework, and ICC Liquidity Risk Management Framework

July 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 [2], notice is hereby given that on July 1, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to make changes to ICC's Risk Management Framework (''RMF''), Risk Management Model Description (''RMMD''), Risk Parameter Setting and Review Policy (''RPSRP''), Stress Testing Framework (''STF''), and Liquidity Risk Management Framework (''LRMF''). These revisions do not require any changes to the ICC Clearing Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revising its RMF, RMMD, RPSRP, STF, and LRMF. The proposed amendments would update certain stress scenario naming conventions to be more generic and introduce stress scenarios related to the Coronavirus pandemic and oil price war in March 2020 (''COVID–19/Oil Crisis Scenarios''). The proposed amendments would also make clarification changes, including adding additional transparency and clarity with respect to ICC's liquidity risk management practices. ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to move forward with implementation of such changes following Commission approval of the proposed rule change.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ICC has filed with the Commission changes related to clearing credit default index swaptions (''Index Swaptions''), which ICC intends to implement following the completion of the ICC governance process surrounding the Index Swaptions product expansion and Commission approval of any related policies and procedures. SEC Release No. 34–87297 (Oct. 15, 2019) (approval), 84 FR 56270 (Oct. 21, 2019) (SR–ICC–2019–007); SEC Release No. 34–89142 (June 24, 2020) (approval), 85 FR 39226 (June 30, 2020) (SR–ICC–2020–002); SEC Release No. 34–89072 (June 16, 2020) (notice), 85 FR 37483 (June 22, 2020) (SR–ICC–2020–008). ICC similarly proposes to implement any changes in this proposed rule change that impact the documentation in respect of Index Swaptions after completion of the governance process surrounding the Index Swaptions product expansion and Commission approval of any related policies and procedures.

The proposed revisions are described in detail as follows.

I. Updated Stress Scenario Naming Conventions and Clarifications

The proposed revisions consist of replacing naming conventions for stress scenarios associated with the Lehman Brothers (''LB'') default with more generic naming conventions associated with extreme price changes, namely extreme price decreases and increases (the ''Extreme Price Change Scenarios'').

Risk Management Framework

ICC proposes to replace references to the LB default with more generic references to extreme market events. Currently, to achieve anti-procyclicality (''APC'') of initial margin requirements, Section IV.B.1 discusses two price based scenarios, associated with price decreases and increases, and states that the considered stress price changes are derived from market behavior during and after the LB default period. ICC proposes to replace the LB default with a reference to extreme market events to state that the considered stress price changes are derived from extreme market events related to the default of a large market participant, global pandemic problem, regional or global economic crisis. Moreover, to achieve APC of Guaranty Fund sizing, Section IV.E.1 of the current RMF discusses two price based scenarios, associated with price decreases and increases, and states that the considered stress price changes are derived from market behavior during and after the LB default period. ICC proposes to similarly replace the LB default with a reference to extreme market events.

Risk Management Model Description

ICC proposes related changes to incorporate the Extreme Price Change Scenarios into the RMMD. ICC would replace references and notations to the scenarios associated with the LB default with the Extreme Price Change Scenarios throughout the document in both the Initial Margin and Guaranty Fund Methodology sections. ICC would introduce the Extreme Price Change Scenarios in Section VII.3.3, which discusses APC measures. Currently, this section examines instrument price changes observed during the LB default. As amended, this section would examine instrument price changes observed during extreme market events and would include considerations related to the greatest price decreases and increases over a number of consecutive trading days during the period of extreme market events. This section would also state that the Extreme Price Change Scenarios reflect extreme market events related to the default of a large market participant, global pandemic problem, regional or global economic crisis and would explain how these scenarios are derived. Moreover, this section would introduce a factor that would be associated with one of the Extreme Price Change Scenarios and reference the RPSRP for details on how it is set. In the context of Index Swaptions, the formulas used would also be updated to reference the Extreme Price Change Scenarios in Section VII.3.3 and minor clarifications would be included for certain descriptions associated with option instruments in respect of the remaining time to expiry in Sections VII.3.3 and X.3.1.

ICC also proposes other minor clarification or clean-up changes to the RMMD. Specifically, ICC proposes to add language to clarify a notation in an equation in Section VII.1.2.1 and update cross-references in Section IX.

Risk Parameter Setting and Review Policy

ICC proposes corresponding changes that incorporate the Extreme Price Change Scenarios into the RPSRP. Table 1 in Section 1.1 contains ICC's core model parameters and would be amended to incorporate the abovementioned factor associated with one of the Extreme Price Change Scenarios. In Section 1.7, ICC proposes another category of parameters associated with the integrated spread response model component, namely the APC level parameters, and a new subsection to correspond to this category. ICC proposes to introduce the Extreme Price Change Scenarios in this subsection. As discussed above, the Extreme Price Change Scenarios consider the greatest observed price decreases and increases over a number of consecutive trading days within the period of extreme market events related to the default of a large market participant, global pandemic problem, regional or global economic crisis. Moreover, ICC would set out how these scenarios are derived as well as how the abovementioned factor is estimated. ICC would further summarize the associated review and governance process, including the reviewers and any prerequisites to the implementation of parameter updates.

II. Introduction of New Stress Scenarios and Clarifications

The proposed changes to the STF and the LRMF introduce the COVID–19/Oil Crisis Scenarios. Additional proposed changes to the LRMF provide transparency and clarity with respect to ICC's liquidity risk management practices and ensure scenario unification among the STF and LRMF as ICC operates its stress testing and liquidity stress testing on a unified set of stress testing scenarios.

Stress Testing Framework

ICC proposes to amend the STF to introduce the COVID–19/Oil Crisis Scenarios. In Section 3, ICC would define extreme market events to include the Coronavirus pandemic and the simultaneous occurrence of the oil price war. In Section 5, the category of scenarios deemed as Historically Observed Extreme but Plausible Market Scenarios: Severity of Losses in Response to a Baseline Credit Event would be renamed more generally to Historically Observed Extreme but Plausible Market Scenarios: Severity of Losses in Response to Baseline Market Events and the associated description would be updated to replace the LB default with a more general description of extreme market events (*i.e.,* events related to the default of a large market participant, global pandemic problem, and regional or global economic crisis). ICC proposes conforming changes to Section 5.2, which corresponds to this category of scenarios, including updating the heading and adding a general description of the category followed by the associated scenarios, which would include the COVID–19/Oil Crisis Scenarios, in bulleted form. ICC also proposes to incorporate reference to the COVID–19/Oil Crisis Scenarios into the other categories of scenarios, namely Hypothetically Constructed (Forward Looking) Extreme but Plausible Market Scenarios and Extreme Model Response Test Scenarios in Sections 5.3 and 5.4, respectively, and to replace references to LB default with more general references to baseline market events and price changes in Section 5.4. In Section 13, ICC proposes to add the COVID–19/Oil Crisis Scenarios to the list of Historically Observed and Hypothetically Constructed Extreme but Plausible Scenarios. Also, in Section 13, ICC proposes to remove a footnote to avoid redundancy as such information can be found in the text of Section 14.

Liquidity Risk Management Framework

The proposed amendments to the LRMF incorporate the COVID–19/Oil Crisis Scenarios, provide additional clarity with respect to ICC's liquidity risk management practices, and ensure unification of the LRMF and STF, including with respect to scenario descriptions and governance procedures.

ICC proposes revisions to Section 2 to provide additional clarity on ICC's liquidity risk management practices. ICC would add explanatory language classifying scenarios as ''extreme and not expected to be realized'' and ''extreme but plausible'' based on risk horizons in Section 2.3 and reference such classifications throughout the document, particularly in Section 3. ICC would clarify actions that it can take only in the event of a CP default, specifically related to pledgeable collateral in Section 2.6, and actions that it can take irrespective of a CP default or non-default scenario, related to accessing committed repurchase (''repo'') and committed foreign exchange (''FX'') facilities in Section 2.7. ICC proposes revisions to Section 2.8 that describes ICC's liquidity waterfall, which defines the order, to the extent practicable, that ICC uses its available liquid resources (''ALR'') to meet its currency-specific cash payment obligations. ALR consist of the available deposits currently in cash of the required denomination, and the cash equivalent of the available deposits in collateral types that ICC can convert to cash, in the required currency of denomination, rapidly enough to meet the relevant, currency-specific deadlines by which ICC must meet its liquidity obligations (''ICC Payout Deadlines''). Under the amendments, to enable an assessment of the impact of a service provider becoming unavailable and/or overnight investments not unwinding by the relevant ICC Payout Deadlines, the cash on deposit component of ALR considered across all levels of the liquidity waterfall may be adjusted to be a portion, the Available Percentage (''AP''), of the actual cash on deposit. The proposed amendments further discuss the determinations of ALR if the analysis assumes the use of the committed repo facilities.

ICC proposes amendments to Section 3.3 that provide additional clarity or promote consistency between the STF and LRMF. The proposed changes add background on ICC's stress testing analysis and reorganize Section 3.3 into four parts. Proposed Section 3.3.1 describes ICC's stress test methodology that uses a set of stress scenarios and establishes if the ALRs are sufficient to cover hypothetical liquidity obligations. This section also includes language describing the Forward Looking (Hypothetically Constructed) Scenarios that is consistent with the STF, such as details on their construction and on the calculation of Loss-Given-Default (''LGD'') and Expected LGD with respect to these scenarios. Proposed subpart (a) details ICC's cover-2 analysis, which demonstrates to what extent the required liquidity resources available to ICC were sufficient to meet single and multi-day cover-2 liquidity obligations under the considered scenarios.

Proposed Section 3.3.2 sets forth the predefined scenarios that ICC maintains for liquidity stress testing and is divided into the following consistent with the STF: (a) Historically Observed Extreme but Plausible Market Scenarios, (b) Historically Observed Extreme but Plausible Market Scenarios: Severity of Losses in Response to Baseline Market Events, (c) Hypothetically Constructed (Forward Looking) Extreme but Plausible Market Scenarios, and (d) Extreme Model Response Tests. ICC would incorporate the COVID–19/Oil Crisis Scenarios in part (b) and amend the terminology describing the LGD scenarios in part (c), including by consistently referring to reference entity groups as Risk Factor Groups (''RFGs''),[4] more specifically defining references entities and CP RFGs, and specifying the reference entities in a RFG for stress testing. In part (c), ICC would clarify its description of the one-service-provider-down scenarios which consider a reduction in ALR designed to represent ICC's exposure to service providers at which it maintains cash deposits, invested cash deposits or collateral against invested cash deposits, due to ICC's potential inability to access those accounts when required. ICC also proposes to update terminology to incorporate the AP in part (c) and add details on the ICC Risk Department's analysis of the AP.

ICC proposes additional amendments to Section 3.3.3 regarding its stress testing analysis approach. ICC proposes to add explanatory language related to portfolios that present specific wrong way risk and regarding sequencing defaulting CP AGs for stress scenarios. Table 1, which lists scenarios used in ICC's liquidity stress testing and assigns each scenario to a group for reporting purposes, would be amended to incorporate additional columns detailing the corresponding report and classification/frequency and reorganized to add additional groups and scenarios (*e.g.,* the COVID–19/Oil Crisis Scenarios) for completeness.

In proposed Section 3.3.4, ICC discusses its interpretation of liquidity stress test results, including governance procedures for enhancing the liquidity risk management methodology and procedures to meet its reporting obligations. Proposed Figure 2 further illustrates ICC's categorization of hypothetical losses. Specifically, depending on whether there are sufficient liquidity resources across certain levels of the liquidity waterfall, stress test results could be in one of three zones (green, yellow, or red) that have different reporting requirements. Results in the red zone are considered poor and reporting to the ICC Risk Committee or the Board would be required.

ICC proposes additional clarification changes to the LRMF. ICC proposes language in Section 4.3 regarding its determination of poor stress testing and/or historical analysis, noting the ICC individuals responsible for making such determination, who would be the same individuals designated in the STF as responsible for determining poor stress testing performance. Proposed Section 6 is an appendix that sets forth the computation of liquidity resources and remaining liquidity resources across the levels of the liquidity waterfall, including formulas for calculating currency-specific cash ALRs and currency-specific cash remaining ALRs. Such changes are explanatory and do not amend the methodology. ICC also proposes to update Table 2, which illustrates a specific report, to reorganize and include additional groups to be consistent with amended Table 1.

ICC proposes other minor clarification or non-material clean-up changes to the LRMF. The proposed revisions update terminology to clarify an objective of the framework in Section 1.3 and abbreviate a defined term in Section 1.4. The proposed changes also add quotation marks around a defined term in Section 2.3; clarify ICC's use of ALR in Section 2.8, including by moving two sentences earlier in the section and incorporating reference to required currencies of denomination; and rephrase a sentence for clarity in Section 2.8.4. ICC proposes to include terminology updates with respect to the scenarios described in Sections 3.1 and 3.3 for consistency and clarity and to amend Section 3.3.2 to make certain terms lowercase, renumber subsections, update formatting, and add and update relevant cross-references. Additionally, ICC proposes minor terminology clarifications in describing its stress test analysis in Section 3.3.3 and ICC's governance procedures in Sections 4.1 through 4.3, such as making certain terms lowercase, more clearly describing certain terms, and abbreviating defined terms.

[4] ICC deems each single name reference entity a Risk Factor. ICC deems a set of single name Risk Factors related by a common parental ownership structure a RFG.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[6] In particular, Section 17A(b)(3)(F) of the Act [7] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. As discussed herein, the proposed rule change would update certain stress scenario naming conventions to be more generic, introduce the COVID–19/Oil Crisis Scenarios, and make clarification changes in the documentation. The proposed changes updating the stress scenario naming conventions to be more generic afford ICC with the necessary flexibility to update such stress scenarios, thereby strengthening the documentation of the RMF, RMMD, and RPSRP and ensuring that the documentation remains up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's risk management system. The proposed revisions also strengthen the STF and LRMF through the introduction of the COVID–19/Oil Crisis Scenarios, which would complement the current scenarios and add additional insight into potential weaknesses in the ICC risk management methodology. The proposed clarification and clean-up changes would further ensure readability and transparency, including with respect to ICC's risk methodology and practices in the RMMD and ICC's liquidity risk management practices in the LRMF. ICC believes that having policies and procedures that clearly and accurately document its risk management practices, including stress testing, liquidity stress testing, and risk parameter setting and review, are an important component to the effectiveness of ICC's risk management system and support ICC's ability to maintain adequate financial resources and sufficient liquid resources, which promotes the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. Accordingly, in ICC's view, the proposed rule change is consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8]

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[9] Rule 17Ad–22(e)(2)(i), (iii), and (v) [10] requires each covered clearing agency [11] to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; support the public interest requirements of Section 17A of the Act [12] applicable to clearing agencies, and the objectives of owners and participants; and specify clear and direct lines of responsibility. ICC's RMF, RMMD, RPSRP, STF, and LRMF clearly assign and document responsibility and accountability for risk decisions and require consultation or approval from relevant parties. Moreover, the proposed changes clearly define the governance procedures associated with the APC level parameters in the RPSRP and the interpretation of liquidity stress test results and the determination of poor stress testing and/or historical analysis in the LRMF, thereby providing additional transparency into ICC's governance arrangements and specifying clear and direct lines of responsibility. For instance, the proposed amendments in the LRMF set out the different reporting requirements applicable to stress test results based on three zones and note the ICC individuals responsible for the determination of poor stress testing and historical analysis. In ICC's view, the proposed rule change continues to ensure that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements that support the public interest requirements of Section 17A of the Act [13] applicable to clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility, consistent with Rule 17Ad–22(e)(2)(i), (iii), and (v).[14]

Rule 17Ad–22(e)(4)(ii) [15] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The introduction of the COVID–19/Oil Crisis Scenarios would complement the current scenarios in the documentation and add additional insight into potential weaknesses in the ICC risk management methodology, thereby supporting ICC's ability to manage its financial resources. Moreover, the proposed changes updating the stress scenario naming conventions to be more generic afford ICC with the necessary flexibility to update such stress scenarios and the proposed clarification and clean-up changes further ensure the readability and transparency of the documentation, thereby strengthening the documentation and ensuring that it remains up-to-date, clear, and transparent to support the effectiveness of ICC's risk management system. As such, the proposed amendments would strengthen ICC's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[16]

Rule 17Ad–22(e)(7)(i) [17] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] *Id.*

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[11] ICC will be a covered clearing agency subject to Rule 17ad–22(e) as of the effective date (July 13, 2020) as a result of the amended definition. 17 CFR 240.17Ad–22; Release No. 34–88616; File No. S7–23–16 (April 9, 2020), 85 FR 28853 (May 14, 2020).

[12] 15 U.S.C. 78q–1.

[13] *Id.*

[14] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[15] 17 CFR 240.17Ad–22(e)(4)(ii).

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(7)(i).

maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions. The introduction of the COVID–19/Oil Crisis Scenarios would complement the current scenarios in the documentation and add additional insight into potential weaknesses in the ICC liquidity risk management methodology, thereby supporting ICC's ability to ensure that it maintains sufficient liquidity resources. The proposed clarification changes to the LRMF provide further clarity and transparency regarding ICC's liquidity stress testing practices to strengthen the documentation surrounding ICC's liquidity stress testing methodology, including by providing additional scenario descriptions and details on the computation of liquidity resources, and ensuring uniformity with the STF. In terms of its liquidity risk management model, the proposed revisions also clarify actions that ICC can take only in the event of a CP default, specifically related to pledgeable collateral, and actions that it can take irrespective of a CP default or non-default scenario, related to accessing committed repo and committed FX facilities. The proposed changes to the LRMF further enhance ICC's approach to identifying potential weaknesses in the liquidity risk management system with additional procedures related to the determination of poor stress testing and/or historical analysis. As such, the proposed amendments would promote ICC's ability to ensure that it maintains sufficient liquid resources in accordance with the requirements of Rule 17Ad–22(e)(7)(i).[18]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to ICC's RMF, RMMD, RPSRP, STF, and LRMF will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

[18] *Id.*

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2020–009 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2020–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2020–009 and should be submitted on or before August 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15306 Filed 7–15–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89292; File No. SR–CboeEDGX–2020–032]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Applicable to Its Equities Trading Platform To Introduce a Flat Charge for the Execution of MDOs That Are Entered With the QDP Instruction

July 10, 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 July 1, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fee schedule applicable to its equities trading platform to introduce a flat charge for the execution of MDOs that are entered with the QDP instruction. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 4, 2020, the Commission approved the Exchange's proposed introduction of a new order instruction, Quote Depletion Protection (''QDP''), that is available for Midpoint Discretionary Orders (''MDOs'').[3] QDP, which was launched by the Exchange on June 10, 2020, is designed to provide enhanced protections to MDOs by tracking significant executions on the EDGX Book, and facilitating the ability of Users to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered. The Exchange now proposes to introduce a flat charge for the execution of MDOs that are entered with the QDP instruction.

EDGX operates pursuant to a maker/taker pricing model where orders that add liquidity are generally provided a rebate, and orders that remove liquidity are generally charged a fee. MDOs that are executed on the Exchange are therefore typically paid a rebate for adding liquidity.[4] Specifically, an MDO that adds liquidity within its discretionary range is currently paid a rebate of $0.00100 per share for securities priced at or above $1.00, or receives free executions for securities priced below $1.00.[5] An MDO that adds liquidity at its displayed or non-displayed ranked price would instead be paid a standard rebate of $0.00170 per share for securities priced at or above $1.00, or $0.00003 per share for securities priced below $1.00,[6] subject to a number of add volume tiers that are designed to incentivize additional liquidity on the EDGX Book.[7] Pursuant to Rule 11.8(g), MDOs entered on the EDGX Book always act as the provider of liquidity, and are therefore not subject to the Exchange's fees for removing liquidity.

The Exchange now proposes to instead introduce a small flat fee for the execution of an MDO that is entered with a QDP instruction. As proposed, MDOs entered with a QDP instruction would be subject to a fee of $0.00020 per share for securities priced at or above $1.00, or 0.30% of the dollar value of the trade for securities priced below $1.00.[8] This charge would apply to the execution of MDOs that are entered with a QDP instruction, regardless of whether a QDP Active Period has been enabled in the security. MDOs entered without the optional QDP instruction would continue to be subject to current pricing. The Exchange's affiliate, Cboe EDGA Exchange, Inc. (''EDGA'') is simultaneously proposing a similar flat fee pricing model for MDOs entered with a QDP instruction that are executed on that exchange.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. Specifically, the Exchange believes that the proposed rule change is consistent with the requirements of the Act as it is designed to compensate the Exchange for the development of new and innovative market features, *i.e.,* QDP, while continuing to provide a pricing model that the Exchange believes is competitive with pricing models offered by other national securities exchanges and off-exchange venues that offer similar protective features to their customers. 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. The proposed rule change reflects a competitive pricing structure designed both to compensate the Exchange for the introduction of innovative features and allow it to continue to compete aggressively with other market centers.

As discussed, the proposed rule change would introduce pricing that is specific to MDOs entered with the recently-introduced QDP instruction. Although MDOs, which are always executed on the Exchange as the maker of liquidity, would be subject to a small flat fee instead of a rebate, the Exchange believes that the proposed pricing is reasonable given the enhanced benefits provided to Users that choose to utilize the protective features provided by the QDP instruction. QDP, which was introduced on the Exchange in June, is designed to facilitate the ability for market participants, including buy-side and other investors, to avoid potentially unfavorable executions in an MDO's discretionary range by preventing the exercise of discretion for two milliseconds following the execution of the EDGX best bid or offer on the same side of the market as the MDO below one round lot. While market participants that use this instruction would be subject to a small flat charge, the Exchange believes that the value of the protection provided by this feature outweighs the small fee that would be charged by the Exchange.

[3] *See* Securities Exchange Act Release No. 89007 (June 4, 2020), 85 FR 35454 (June 10, 2020) (SR–CboeEDGX–2020–010).

[4] As discussed below, an MDO may be provided free executions instead of a rebate if it adds liquidity within its discretionary range for securities priced below $1.00.

[5] *See* EDGX Fee Schedule, Fee Code DM.

[6] *See* EDGX Fee Schedule, Standard Rates.

[7] *See* EDGX Fee Schedule, Footnote 1, Add Volume Tiers, and Footnote 2, Tape B Volume Tier. Current tiers may provide a rebate for adding liquidity that ranges from $0.0023 per share to $0.0029 per share.

[8] To effect this change, the Exchange would introduce a new fee code ''DQ'' to its fee schedule that applies to MDOs entered with a QDP instruction.

[9] *See* SR–CboeEDGA–2020–019 (pending publication).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

The Nasdaq Stock Market LLC (''Nasdaq'') similarly charges special fees for the use of orders that are designed to offer certain protections to market participants. Specifically, Nasdaq charges a fee of $0.0004 per share to members that trade using its Midpoint Extended Life Order (''M–ELO'') in securities priced at or above $1.[12] The Exchange believes that the proposed fees would be competitive with the fees that Nasdaq charges for M–ELO executions, as well as the fees charged by other national securities exchanges and off-exchange venues that provide various protective features.[13] QDP is offered on a voluntary basis, and therefore market participants that would prefer to operate under the current pricing structure can continue to enter MDOs without the QDP instruction. The Exchange believes, however, that market participants may find value in the use of the QDP instruction, and—similar to firms that trade using Nasdaq M–ELO, IEX Discretionary Peg, or other similar trading mechanisms—would be willing to pay a small flat fee to benefit from the protections that this instruction is designed to provide to investors.

The Exchange also believes that the proposed fee change is equitable and not unfairly discriminatory because it would apply equally to all MDOs entered with a QDP instruction. As discussed, QDP is an optional order instruction that a market participant can choose to include on an MDO entered on the Exchange in order to benefit from enhanced protections at times when recent executions on the EDGX Book suggest that the market may be about to move against the resting MDO. Both the MDO order type and the associated QDP instruction are available to all Users on an equal and non-discriminatory basis, and any User that chooses to use the QDP instruction would be subject to the same fee. As proposed, any MDO entered with a QDP instruction would be charged a small flat fee, regardless of how the order is ultimately executed. That is, an MDO entered with a QDP instruction would always be subject to a small transaction fee whether or not the MDO is executed within its discretionary range or at its displayed or non-displayed ranked price, and irrespective of whether or not the MDO is executed during a QDP Active Period where executions within the order's discretionary range are prevented.

Although MDOs that include the new QDP instruction would forgo a rebate relative to MDOs that do not include this instruction, the Exchange does not believe that this is inequitable or unfairly discriminatory within the meaning of the Act. All similarly situated market participants would be subject to consistent and non-discriminatory pricing based on the instructions that they include on their MDOs, with Users that include the optional QDP instruction paying a small fee that the Exchange believes is modest in relation to the value provided by the QDP instruction in avoiding potentially unfavorable executions. The proposed pricing is designed to be attractive to Users that enter MDOs with a QDP instruction, notwithstanding the fact that market participants would be subject to a fee instead of a rebate. Further, the Exchange believes that the ability to charge a flat fee for the execution of such orders would appropriately compensate the Exchange for the development of this feature, while allowing the Exchange to offer pricing that is competitive with other national securities exchanges and off-exchange venues that may offer competing features. To the extent that any particular User believes that the benefits of the QDP instruction are outweighed by the proposed pricing, such Users would be free to enter MDOs without the QDP instruction, in which case their orders would be subject to the same pricing offered today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed changes to its fees would promote continued competition between the Exchange, other national securities exchanges, and off-exchange venues that must continuously compete to offer both competitive pricing and services to members and investors. As proposed, the Exchange would charge a small flat fee for the use of its recently-introduced QDP instruction. Charging fees for the use of this instruction would both compensate for the development and introduction of new and innovative features, and provide continued incentives for the Exchange to compete on both cost and the quality of its products and services.

Intramarket Competition

The Exchange believes the proposed rule change would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees would apply to all members equally in that all members would be subject to the same flat fee for the execution of orders that include a QDP instruction. The Exchange and other national securities exchanges (*e.g.,* Nasdaq) offer pricing that is based on the characteristics of the order that is executed on the Exchange. Although MDOs entered with the QDP instruction would be subject to the pricing described in this proposed rule change, the Exchange does not believe that pricing would impose any significant burden on intramarket competition as this fee would be applied in the same manner to the execution of any MDO entered with this instruction. Both MDO and the associated QDP instruction discussed in this filing are available to all Users on an equal and non-discriminatory basis. As a result, any User can decide to use (or not use) the QDP instruction based on the benefits provided by that instruction in potentially avoiding unfavorable executions, and the associated charge that the Exchange proposes to introduce for its use. As discussed, any firm that chooses to use the QDP instruction would be charged the same flat fee for the execution of orders that are entered with this instruction.

Intermarket Competition

The Exchange also believes the proposed fees would not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed, the Exchange operates in a highly competitive market where members can direct their orders to a number of different market centers. These include 12 live U.S. equities exchanges, as well as a large number of off-exchange venues that trade NMS stocks. In addition, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 20% of U.S. equities market share.[14] Therefore, no exchange possesses significant pricing power in the execution of order flow.

[12] *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 118(a)(1), (2), (3). Nasdaq does not charge a fee for M–ELO executions in securities priced below $1. *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 118(b).

[13] For example, Investors Exchange LLC (''IEX''), charges a fee of $0.0009 or $0.0003 per share for adding or removing non-displayed or displayed liquidity, respectively. *See* IEX Fee Schedule, Fee Codes I and L. Although IEX does not have special pricing for its Discretionary Peg Orders, which are similar in certain respects to an MDO entered with a QDP instruction, firms that trade such orders on IEX would be subject to the general transaction fees described above.

[14] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 28, 2020), available at *http://markets.cboe.com/us/equities/market_share/.*

Indeed, market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable, or if they believe that the products and services that they offer are better serve their trading needs. Since competitors are free to modify their own pricing in response, and as market participants may readily adjust their order routing practices, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited.

Conclusion

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share to competing exchanges and off-exchange venues as a result. Accordingly, the Exchange does not believe that the proposed changes would impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Indeed, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

The 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'. . . .''[16] Accordingly, the Exchange does not believe the proposed fees impose 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] 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–CboeEDGX–2020–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2020–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–032, and should be submitted on or before August 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15307 Filed 7–15–20; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] *See NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89289; File No. SR–MIAX–2020–22]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 10, 2020.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2020, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to extend the waiver period for certain non-transaction fees applicable to Market Makers [3] that trade solely in Proprietary Products [4] until September 30, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange, options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, ''SPY''). [5] The Exchange adopted its initial SPIKES transaction fees on February 15, 2019. [6]

On May 31, 2019, the Exchange filed a proposal with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) until September 30, 2019. [7] In particular, the Exchange adopted waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface (''API'') Testing and Certification fees for Members, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2019.

On October 1, 2019, the Exchange filed a proposal with the Commission to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2019. [8]

On December 30, 2019, the Exchange filed a proposal with the Commission to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2020. [9]

Proposal

The Exchange now proposes to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2020. In particular, the Exchange proposes to waive Membership Application fees, monthly Market Maker Trading Permit fees, Member API Testing and Certification fees, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2020.

Membership Application Fees

The Exchange currently assesses Membership fees for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied. The one-time application fee is based upon the applicant's status as either a Market Maker or an Electronic Exchange Member (''EEM''). [10] A Market Maker is assessed a one-time Membership Application fee of $3,000.00.

The Exchange proposes that the waiver for the one-time Membership Application fee of $3,000.00 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from June 30, 2020 until September 30, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to submit membership applications, which should result in increasing potential liquidity in Proprietary Products, including options on SPIKES. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers who will trade solely in Proprietary Products from June 30, 2020 until September 30, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after September 30, 2020.

Trading Permit Fees

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs. Members receiving Trading Permits during a particular calendar month are assessed monthly Trading Permit fees as set forth in the Fee Schedule. As it relates to Market Makers, MIAX currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX Express Interface Ports (''MEI Ports'') [11] in the production environment and is assigned to quote in one or more classes. MIAX assesses its Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''Proprietary Product'' means a class of options that is listed exclusively on the Exchange. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

[6] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with SR–MIAX–2019–11.

[7] *See* Securities Exchange Act Release No. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR–MIAX–2019–28).

[8] *See* Securities Exchange Act Release No. 87282 (October 10, 2019), 84 FR 55658 (October 17, 2019) (SR–MIAX–2019–43).

[9] *See* Securities Exchange Act Release No. 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR–MIAX–2019–53).

[10] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[11] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, note 27.

the per class basis or percentage of total national average daily volume measurements. A MIAX Market Maker is assessed a monthly Trading Permit Fee according to the following table:

Type of Trading Permit	Monthly MIAX Trading Permit fee	Market Maker assignments (the lesser of the applicable measurements below) Ω	
		Per class	% of national average daily volume
Market Maker (includes RMM, LMM, PLMM).	$7,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
	12,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
	*17,000.00	Up to 100 Classes	Up to 50% of Classes by volume.
	*22,000.00	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

*For these Monthly MIAX Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

MIAX proposes that the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from June 30, 2020 to September 30, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for Market Makers to provide liquidity in Proprietary Products on the Exchange, which should result in increasing potential order flow and volume in Proprietary Products, including options on SPIKES. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers trading solely in Proprietary Products from June 30, 2020 until September 30, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness by potential Members seeking a Trading Permit on the Exchange that the Exchange intends to assess such a fee after September 30, 2020.

The Exchange also proposes that Market Makers who trade Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted with the symbol ''Ω'' following the table that shows the monthly Trading Permit Fees currently assessed for Market Makers in Section 3)b) of the Fee Schedule.

API Testing and Certification Fee

The Exchange assesses an API Testing and Certification fee to all Members depending upon the type of Member. An API makes it possible for Members' software to communicate with MIAX software applications, and is subject to Members testing with, and certification by, MIAX. The Exchange offers four types of interfaces: (i) The Financial Information Exchange Port (''FIX Port''),[12] which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the Clearing Trade Drop Port (''CTD Port''),[13] which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FIX Drop Copy Port (''FXD Port''),[14] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of $2,500.00. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX's interfaces.

MIAX proposes to extend the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from June 30, 2020 until September 30, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to develop software applications to trade in Proprietary Products, including options on SPIKES. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers who trade solely in Proprietary Products from June 30, 2020 until September 30, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after September 30, 2020.

[12] A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit simple and complex orders electronically to MIAX. *See* Fee Schedule, note 24.

[13] Clearing Trade Drop (''CTD'') provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. *See* Fee Schedule, Section 5)d)iii.

[14] The FIX Drop Copy Port (''FXD'') is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section 5)d)iv.

MEI Port Fees

MIAX provides four (4) Port types, including (i) the FIX Port, which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the CTD Port, which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FXD Port, which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

MIAX assesses monthly MEI Port Fees to Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port Fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the above table. The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses MIAX Market Makers the monthly MEI Port Fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. MIAX assesses MEI Port Fees on Market Makers according to the following table:

Monthly MIAX MEI fees	Market Maker assignments (the lesser of the applicable measurements below) Ω	
	Per class	% of national average daily volume
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume.
$10,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
$14,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
$17,500.00 *	Up to 100 Classes	Up to 50% of Classes by volume.
$20,500.00 *	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX.

Ω Excludes Proprietary Products.

* For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

MIAX proposes to extend the waiver of the monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from June 30, 2020 until September 30, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposal is to continue to provide an incentive to Market Makers to connect to MIAX through the MEI Port such that they will be able to trade in MIAX Proprietary Products. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers trading solely in Proprietary Products until September 30, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after September 30, 2020.

The Exchange notes that for the purposes of this proposed change, other Market Makers who trade MIAX Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted by the symbol ''Ω'' following the table that shows the monthly MEI Port Fees currently assessed for Market Makers in Section 5)d)ii) of the Fee Schedule.

The proposed extension of the fee waivers are targeted at market participants, particularly market makers, who are not currently members of MIAX, who may be interested in being a Market Maker in Proprietary Products on the Exchange. The Exchange estimates that there are fewer than ten (10) such market participants that could benefit from the extension of these fee waivers. The proposed extension of the fee waivers does not apply differently to different sizes of market participants, however the fee waivers do only apply to Market Makers (and not EEMs).

Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to continue to offer the fee waivers to Market Makers because the Exchange is seeking additional liquidity providers for Proprietary Products, in order to enhance liquidity and spreads in Proprietary Products, which is traditionally provided by Market Makers, as opposed to EEMs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act [16] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposal to extend the fee waiver period for certain non-transaction fees for Market Makers in Proprietary Products is an equitable allocation of reasonable fees because the proposal continues to waive non-transaction fees for a limited period of time in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants in MIAX's Proprietary Products, including options on SPIKES. The Exchange believe the proposed extension of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all market participants not currently registered as Market Makers at the Exchange. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker and trade solely in Proprietary Products in order to qualify for the fee waivers.

The Exchange believes that the proposed extension of the fee waivers is equitable and not unfairly discriminatory for Market Makers as compared to EEMs because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes it is reasonable and equitable to continue to waive the one-time Membership Application Fee, monthly Trading Permit Fee, API Testing and Certification Fee, and monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2020, since the waiver of such fees provides incentives to interested market participants to trade in Proprietary Products. This should result in increasing potential order flow and liquidity in MIAX Proprietary Products, including options on SPIKES.

The Exchange believes it is reasonable and equitable to continue to waive the API Testing and Certification fee assessable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2020, since the waiver of such fees provides incentives to interested Members to develop and test their APIs sooner. Determining system operability with the Exchange's system will in turn provide MIAX with potential order flow and liquidity providers in Proprietary Products.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Market Makers who trade in Proprietary Products along with multi-listed classes will continue to not have Proprietary Products counted toward those Market Makers' class assignment count or percentage of total national average daily volume for monthly Trading Permit Fees and monthly MEI Port Fees in order to incentivize existing Market Makers who currently trade in multi-listed classes to also trade in Proprietary Products, without incurring certain additional fees.

The Exchange believes that the proposed extension of the fee waivers constitutes an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The proposed extension of the fee waivers means that all prospective market makers that wish to become Market Maker Members of the Exchange and quote solely in Proprietary Products may do so and have the above-mentioned fees waived until September 30, 2020. The proposed extension of the fee waivers will continue to not apply to potential EEMs because the Exchange is seeking to enhance the quality of its markets in Proprietary Products through introducing more competition among Market Makers in Proprietary Products. In order to increase the competition, the Exchange believes that it must continue to waive entry type fees for such Market Makers. EEMs do not provide the benefit of enhanced liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to continue to only offer the proposed fee waivers to Market Makers (and not EEMs). Further, the Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Proprietary Products from an existing Market Maker's permit fees and port fees, in order to incentive such Market Makers to quote in Proprietary Products. The amount of a Market Maker's permit and port fee is determined by the number of classes quoted and volume of the Market Maker. By excluding Proprietary Products from such fees, the Exchange is able to incentivize Market Makers to quote in Proprietary Products. EEMs do not pay permit and port fees based on the classes traded or volume, so the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to only offer the exclusion to Market Makers (and not EEMs).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposal to extend certain of the non-transaction fee waivers until September 30, 2020 for Market Makers in Proprietary Products would increase intra-market competition by incentivizing new potential Market Makers to quote in Proprietary Products, which will enhance the quality of quoting and increase the volume of contracts in Proprietary Products traded on MIAX. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's Proprietary Products. Enhanced market quality and increased transaction volume in Proprietary Products that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

Inter-Market Competition

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition

that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the fee waivers apply only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[17] and Rule 19b–4(f)(2)[18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–22 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–MIAX–2020–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–22 and should be submitted on or before August 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15308 Filed 7–15–20; 8:45 am]

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89285; File No. SR–CBOE–2020–062]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Silexx Trading Platform Fees Schedule

July 10, 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 July 1, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend the Silexx trading platform (''Silexx'' or the ''platform'') Fees 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Silexx Fees Schedule to (1) waive certain fees for FLEX and Cboe Silexx, (2) introduce a new ''CAT File'' fee and (3) eliminate obsolete references to an expired upgrade opportunity, effective July 1, 2020.

By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders,[3] and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users' choice.

has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions. With the exception of Silexx FLEX and Cboe Silexx, users cannot directly route orders through any of the current versions of Silexx to an exchange or trading center nor is the platform integrated into or directly connected to Cboe Option's System. The Exchange recently made available additional versions of the Silexx platform, Silexx FLEX and Cboe Silexx, which do support the trading of FLEX and non-FLEX Options, respectively, and allows authorized Users with direct access to the Exchange. The Silexx front-end and back-end platforms are a software application that are installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform. Use of Silexx is completely optional.

Additional Functionality Fee Waiver

The Exchange first proposes to waive the following fees for additional functionality users may purchase for FLEX and Cboe Silexx:

Additional functionality for platforms	Functionality description	Fee
Crossing	Availability of crossing order ticket	$300/month/login ID.
Port	Provides access to an executing broker with connectivity to the Silexx platform for routing.	$100/month/login ID.
Staged Orders, Drop Copies, and Order Routing Functionality for FIX Connections (sessions).	Ability to receive staged orders, receive ''drop copies'' of order fill messages, and route orders to executing brokers.	$250/month/FIX Connection.
Staged Orders, Drop Copies, and Order Routing Functionality for FIX Connections (sessions) Using Third-Party FIX Router.	Ability to receive staged orders, receive ''drop copies'' of order fill messages, and route orders to executing brokers through a third-party FIX router.	$500/month/FIX Connection.
Equity Order Reports (paid by the trading firm)	Daily transmission of equity order reports	$250/month/trading firm.

Particularly, the above additional functionality permits users to add features in accordance with their use of the Silexx platform. The Exchange offers each type of additional functionality as a convenience and use of each type of additional functionality is discretionary and not compulsory. More specifically, the crossing functionality provides users who choose to regularly cross orders with access to additional crossing order tickets. The port fee applies to connections from users to executing brokers, which provides users with access to an executing broker with connectivity to the Silexx platform for routing. Financial Information eXchange (''FIX'') is an industry-standard, non-proprietary API that permits market participants to connect to exchanges. FIX connectivity provides users with the ability to receive ''drop copy'' order fill messages from their executing brokers. These fill messages allow customers to update positions, risk calculations, and streamline back-office functions. Additionally, FIX connections can be updated to permit the platform to receive orders sent from another system and then route these orders through the platform for execution (staged orders) as well as provide users with the ability to route orders in various ways to executing brokers (such as designation of a market to which the broker is to route an order received from the platform and use of a broker's ''smart router'' functionality). Some users have connections to third-party FIX routers, who currently normalize the format of messages of their client. To the extent a FIX router has a connection to the Silexx platform, users that also have connections to these routers may elect to receive staged orders, drop copies, and order routing functionality through a fix router. Additionally, the Silexx platform permits users to elect to receive daily transmission of equity order reports related to order users submit through the platform. As noted above, the Exchange recently adopted Silexx FLEX and Cboe Silexx. The Exchange wishes to waive the fees for these additional types of functionality [4] as an incentive to market participants to start or continue using these new Silexx platforms as trading tools on their trading desks.

CAT File Fee

The Exchange next wishes to adopt a fee for CAT Files. Particularly, Silexx intends to make Consolidated Audit Trail (''CAT'')-formatted files available to Silexx users for orders processed by the user via Silexx applications. Users may also elect to have Silexx, which is a CAT Reporter Agent, submit these files to CAT on their behalf. Similar to the fee assessed for Equity Order Reports,[5] the Exchange proposes to adopt a monthly fee of $250 per CAT Industry Member ID (''IMID''),[6] payable by the trading firm for CAT Files. The Exchange also proposes to waive this fee for Silexx FLEX and Cboe Silexx.

The Exchange lastly proposes to eliminate obsolete language in the ''Silexx Platform Version'' table. Particularly, the notes section provides that: ''All users of Basic may be upgraded to Pro at no additional cost through May 31, 2020''. As that date has passed, and the free upgrade is no longer available, the Exchange proposes to delete that language in its entirety to avoid potential confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section

[4] The Exchange is not waiving Additional Functionality fees for API, PULSe Routing Network via Silexx or Market Data. Particularly, the API functionality is not applicable or available for Silexx Flex or Cboe Silexx and the PULSe Network via Silexx fee is already only applicable to non-Silexx (and non-PULSe) workstations. The Exchange lastly does not wish to waive fees for market data.

[5] The Equity Order Reports fee is assessed to Silexx users that elect to receive daily transmission of Order Audit Trail System (''OATS'') reports for its orders submitted through their Silexx platform.

[6] CAT uses the IMID to determine the firm for which data is submitted and to facilitate event linkages within a firm and between venues.

[7] 15 U.S.C. 78f(b).

6(b)(5) [8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed rule change to waive certain additional functionality fees for Silexx FLEX and Cboe Silexx is reasonable because users using the functionality for these newer platforms would not be subject to such fees. The Exchange believes not assessing these fees for Silexx FLEX and Cboe Silexx also serves as an incentive to market participants to start using these recently adopted Silexx platforms as additional trading tools on their trading desks. Moreover, the Exchange notes that Silexx FLEX and Cboe Silexx are available to all market participants at no cost.[10] The proposal is equitable and not unfairly discriminatory as it applies to all users of Silexx FLEX and Cboe Silexx uniformly. Additionally, the Exchange notes that use of each version of the platform, including each type of additional functionality, is discretionary and not compulsory.

The Exchange believes the proposed monthly fee for CAT Files is reasonable as it is the same rate for other similar reports (*i.e.,* Equity Order Reports). Additionally, the Exchange believes the proposed fee is reasonable as the Exchange believes it is substantially lower than the cost assessed by third-party vendors for similar CAT files. The proposal is equitable and not unfairly discriminatory as it applies to all users other than Silexx FLEX and Cboe Silexx. As discussed above, the Exchange believes waiving additional functionality fees, including the proposed fee for CAT files, for Silexx FLEX and Cboe Silexx is reasonable, equitable and not unfairly discriminatory as such platforms are new and the Exchange wishes to incentivize their use to market participants. Finally, the Exchange notes receipt of the CAT files is completely voluntary and not compulsory.

Lastly, the Exchange believes its proposal to eliminate language regarding an outdated free upgrade alleviates potential confusion and maintains clarity in the fees schedule, thereby removing impediments to, and perfecting, the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose any burden on intramarket competition because the proposed rule changes apply to all similarly situated users of Silexx uniformly. The Exchange notes that each additional type of Silexx functionality, including the new CAT Files, are available to all market participants, and users have discretion to determine which, if any, types of functionality and reports to purchase.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] 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–CBOE–2020–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Silexx Fees Schedule, Silexx Platform Version Table.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–062 and should be submitted on or before August 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15309 Filed 7–15–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16532; CALIFORNIA Disaster Number CA–00321 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 07/07/2020.

Incident: Civil Unrest.

Incident Period: 05/26/2020 and continuing.

DATES: Issued on 07/07/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/07/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Sacramento

Contiguous Counties:

California: Amador, Contra Costa, El Dorado, Placer, San Joaquin, Solano, Sutter, Yolo

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for economic injury is 165320.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–15396 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16545 and #16546; Missouri Disaster Number MO–00105]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Missouri

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–4552–DR), dated 07/09/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/03/2020 through 05/04/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bates, Butler, Carter, Dallas, Douglas, Dunklin, Henry, Hickory, Howell, Laclede, New Madrid, Oregon, Pemiscot, Polk, Ripley, Shannon, Stoddard, Wayne, Wright

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 16545C and for economic injury is 165460.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15387 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16533 and #16534; Michigan Disaster Number MI–00084]

Presidential Declaration of a Major Disaster for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–4547–DR), dated 07/09/2020.

Incident: Severe Storms and Flooding.

Incident Period: 05/16/2020 through 05/22/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

[13] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Arenac, Gladwin, Iosco, Midland, Saginaw

Contiguous Counties (Economic Injury Loans Only):

Michigan: Alcona, Bay, Clare, Genesee, Gratiot, Isabella, Ogemaw, Oscoda, Roscommon, Shiawassee, Tuscola

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 165336 and for economic injury is 165340.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15392 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16543 and #16544; Mississippi Disaster Number MS–00129]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4551–DR), dated 07/09/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/22/2020 through 04/23/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Amite, Claiborne, Covington, George, Jefferson Davis, Jones, Lawrence, Pike, Simpson, Smith, Wayne.

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 16543C and for economic injury is 165440.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15383 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16539 and #16540; Hawaii Disaster Number HI–00058]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Hawaii

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–4549–DR), dated 07/09/2020.

Incident: Severe Storms and Flooding.

Incident Period: 03/27/2020 through 03/28/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kauai

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 165396 and for economic injury is 165400.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15390 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16535 and #16536; Michigan Disaster Number MI–00086]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Michigan (FEMA–4547–DR), dated 07/09/2020.

Incident: Severe Storms and Flooding.

Incident Period: 05/16/2020 through 05/22/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Arenac, Gladwin, Iosco, Midland, Saginaw

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 165356 and for economic injury is 165360.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15391 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16537 and #16538; Utah Disaster Number UT–00068]

Presidential Declaration of a Major Disaster for the State of Utah

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–4548–DR), dated 07/09/2020.

Incident: Earthquake and Aftershocks.

Incident Period: 03/18/2020 through 04/17/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Davis, Salt Lake

Contiguous Counties (Economic Injury Loans Only):

Utah: Box Elder, Morgan, Summit, Tooele, Utah, Wasatch, Weber

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	7.500
Businesses Without Credit Available Elsewhere	3.750
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 165372 and for economic injury is 165380.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15393 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16547 and #16548; North Dakota Disaster Number ND–00081]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of North Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–4553–DR), dated 07/09/2020.

Incident: Flooding.

Incident Period: 04/01/2020 through 04/25/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Barnes, Cass, Dickey, Foster, Grand Forks, Lamoure, Logan, McIntosh, Nelson, Pembina, Ransom, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Walsh

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 165476 and for economic injury is 165480.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15378 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16541 and #16542; Tennessee Disaster Number TN–00123]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–4550–DR), dated 07/09/2020.

Incident: Severe Storms, Straight-line Winds, and Flooding.

Incident Period: 05/03/2020 through 05/04/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/09/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Benton, Carroll, Davidson, Decatur, Dickson, Dyer, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lawrence, Lewis, Madison, Maury, Obion, Perry, Weakley

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 16541B and for economic injury is 165420.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–15388 Filed 7–15–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Delegation of Authority No. 485]

Delegation to the Assistant Secretary for Consular Affairs of Authorities Under the Hague Abduction Convention, International Child Abduction Remedies Act, and the International Child Abduction Prevention and Return Act

By virtue of the authority vested in the Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a,) I hereby delegate the following authorities to the Assistant Secretary of State for Consular Affairs:

(1) To the extent authorized by law, and except as provided in paragraph (2) of this delegation, I hereby delegate to the Assistant Secretary of State for Consular Affairs all duties, responsibilities, authorities, and powers necessary to carry out the functions of Secretary of State under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention) and United States Code, Title 22, Chapters 97 (International Child Abduction Remedies Act) and 98 (Sean and David Goldman International Child Abduction Prevention and Return Act of 2014), and to establish such form and prescribe such regulations as may be necessary and proper in order to perform those functions.

(2) There are hereby excluded from the functions delegated under paragraph (1) of this delegation the authorities and powers defined in Title 22, subsection 9122(d), paragraphs 5–8, (22 U.S.C. 9122(d)(5–8)).

(3) The functions delegated under paragraph (1) of this delegation include accepting accessions under the Hague Abduction Convention.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time. This delegation of authority replaces Delegation of Authority No. 172, which is hereby revoked. No other delegations of authority are affected by this delegation of authority.

The Secretary, the Deputy Secretary, or the Under Secretary for Management may exercise any function delegated by this delegation of authority.

Dated: June 8, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–15321 Filed 7–15–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 11159]

Commission on Unalienable Rights; Notice of Open Meeting; Correction

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: The Department of State published a document in the **Federal Register** of July 2, 2020, announcing a meeting of the Commission on Unalienable Rights, and is hereby correcting information concerning the times for the Commission meeting.

FOR FURTHER INFORMATION CONTACT: Duncan Walker, Policy Planning Staff, Department of State, (202) 647–2236/3490.

SUPPLEMENTARY INFORMATION: Correction in the **Federal Register** of July 2, 2020, in FR Doc. 2020–14339, on page 39967, in the first column, correct the first paragraph to read:

''The Members of the Commission on Unalienable Rights ('Commission') will meet from 4:00 p.m. until 5:00 p.m., to present the Commission's proposed Report to the public. The meeting will be in Philadelphia at the National Constitution Center, 525 Arch Street, Independence Mall. Doors will open at 3:30 p.m.''

Duncan H. Walker,

Designated Federal Officer, Department of State.

[FR Doc. 2020–15414 Filed 7–15–20; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Effective August 23, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $16 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process, which was initiated in September 2018. Stakeholders submitted requests for the exclusion of specific products and the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative's determination to make certain amendments to previously granted exclusions and grants an exclusion that previously was published under a different U.S. note to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: The amendments announced in this notice are retroactive to the date of publication of the original exclusions and do not extend the period for the original exclusions. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler 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 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 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 37381 (July 31, 2019), 84 FR 49600 (September 20, 2019), 84 FR 52553 (October 2, 2019), 84 FR 69011 (December 17, 2019), 85 FR 10808 (February 25, 2020), and 85 FR 28691 (May 13, 2020).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 eight-digit subheadings of the HTSUS, with an approximate annual trade value of $16 billion. *See* 83 FR 40823. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the $16 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 47236 (September 18 notice).

Under the September 18 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 eight-digit subheading covered by the $16 billion action. Requestors also had to provide the ten-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. 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 September 18 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 September 18 notice required submission of requests for exclusion from the $16 billion action no later than December 18, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In July 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 37381. The U.S. Trade Representative granted additional exclusions in September and October 2019, and February 2020. *See* 84 FR 49600, 84 FR 52553, 85 FR 10808.

B. Determination To Grant Exclusion

Based on the evaluation of the factors set out in the September 18 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 exclusion 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 request. As set out in the Annex, the exclusion is reflected in a specially prepared product description, found in Paragraph A. This exclusion previously was published under a different U.S. note to subchapter III of chapter 99 of the HTSUS. *See* 85 FR 7816 (February 11, 2020). In accordance with the September 18 notice, an exclusion is available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of the exclusion is governed by the scope of the ten-digit HTSUS subheading and product description in the Annex to this notice, and not by the product description set out in any particular request for exclusion.

C. Technical Amendments to Exclusions

Subparagraph B of the Annex makes eight amendments to accommodate conforming changes to the HTSUS: U.S. notes 20(o)(63)–(65), U.S. note 20(v)(89), and U.S. notes 20(y)(79)–(82) to subchapter III of chapter 99 of the HTSUS, as set out in the Annexes of the notice published at 84 FR 37381 (July 31, 2019), 84 FR 49600 (September 20, 2019) and 84 FR 52553 (October 2, 2019).

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

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 August 23, 2018, and before October 2, 2020, U.S. note 20(y) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting the following exclusions in numerical order after exclusion (112):

113. Multi-phase AC motors of an output of at least 5.8 kW but not exceeding 14.92 kW, each assembled with planetary gears and a gearbox (described in statistical reporting number 8501.52.4000).

B. 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 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. U.S. note 20(o)(63) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8040)'' and inserting ''(described in statistical reporting number 9025.19.8040 prior to July 1, 2020; described in statistical reporting number 9025.19.8010 or 9025.19.8020 effective July 1, 2020)'' in lieu thereof.

2. U.S. note 20(o)(64) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8080)'' and inserting ''(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)'' in lieu thereof.

3. U.S. note 20(o)(65) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8080)'' and inserting ''(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)'' in lieu thereof.

4. U.S. note 20(v)(89) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8080)'' and inserting ''(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)'' in lieu thereof.

5. U.S. note 20(y)(79) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8040)'' and inserting ''(described in statistical reporting number 9025.19.8040 prior to July 1, 2020; described in statistical reporting number 9025.19.8010 or 9025.19.8020 effective July 1, 2020)'' in lieu thereof.

6. U.S. note 20(y)(80) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8080)'' and inserting ''(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)'' in lieu thereof.

7. U.S. note 20(y)(81) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8080)'' and inserting ''(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)'' in lieu thereof.

8. U.S. note 20(y)(82) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''(described in statistical reporting number 9025.19.8080)'' and inserting ''(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–15320 Filed 7–15–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2019–0009]

Notice of Action in the Section 301 Investigation of France's Digital Services Tax

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On December 6, 2019, the U.S. Trade Representative announced a determination that France's Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce. This notice announces the U.S. Trade Representative's determination to take action in the form of additional duties of 25 percent on products of France specified in Annex A to this notice. The U.S. Trade Representative has further determined to suspend application of the additional duties for a period of up to 180 days.

DATES: July 10, 2020: The U.S. Trade Representative determined to take action in the form of additional duties of 25 percent on products of France specified in Annex A. January 6, 2021: The end of the 180-day suspension period for the additional duties.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Megan Grimball, Associate General Counsel at (202) 395–5725, Robert Tanner, Director, Services and Investment at (202) 395–6125, or Michael Rogers, Director, Europe and the Middle East at (202) 395–2684. For specific questions on customs classification or implementation of additional duties on products identified in Annex A to this notice, contact *traderemedy@cbp.gov.*

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

On July 10, 2019, the U.S. Trade Representative initiated the investigation of France's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act). *See* 84 FR 34042 (July 16, 2019) (July 16 notice). The July 16 notice invited public comment on France's DST, including whether the tax would discriminate against U.S. companies, the retroactive application of the new tax, and whether France's DST diverged from norms reflected in the U.S. and international tax system. The Office of the United States Trade Representative (USTR) and the interagency Section 301 Committee held a hearing on August 19, 2019. Ten witnesses provided testimony, and interested persons filed 36 written submissions. Following a request by the U.S. Trade Representative, consultations were held with the Government of France on November 14, 2019.

USTR published a comprehensive report on France's DST on December 2, 2019, which is available at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax.* On December 6, 2019, based on the information obtained during the investigation and the advice of the Section 301 Committee, and as reflected in the December 2 report on the findings in the investigation, the U.S. Trade Representative determined that France's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce, and therefore is actionable under sections 301(b) and 304 (a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)). *See* 84 FR 66856 (December 6, 2019) (December 6 notice).

The December 6 notice proposed that appropriate action would include additional *ad valorem* duties of up to 100 percent on products of France to be drawn from a list of 63 tariff subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) included in the annex to that notice. The December 6 notice requested comments on the proposed action, as well as on other potential actions, including the imposition of fees or restrictions on services of France.

USTR and the Section 301 Committee held a hearing regarding the proposed action on January 7 and 8, 2020. Thirty-seven witnesses provided testimony, and interested persons filed nearly 3,800 written comments. Transcripts from the August 2019 and January 2020 hearings are available on the USTR website at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax.* The written public submissions are available on *www.regulations.gov* under docket number USTR–2019–0009.

II. Determination of Action To Be Taken in the Investigation

In accordance with section 301(b) of the Trade Act, the U.S. Trade Representative has determined that action is appropriate in this investigation. Section 301(b) provides that upon determining that the acts, policies, and practices under investigation are actionable and that action is appropriate, the U.S. Trade Representative shall take all appropriate and feasible action authorized under section 301(c) of the Trade Act, subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the U.S. Trade Representative to take under section 301(b), to obtain the elimination of that act, policy, or practice. Section 304(a)(1)(B)(2) provides that the U.S. Trade Representative shall make the determination of what action to take on or before the date that is 12 months after the date on which the investigation was initiated, or in this case, by July 10, 2020.

Pursuant to sections 301(b) and (c) of the Trade Act, and in accordance with the advice of the Trade Policy Staff Committee, the U.S. Trade Representative has determined that appropriate action is the imposition of *ad valorem* duties of 25 percent on products of France specified in Annex A to this notice. Annex A contains a list of 21 tariff subheadings, with an estimated trade value for calendar year 2019 of approximately $1.3 billion. In making this determination, the U.S. Trade Representative considered the public comments submitted in the investigation, as well as advice of advisory committees.

In determining the level of trade covered by the additional duties, the U.S. Trade Representative considered the value of digital transactions covered by France's DST and the amount of taxes assessed by France on U.S. companies. France's 3 percent DST covers transactions of U.S. companies with estimated revenues of approximately $15 billion in 2020, with expected collections of approximately $450 million in taxes from U.S. companies for activities during 2020, and over $500 million for activities during 2021. Additional duties of 25 percent on the products of France covered by the trade action should result in the collection of tariffs on goods of France at comparable, though somewhat lower amounts. The U.S. Trade Representative will continue to monitor the effect of the trade action and the progress of discussions with France, and may adopt appropriate modifications.

Section 305(a) of the Trade Act (19 U.S.C. 2415(a)), provides, in pertinent part, that the U.S. Trade Representative may delay implementation of the action to be taken for up to 180 days ''if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable to obtain United States rights or satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.'' Pursuant to section 305(a), the U.S. Trade Representative has determined to suspend the additional duties for up to 180 days (that is, up to January 6, 2021) to allow additional time for bilateral and multilateral discussions that could lead to a satisfactory resolution of this matter.

In order to implement this determination, subchapter III of chapter 99 of the HTSUS is modified by Annex A of this notice. Annex A has an effective date of January 6, 2021, which is 180 days after the determination of action. In the event the U.S. Trade Representative determines that the suspension of the additional duties should be for less than a period of 180 days, USTR will issue a subsequent notice amending the effective date.

For informational purposes, Annex B contains a list of the tariff subheadings covered by the tariff action along with short product descriptions. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action.

As specified in Annex A, products provided for in new HTSUS heading 9903.90.01, will be subject to an additional *ad valorem* duty of 25 percent. The additional duties provided for in the new HTSUS heading established by Annex A apply in addition to all other applicable duties, fees, exactions, and charges. Any product listed in Annex A, except any product that is eligible for admission under 'domestic status' as defined in 19 CFR 146.43, which is subject to the additional duty imposed by this determination, and is admitted into a U.S. foreign trade zone on or after the effective date of the additional duties only may be admitted as 'privileged foreign status' as defined in 19 CFR 146.41. Such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the classification

under the applicable HTSUS subheading.

The U.S. Trade representative will continue to monitor the effects of the trade action and the progress made toward resolution of this matter. If a modification to the action may be appropriate, the U.S. Trade Representative will consider the comments received in response to the December 6 notice.

Joseph Barloon,

General Counsel, Office of the United States 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 standard time on January 6, 2021, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified:

1. by inserting the following new U.S. notes 22(a) and 22(b) to subchapter III of chapter 99 in numerical sequence:

"22 (a) For the purposes of heading 9903.90.01, products of France, as specified in this note, shall be subject to additional duties as provided herein. All products of France that are classified in the subheadings enumerated in this note are subject to the additional duties imposed by heading 9903.90.01. The duties imposed by heading 9903.90.01 shall be in addition to the general duty rates provided for in the applicable provisions of the tariff schedule.

Products of France that are classified in the subheadings enumerated in this note and that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional duties imposed by heading 9903.90.01, and any such duty exemption or reduction shall apply only to the permanent general rate prescribed in provisions of chapters 1 through 97 of the tariff schedule.

The additional duties imposed by heading 9903.90.01 do not apply to goods for which entry is properly claimed under a provision of chapter 98 of the HTSUS, except for goods entered under subheadings 9802.00.40, 9802.00.50 and 9802.00.60 and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50 and 9802.00.60, the additional duties apply to the value of repairs, alterations or processing performed in France and as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80.

Products of France that are provided for in heading 9903.90.01 and classified in one of the subheadings enumerated in note 22(b) to this subchapter shall continue to be subject to antidumping, countervailing or other duties (including duties imposed by other provisions of subchapter III of this chapter and safeguard duties set forth in provisions of subchapter IV of this chapter), fees, exactions and charges that apply to such products, as well as to the additional duties imposed herein.

(b) Heading 9903.90.01 shall apply to all products of France that are classified in the subheadings enumerated below:

3304.10.00	3304.99.50	3401.20.00
3304.20.00	3401.11.10	3401.30.10
3304.30.00	3401.11.50	3401.30.50
3304.91.00	3401.19.00	4202.21.30

4202.21.60	4202.22.40	4202.22.70
4202.21.90	4202.22.45	4202.22.81
4202.22.15	4202.22.60	4202.22.89"

2. by inserting the following new heading 9903.90.01 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	
"9903.90.01		"Articles the product of France, as provided for in U.S. note 22(a) to this subchapter and as provided for in the subheadings enumerated in U.S. note 22(b) to this subchapter	The duty provided in the applicable subheading + 25%"		

Annex B

Note: The product descriptions that are contained this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action. Any questions regarding the scope of particular HTSUS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

HTSUS Subheading	Product Description
3304.10.00	Lip make-up preparations
3304.20.00	Eye make-up preparations
3304.30.00	Manicure or pedicure preparations
3304.91.00	Beauty or make-up powders, whether or not compressed
3304.99.50	Beauty or make-up preparations & preparations for the care of the skin, excl. medicaments but incl. sunscreen or sun tan preparations, nesoi
3401.11.10	Castile soap in the form of bars, cakes or molded pieces or shapes
3401.11.50	Soap, nesoi; organic surface-active products used as soap, in bars, cakes, pieces, soap-impregnated paper, wadding, felt, for toilet use
3401.19.00	Soap; organic surface-active products used as soap, in bars, cakes, pieces; soap-impregnated paper, wadding, felt, not for toilet use
3401.20.00	Soap, not in the form of bars, cakes, molded pieces or shapes
3401.30.10	Organic surface-active products for wash skin, in liquid or cream, contain any aromatic/mod aromatic surface-active agent, put up for retail
3401.30.50	Organic surface-active products and preparations for washing the skin, in liquid or cream form, put up for retail sale, nesoi
4202.21.30	Handbags, with or without shoulder strap or without handle, with outer surface of reptile leather
4202.21.60	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, n/o $20 ea.
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, over $20 ea.
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
4202.22.40	Handbags with or without shoulder strap or without handle, with outer surface of textile materials, wholly or in part of braid, nesoi
4202.22.45	Handbags with or without shoulder strap or without handle, with outer surface of cotton, not of pile or tufted construction or braid
4202.22.60	Handbags with or w/o shoulder strap or w/o handle, outer surface of veg. fibers, exc. cotton, not of pile or tufted construction or braid
4202.22.70	Handbags with or w/o shoulder strap or w/o handle, with outer surface containing 85% or more of silk, not braided
4202.22.81	Handbags with or without shoulder strap or without handle, with outer surface of MMF materials
4202.22.89	Handbags with or without shoulder strap or without handle, with outer surface of textile materials nesoi

[FR Doc. 2020–15312 Filed 7–15–20; 8:45 am]
BILLING CODE 3290–F0–C

FEDERAL AVIATION ADMINISTRATION

Las Vegas Metroplex; Finding of No Significant Impact/Record of Decision

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability of Finding of No Significant Impact/Record of Decision.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has published a Finding of No Significant/Record of Decision for the Las Vegas Metroplex Project.

FOR FURTHER INFORMATION CONTACT: Ryan Weller, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547, or email address: *9-las-metroplex-ea@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA prepared a Final Environmental Assessment (EA), dated June 8, 2020, to assess the potential environmental impacts of the Las Vegas Metroplex Project in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* The FAA accepted public comment on the Final EA from June 8 to June 22, 2020. This notice announces that based on the information and analysis contained in the Final EA, and after reviewing comments received on the Final EA, the FAA is issuing a Finding of No Significant Impact and Record of Decision (FONSI/ROD) for the Las Vegas Metroplex Project. The FONSI/ROD documents the FAA's determination that the Las Vegas Metroplex Project would not significantly affect the quality of the human environment and that an Environmental Impact Statement (EIS) is therefore not necessary. The FONSI/ROD also documents the FAA's decision to proceed with the preferred alternative detailed in the Final EA. The Las Vegas Metroplex Project will improve the efficiency of the national airspace system in the Las Vegas area by optimizing aircraft arrival and departure procedures at McCarran International Airport, Henderson Executive Airport, and North Las Vegas Airport.

Availability: The FONSI/ROD is available at:

(1) Online: *https://www.faa.gov/air_traffic/community_involvement/las/* and *http://www.metroplexenvironmental.com/las_metroplex/las_docs.html*

(2) Electronic version of the FONSI/ROD is available at 27 libraries in the Las Vegas Metroplex General Study Area. A complete list of libraries with electronic copies of the FONSI/ROD is available online at: *http://www.metroplexenvironmental.com/las_metroplex/las_docs.html*

Issued in Des Moines, Washington, on July 9, 2020.

B.G. Chew,

(Acting) Manager, Operations Support Group, Air Traffic Organization.

[FR Doc. 2020–15415 Filed 7–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–14]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before September 14, 2020.

ADDRESSES: Submit comments and recommendations for the proposed ICR to Ms. Hodan Wells, Information Collection Clearance Officer, at email: *hodan.wells@dot.gov* or telephone: (202) 493–0440. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Railroad Safety Appliance Standards.

OMB Control Number: 2130–0594.

Abstract: The information collection associated with 49 CFR part 231 is used by FRA to promote and enhance the safe placement and securement of safety appliances on modern rail equipment by establishing a process for the review and approval of existing industry standards. In 2011, FRA amended the regulations related to safety appliance arrangements by permitting railroad industry representatives to submit requests for the approval of existing industry standards relating to the safety appliance arrangements on newly constructed railroad cars, locomotives, tenders, or other rail vehicles in lieu of the specific provisions contained in part 231.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: Railroads/railroad industry representatives/rail labor unions/general public.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses (hours)	Total annual burden hours	Total cost equivalent [1]
231.33(b)—Procedure for special approval of existing industry safety appliance standards—drafting and filing of petitions.	Association of American Railroads (AAR) (industry rep.).	1 petition	16	16	$1,232
—(b)(6) Affirmative statement by petitioner that a petition copy has been served on rep. of employees responsible for equipment's operation/inspection/testing/maintenance.	AAR (industry rep.)	1 affirmation statement.	1	1	77
—(f)(3)(iii) Disposition of petitions: petition returned by FRA requesting additional information.	AAR (industry rep.)	1 petition or additional document.	2	2	154
231.35(a)–Procedure for modification of an approved industry safety appliance standard for new car construction—drafting and filing of petitions.	AAR (industry rep.)	1 petition for modification.	16	16	1,232
—Affirmative statement by petitioner that a petition copy has been served on rep. of employees responsible for equipment's operation/inspection/testing/maintenance.	AAR (industry rep.)	1 affirmation statement.	1	1	77
—(b)(2)(iii) Statement of interest in reviewing special approval filed with FRA.	5 rail labor unions/ general public.	1 statement of interest.	1	1	77
—(e) FRA review of petition for modification; agency objection and AAR response.	AAR (industry rep.)	1 additional comment	1	1	77
Total	N/A	7 responses	N/A	38	2,926

[1] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

Total Estimated Annual Responses: 7.

Total Estimated Annual Burden: 38 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $2,926.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–15330 Filed 7–15–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement Source of Compensation for Labor or Personal Services

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 consent to extend the time to assess tax under section 367-gain recognition agreement.

DATES: Written comments should be received on or before September 14, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 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 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

OMB Number: 1545–1395.

Form Number: 8838.

Abstract: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

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 households, and businesses and other for-profit organizations.

Estimated Number of Respondents: 666.

Estimated Time per Respondent: 8 hour, 14 minutes.

Estimated Total Annual Burden Hours: 5,482 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: July 10, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15354 Filed 7–15–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; CARES Act Loan and Payroll Support Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments must be received on or before September 14, 2020.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: CARES Act Loan and Payroll Support Programs.

OMB Control Number: 1505–0263.

Type of Review: Extension of a currently approved collection.

Description: On March 27, 2020, the President signed the ''Coronavirus Aid, Relief, and Economic Security Act'' or the ''CARES Act,'' (Pub. L. 116–136) which provides emergency assistance and health care response for individuals, families and businesses affected by the COVID–19 pandemic, and provides emergency appropriations to support executive branch agency operations during the COVID–19 pandemic. The Act authorizes the Secretary of the Treasury to make loans, loan guarantees, and other investments that do not exceed $500 billion in the aggregate to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus. Section 4003(b)(1)–(3) authorizes the Secretary to make loans and loan guarantees available to passenger air carriers and cargo air carriers, as well as certain related businesses, and businesses critical to maintaining national security. As part of the loan and payroll support agreements, applicants will need to maintain records for a period of 2, 5, or 10 years, depending on the loan type, as well as submit compliance reports quarterly to ensure funding is used in accordance with the agreements and aid statutory reporting requirements.

Forms: Payroll Support Application Form, Payroll Support Program Agreement, Supplemental Information for Contractor Applicants, Treasury Loan Application Form for Air Carriers and Certain Eligible Businesses, Treasury Loan Application Form for Businesses Critical to Maintaining National Security, Quarterly and Annual Compliance and Reporting Collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,000 for applications, 1,100 for reporting.

Frequency of Response: Once for applications, Quarterly for reporting.

Estimated Total Number of Annual Responses: 1,000 for applications, 4,400 for reporting.

Estimated Time per Response: 2 hours for applications, 4 hours for reporting.

Estimated Total Annual Burden Hours: 2,000 for applications, 17,600 for reporting.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: July 10, 2020.

Lenora Stiles,

Interim Deputy Chief Operating Officer of CARES Operations, Office of Management.

[FR Doc. 2020–15331 Filed 7–15–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0877]

Agency Information Collection Activity: Freedom of Information Act (FOIA) or Privacy Act (PA) Request, Priority Processing Request and Document/Evidence Submission

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected

cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0877.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0877'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Freedom of Information Act (FOIA) or Privacy Act (PA) Request (VA Form 20–10206), Priority Processing Request (VA Form 20–10207) and Document/Evidence Submission (VA Form 20–10208).

OMB Control Number: 2900–0877.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form 20–10206 is used by a claimant to request access to Federal agency records as long as the record is not exempt from release by one of the nine FOIA exemptions. This form standardizes submission of Freedom of Information Act (FOIA) and Privacy Act (PA) requests received from claimants in order to facilitate the identification and retrieval of requested records. VA Form 20–10207 is used by claimant's to notify VA of an urgent or immediate need due to change in status or circumstance for priority processing of claim. VA Form 20–10208 is used to identify and associate additional evidence or information in support of claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 29031 on May 14, 2020.

Affected Public: Individuals or households.

Estimated Annual Burden: 50,000 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 500,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–15339 Filed 7–15–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Council on Environmental Quality

40 CFR Parts 1500, 1501, 1502, et al.
Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act; Final Rule

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1515, 1516, 1517, and 1518

[CEQ–2019–0003]

RIN 0331–AA03

Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) issues this final rule to update its regulations for Federal agencies to implement the National Environmental Policy Act (NEPA). CEQ has not comprehensively updated its regulations since their promulgation in 1978, more than four decades ago. This final rule comprehensively updates, modernizes, and clarifies the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies in connection with proposals for agency action. The rule will improve interagency coordination in the environmental review process, promote earlier public involvement, increase transparency, and enhance the participation of States, Tribes, and localities. The amendments will advance the original goals of the CEQ regulations to reduce paperwork and delays, and promote better decisions consistent with the national environmental policy set forth in section 101 of NEPA.

DATES: This is a major rule subject to congressional review. The effective date is September 14, 2020. However, if congressional review has changed the effective date, CEQ will publish a document in the **Federal Register** to establish the actual effective date or to terminate the rule.

ADDRESSES: CEQ has established a docket for this action under docket number CEQ–2019–0003. All documents in the docket are listed on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Viktoria Z. Seale, Chief of Staff and General Counsel, 202–395–5750, *NEPA-Update@ceq.eop.gov.*

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I. Background

President Nixon signed the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* (NEPA or the Act) into law on January 1, 1970. The Council on Environmental Quality (CEQ) initially issued interim guidelines for implementing NEPA in 1970, revised those guidelines in 1971 and 1973, and subsequently promulgated its regulations implementing NEPA in 1978. The original goals of those regulations were to reduce paperwork and delays, and promote better decisions consistent with the national environmental policy established by the Act.

Since the promulgation of the 1978 regulations, however, the NEPA process has become increasingly complicated and can involve excessive paperwork and lengthy delays. The regulations have been challenging to navigate with related provisions scattered throughout, and include definitions and provisions that have led to confusion and generated extensive litigation. The complexity of the regulations has given rise to CEQ's issuance of more than 30 guidance documents to assist Federal agencies in understanding and complying with NEPA. Agencies also have developed procedures and practices to improve their implementation of NEPA. Additionally, Presidents have issued directives, and Congress has enacted legislation to reduce delays and expedite the implementation of NEPA and the CEQ regulations, including for transportation, water, and other types of infrastructure projects.

Despite these efforts, the NEPA process continues to slow or prevent the development of important infrastructure and other projects that require Federal permits or approvals, as well as rulemakings and other proposed actions. Agency practice has also continued to evolve over the past four decades, but many of the most efficient and effective practices have not been incorporated into the CEQ regulations. Further, a wide range of judicial decisions, including those issued by the Supreme Court, evaluating Federal agencies' compliance with NEPA have construed and interpreted key provisions of the statute and CEQ's regulations. CEQ's guidance, agency practice, more recent presidential directives and statutory developments, and the body of case law related to NEPA implementation have not been harmonized or codified in CEQ's regulations.

As discussed further below, NEPA implementation and related litigation can be lengthy and significantly delay major infrastructure and other projects.[1] For example, CEQ has found that NEPA reviews for Federal Highway Administration projects, on average take more than seven years to proceed from a notice of intent (NOI) to prepare an environmental impact statement (EIS) to issuance of a record of decision (ROD). This is a dramatic departure from CEQ's prediction in 1981 that Federal agencies would be able to complete most EISs, the most intensive review of a project's environmental impacts under NEPA, in 12 months or less.[2] In its most recent review, CEQ found that, across the Federal Government, the average time for completion of an EIS and issuance of a ROD was 4.5 years and the median was 3.5 years.[3] CEQ determined that one quarter of EISs took less than 2.2 years, and one quarter of the EISs took more than 6 years. And these timelines do not necessarily include further delays associated with litigation over the legal sufficiency of the NEPA process or its resulting documentation.

Although other factors may contribute to project delays, the frequency and consistency of multi-year review processes for EISs for projects across the Federal Government leaves no doubt that NEPA implementation and related litigation is a significant factor.[4] It is critical to improve NEPA implementation, not just for major projects, but because tens of thousands of projects and activities are subject to NEPA every year, many of which are important to modernizing our Nation's infrastructure.[5]

As noted above, an extensive body of case law interpreting NEPA and CEQ's implementing regulations drives much of agencies' modern day practice. Though courts have correctly recognized that NEPA requires agencies to follow certain procedures and not to reach particular substantive results, the accretion of cases has not necessarily clarified implementation of the law. In light of the litigation risk such a situation presents, agencies have responded by generating voluminous studies analyzing impacts and alternatives well beyond the point where useful information is being produced and utilized by decision makers. In its most recent review, CEQ found that final EISs averaged 661 pages in length, and the median document was 447 pages.[6] One quarter were 748 pages or longer. The page count and document length data do not include

[1] *See infra* sec. I.B.3 and I.C.

[2] Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026 (Mar. 23, 1981) (''Forty Questions''), *https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act.* ''The Council has advised agencies that under the new NEPA regulations even large complex energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.'' *Id.* at Question 35.

[3] *See infra* sec. I.B.3.

[4] *See also,* Philip K. Howard, Common Good, Two Years, Not Ten: Redesigning Infrastructure Approvals (Sept. 2015) (''Two Years, Not Ten''), *https://www.commongood.org/wp-content/uploads/2017/07/2YearsNot10Years.pdf.*

[5] As discussed in sections II.D and II.C.5, CEQ estimates that Federal agencies complete 176 EISs and 10,000 environmental assessments each year. In addition, CEQ estimates that agencies apply categorical exclusions to 100,000 actions annually. *See infra* sec. II.C.4.

[6] *See infra* sec. I.B.3.

appendices. The average modern EIS is more than 4 times as long as the 150 pages contemplated by the 1978 regulations.

By adopting these regulations following so many decades of NEPA practice, implementation, and litigation, CEQ is acting now to enhance the efficiency of the process based on its decades of experience overseeing Federal agency practice, and clarifying a number of key NEPA terms and requirements that have frequently been subject to litigation. The modifications and refinements reflected in the final rule will contribute to greater certainty and predictability in NEPA implementation, and thus eliminate at least in some measure the unnecessary and burdensome delays that have hampered national infrastructure and other important projects.

In June 2018, CEQ issued an advance notice of proposed rulemaking (ANPRM) requesting comment on potential updates and clarifications to the CEQ regulations.[7] On January 10, 2020, CEQ published a notice of proposed rulemaking[8] (NPRM or proposed rule) in the **Federal Register** proposing to update its regulations for implementing the procedural provisions of NEPA.

Following the publication of the NPRM, CEQ received approximately 1,145,571 comments on the proposed rule.[9] A majority of the comments (approximately 1,136,755) were the result of mass mail campaigns, which are comments with multiple signatories or groups of comments that are identical or very similar in form and content. CEQ received approximately 8,587 unique public comments of which 2,359 were substantive comments raising a variety of issues related to the rulemaking and contents of the proposed rule, including procedural, legal, and technical issues. Finally, 229 comments were duplicate or non-germane submissions, or contained only supporting materials.

The background section below summarizes NEPA, the CEQ regulations, and developments since CEQ issued those regulations. Specifically, section I.A provides a brief summary of the NEPA statute. Section I.B describes the history of CEQ's regulations implementing NEPA and provides an overview of CEQ's numerous guidance documents and reports issued subsequent to the regulations. Section I.C discusses the role of the courts in interpreting NEPA. Section I.D provides a brief overview of Congress's efforts, and section I.E describes the initiatives of multiple administrations to reduce delays and improve implementation of NEPA. Finally, sections I.F and I.G provides the background on this rulemaking, including the ANPRM and the NPRM.

In section II, CEQ provides a summary of the final rule, including changes CEQ made from the proposed rule, which comprehensively updates and substantially revises CEQ's prior regulations. This final rule modernizes and clarifies the CEQ regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies by simplifying regulatory requirements, codifying certain guidance and case law relevant to these regulations, revising the regulations to reflect current technologies and agency practices, eliminating obsolete provisions, and improving the format and readability of the regulations. CEQ's revisions include provisions intended to promote timely submission of relevant information to ensure consideration of such information by agencies. CEQ's revisions will provide greater clarity for Federal agencies, States, Tribes, localities, and the public, and advance the original goals of the CEQ regulations to reduce paperwork and delays and promote better decisions consistent with the national environmental policy set forth in section 101 of NEPA.

CEQ provides a summary of the comments received on the proposed rule and responses in the document titled ''Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act Final Rule Response to Comments''[10] (''Final Rule Response to Comments''). This document organizes the comments by the parts and sections of the proposed rule that the comment addresses, and includes a subsection on other general or crosscutting topics.

Ultimately, the purpose of the NEPA process is to ensure informed decision making by Federal agencies with regard to the potential environmental effects of proposed major Federal actions and to make the public aware of the agency's decision-making process. When effective and well managed, the NEPA process results in more informative documentation, enhanced coordination, resolution of conflicts, and improved environmental outcomes. With this final rule, CEQ codifies effective agency practice and provides clarity on the requirements of the NEPA process.

A. National Environmental Policy Act

Congress enacted NEPA to establish a national policy for the environment, provide for the establishment of CEQ, and for other purposes. Section 101 of NEPA sets forth a national policy ''to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans.'' 42 U.S.C. 4331(a). Section 102 of NEPA establishes procedural requirements, applying that national policy to proposals for major Federal actions significantly affecting the quality of the human environment by requiring Federal agencies to prepare a detailed statement on: (1) The environmental impact of the proposed action; (2) any adverse environmental effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. 4332(2)(C). NEPA also established CEQ as an agency within the Executive Office of the President to administer Federal agency implementation of NEPA. 42 U.S.C. 4332(2)(B), (C), (I), 4342, 4344; *see also Dep't of Transp.* v. *Pub. Citizen*, 541 U.S. 752, 757 (2004); *Warm Springs Dam Task Force* v. *Gribble,* 417 U.S. 1301, 1309–10 (Douglas, J. Circuit Justice 1974).

NEPA does not mandate particular results or substantive outcomes. Rather, NEPA requires Federal agencies to consider environmental impacts of proposed actions as part of agencies' decision-making processes. Additionally, NEPA does not include a private right of action and specifies no remedies. Challenges to agency action alleging noncompliance with NEPA procedures are brought under the Administrative Procedure Act (APA). 5

[7] 83 FR 28591 (June 20, 2018).

[8] 85 FR 1684 (Jan. 10, 2020).

[9] In the NPRM, CEQ listed several methods for members of the public to submit written comments, including submittal to the docket on *regulations.gov,* by fax, or by mail. In addition, CEQ also included an email address (*NEPA-Update@ceq.eop.gov*) in the NPRM for further information. While the NPRM did not list this email address among the several methods for the public to provide comments, CEQ has considered comments received through this email address during the public comment period and included them in the docket on *regulations.gov.*

[10] The Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act Final Rule Response to Comments document is available under ''Supporting Documents'' in the docket on *regulations.gov* under docket ID CEQ–2019–0003.

U.S.C. 551 *et seq.* Accordingly, NEPA cases proceed as APA cases. Limitations on APA cases and remedies thus apply to the adjudication of NEPA disputes.

B. Council on Environmental Quality Regulations, Guidance, and Reports

1. Regulatory History

In 1970, President Nixon issued Executive Order (E.O.) 11514, titled ''Protection and Enhancement of Environmental Quality,'' which directed CEQ to ''[i]ssue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act.'' [11] CEQ issued interim guidelines in April of 1970 and revised them in 1971 and 1973.[12]

In 1977, President Carter issued E.O. 11991, titled ''Relating to Protection and Enhancement of Environmental Quality.'' [13] E.O. 11991 amended section 3(h) of E.O. 11514, directing CEQ to ''[i]ssue regulations to Federal agencies for the implementation of the procedural provisions of [NEPA] . . . to make the environmental impact statement process more useful to decision[ ]makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives,'' and to ''require [environmental] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses.'' E.O. 11991 also amended section 2 of E.O. 11514, requiring agency compliance with the regulations issued by CEQ. The Executive order was based on the President's constitutional and statutory authority, including NEPA, the Environmental Quality Improvement Act, 42 U.S.C. 4371 *et seq.,* and section 309 of the Clean Air Act, 42 U.S.C. 7609. The President has a constitutional duty to ensure that the ''Laws be faithfully executed,'' U.S. Const. art. II, sec. 3, which may be delegated to appropriate officials. 3 U.S.C. 301. In signing E.O. 11991, the President delegated this authority to CEQ.[14]

In 1978, CEQ promulgated its ''National Environmental Policy Act, Regulations, Implementation of Procedural Provisions,'' 40 CFR parts 1500–1508 (''CEQ regulations'' or ''NEPA regulations''), ''[t]o reduce paperwork, to reduce delays, and at the same time to produce better decisions [that] further the national policy to protect and enhance the quality of the human environment.'' [15] The Supreme Court has explained that E.O. 11991 requires all ''heads of [F]ederal agencies to comply'' with the ''single set of uniform, mandatory regulations'' that CEQ issued to implement NEPA's provisions. *Andrus* v. *Sierra Club,* 442 U.S. 347, 357 (1979).

The Supreme Court has afforded the CEQ regulations ''substantial deference.'' *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 355 (1989) (citing *Andrus,* 442 U.S. at 358); *Pub. Citizen,* 541 U.S. at 757 (''The [CEQ], established by NEPA with authority to issue regulations interpreting it, has promulgated regulations to guide [F]ederal agencies in determining what actions are subject to that statutory requirement.'' (citing 40 CFR 1500.3)). The new regulations are intended to embody CEQ's interpretation of NEPA for *Chevron* purposes and to operate as legislative rules.[16] *See Chevron U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 842–43 (1984); *see also Nat'l Cable & Telecomm. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980–86 (2005) (applying *Chevron* deference to Federal Communications Commission regulations); *United States* v. *Mead Corp.,* 533 U.S. 218, 227–30 (2001) (properly promulgated agency regulations addressing ambiguities or gaps in a statute qualify for *Chevron* deference when agencies possess the authority to issue regulations interpreting the statute). The Supreme Court has held that NEPA is a procedural statute that serves the twin aims of ensuring that agencies consider the significant environmental consequences of their proposed actions and inform the public about their decision making. *Balt. Gas & Elec. Co.* v. *Nat. Res. Def. Council, Inc.,* 462 U.S. 87, 97 (1983) (citing *Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 553 (1978); *Weinberger* v. *Catholic Action of Haw./Peace Educ. Project,* 454 U.S. 139, 143 (1981)).

Furthermore, in describing the role of NEPA in agencies' decision-making processes, the Supreme Court has stated, ''Congress in enacting NEPA, however, did not require agencies to elevate environmental concerns over other appropriate considerations.'' [17] *Balt. Gas & Elec. Co.,* 462 U.S. at 97 (citing *Strycker's Bay Neighborhood Council* v. *Karlen,* 444 U.S. 223, 227 (1980) (per curiam)). Instead, NEPA requires agencies to analyze the environmental consequences before taking a major Federal action. *Id.* (citing *Kleppe* v. *Sierra Club,* 427 U.S. 390, 410 n.21 (1976)). The Supreme Court has recognized that agencies have limited time and resources and that ''[t]he scope of the agency's inquiries must remain manageable if NEPA's goal of '[insuring] a fully informed and well-considered decision,' . . . is to be accomplished.'' *Metro. Edison Co.* v. *People Against Nuclear Energy,* 460 U.S. 766, 776 (1983) (quoting *Vt. Yankee,* 435 U.S. at 558).

CEQ has substantively amended its NEPA regulations only once, at 40 CFR 1502.22, to replace the ''worst case'' analysis requirement with a provision for the consideration of incomplete or unavailable information regarding reasonably foreseeable significant adverse effects.[18] CEQ found that the amended 40 CFR 1502.22 would ''generate information and discussion on those consequences of greatest concern to the public and of greatest relevance to the agency's decision,'' [19] rather than distorting the decision-making process by overemphasizing highly speculative harms.[20] The Supreme Court found this reasoning to

[11] 35 FR 4247 (Mar. 7, 1970), sec. 3(h).

[12] *See* 35 FR 7390 (May 12, 1970) (interim guidelines); 36 FR 7724 (Apr. 23, 1971) (final guidelines); 38 FR 10856 (May 2, 1973) (proposed revisions to guidelines); 38 FR 20550 (Aug. 1, 1973) (revised guidelines).

[13] 42 FR 26967 (May 25, 1977).

[14] The Presidential directive was consistent with the recommendation of the Commission on Federal Paperwork that the President require the development of consistent regulations and definitions and ensure coordination among agencies in the implementation of Environmental Impact Statement preparation. *See* The Report of the Commission on Federal Paperwork, Environmental Impact Statements 16 (Feb. 25, 1977).

[15] 43 FR 55978 (Nov. 29, 1978); *see also* 44 FR 873 (Jan. 3, 1979) (technical corrections), and 43 FR 25230 (June 9, 1978) (proposed rule).

[16] Even without expressly invoking *Chevron* here and noting that CEQ intends these regulations to operate as legislative rules, *Chevron* would still apply. *See Guedes* v. *ATF,* 920 F.3d 1, 23 (D.C. Cir. 2019) (''And for this Rule in particular, another telltale sign of the agency's belief that it was promulgating a rule entitled to *Chevron* deference is the Rule's invocation of *Chevron* by name. To be sure, an agency of course need not expressly invoke the *Chevron* framework to obtain *Chevron* deference: '*Chevron* is a standard of *judicial* review, not of *agency* action.' *SoundExchange*[, *Inc.* v. *Copyright Royalty Bd.,*] 904 F.3d [41,] 54 [(D.C. Cir. 2018)]. Still, the Bureau's invocation of *Chevron* here is powerful evidence of its intent to engage in an exercise of interpretive authority warranting *Chevron* treatment.'') (emphasis in original).

[17] Section 101 of NEPA provides that it is the Federal Government's policy ''to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and [to] *fulfill the social, economic, and other requirements of present and future generations of Americans.*'' 42 U.S.C. 4331(a) (emphasis added).

[18] 51 FR 15618 (Apr. 25, 1986).

[19] 50 FR 32234, 32237 (Aug. 9, 1985).

[20] 51 FR 15618, 15620 (Apr. 25, 1986).

be a well-considered basis for the change, and that the new regulation was entitled to substantial deference. *Methow Valley,* 490 U.S. at 356.

The NEPA regulations direct Federal agencies to adopt their own implementing procedures, as necessary, in consultation with CEQ. 40 CFR 1507.3. Under this regulation, over 85 Federal agencies and their subunits have developed such procedures.[21]

2. CEQ Guidance and Reports

Over the past four decades, numerous questions have been raised regarding appropriate implementation of NEPA and the CEQ regulations. Soon after the issuance of the CEQ regulations and in response to CEQ's review of NEPA implementation and input from Federal, State, and local officials, including NEPA practitioners, CEQ issued the ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' [22] in 1981 (''Forty Questions''). This guidance covered a wide range of topics including alternatives, coordination among applicants, lead and cooperating agencies, and integration of NEPA documents with analysis for other environmental statutes. In addition, CEQ has periodically examined the effectiveness of the NEPA process and issued a number of reports on NEPA implementation. In some instances, these reports led to additional guidance. These documents have been intended to provide guidance and clarifications with respect to various aspects of the implementation of NEPA and the definitions in the CEQ regulations, and to increase the efficiency and effectiveness of the environmental review process.[23]

In January 1997, CEQ issued ''The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years.'' [24] In that report, CEQ acknowledged that NEPA has ensured that agencies adequately analyze the potential environmental consequences of their actions and bring the public into the decision-making processes of Federal agencies. However, CEQ also identified matters of concern to participants in the study, including concerns with overly lengthy documents that may not enhance or improve decision making,[25] and concerns that agencies may seek to '' 'litigation-proof' documents, increasing costs and time but not necessarily quality.'' [26] The report further stated that ''[o]ther matters of concern to participants in the Study were the length of NEPA processes, the extensive detail of NEPA analyses, and the sometimes confusing overlay of other laws and regulations.'' [27] The participants in the study identified five elements of the NEPA process' collaborative framework (strategic planning, public information and input, interagency coordination, interdisciplinary place-based decision making, and science-based flexible management) as critical to effective and efficient NEPA implementation.

In 2002, the Chairman of CEQ established a NEPA task force, composed of Federal agency officials, to examine NEPA implementation by focusing on (1) technology and information management and security; (2) Federal and intergovernmental collaboration; (3) programmatic analyses and tiering; (4) adaptive management and monitoring; (5) categorical exclusions (CEs); and (6) environmental assessments (EAs). In 2003, the task force issued a report [28] recommending actions to improve and modernize the NEPA process, leading to additional guidance documents and handbooks.

Over the past 4 decades, CEQ has issued over 30 documents on a wide variety of topics to provide guidance and clarifications to assist Federal agencies in more efficiently and effectively implementing the NEPA regulations.[29] While CEQ has sought to provide clarity and direction related to implementation of the regulations and the Act through the issuance of guidance, agencies continue to face implementation challenges. Further, the documentation and timelines for completing environmental reviews can be very lengthy, and the process can be complex and costly.

In 2018, CEQ and the Office of Management and Budget (OMB) issued a memorandum titled ''One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under E.O. 13807'' (''OFD Framework Guidance'').[30] CEQ and OMB issued this guidance pursuant to E.O. 13807, titled ''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,'' [31] to improve agency coordination for infrastructure

[21] A list of agency NEPA procedures is available at *https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html.*

[22] Forty Questions, *supra* note 2.

[23] *See https://www.energy.gov/nepa/ceq-guidance-documents.*

[24] *https://ceq.doe.gov/docs/ceq-publications/nepa25fn.pdf.*

[25] *Id.* at iii.

[26] *Id.*

[27] *Id.* In the 50 years since the passage of NEPA, Congress has amended or enacted a number of other environmental laws that may also apply to proposed Federal agency actions, such as the Endangered Species Act, the Clean Water Act, the Clean Air Act, and other substantive statutes. *See* discussion *infra* sec. I.D. Consistent with 40 CFR 1502.25, longstanding agency practice has been to use the NEPA process as the umbrella procedural statute, integrating compliance with these laws into the NEPA review and discussing them in the NEPA document. However, this practice sometimes leads to confusion as to whether an agency does an analysis to comply with NEPA or another, potentially substantive, environmental law.

[28] *See* The NEPA Task Force Report to the Council on Environmental Quality, Modernizing NEPA Implementation (Sept. 2003) (''NEPA Task Force Report''), *https://ceq.doe.gov/docs/ceq-publications/report/finalreport.pdf.*

[29] *See, e.g.,* Emergencies and the National Environmental Policy Act (Oct. 2016) (''Emergencies Guidance''), *https://ceq.doe.gov/docs/nepa-practice/Emergencies_and_NEPA.pdf;* Effective Use of Programmatic NEPA Reviews (Dec. 18, 2014) (''Programmatic Guidance''), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Effective_Use_of_Programmatic_NEPA_Reviews_Final_Dec2014_searchable.pdf;* NEPA and NHPA: A Handbook for Integrating NEPA and Section 106 (Mar. 2013), *https://ceq.doe.gov/publications/nepa-handbooks.html;* Memorandum on Environmental Conflict Resolution (Nov. 28, 2005), as expanded by Memorandum on Environmental Collaboration and Conflict Resolution (Sept. 7, 2012), *https://ceq.doe.gov/nepa-practice/environmental-collaboration-and-conflict-resolution.html;* Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act, 77 FR 14473 (Mar. 12, 2012) (''Timely Environmental Reviews Guidance''), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Improving_NEPA_Efficiencies_06Mar2012.pdf;* Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact, 76 FR 3843 (Jan. 21, 2011) (''Mitigation Guidance''), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf;* Council on Environmental Quality, Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act, 75 FR 75628 (Dec. 6, 2010) (''CE Guidance''), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf;* Letter from the Hon. James L. Connaughton, Chairman, Council on Environmental Quality, to the Hon. Norman Y. Mineta, Secretary, Department of Transportation (May 12, 2003) (''Connaughton Letter''), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-DOT_PurposeNeed_May-2013.pdf;* Considering Cumulative Effects Under the National Environmental Policy Act (Jan. 1997) (''Cumulative Effects Guidance''), *https://ceq.doe.gov/publications/cumulative_effects.html;* Environmental Justice: Guidance under the National Environmental Policy Act (Dec. 10, 1997) (''EJ Guidance''), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf;* Forty Questions, *supra* note 2. CEQ also issued a resource for the public, A Citizen's Guide to the NEPA: Having Your Voice Heard (Dec. 2007), *https://ceq.doe.gov/get-involved/citizens_guide_to_nepa.html.*

[30] M–18–13 (Mar. 20, 2018), *https://www.whitehouse.gov/wp-content/uploads/2018/04/M-18-13.pdf.*

[31] *82 FR 40463* (Aug. 24, 2017).

projects requiring an EIS and permits or other authorizations from multiple agencies and to improve the timeliness of the environmental review process. *See* E.O. 13807, *infra* sec. I.E. Consistent with the OFD Framework Guidance, *supra* note 30, Federal agencies signed a memorandum of understanding committing to implement the One Federal Decision (OFD) policy for major infrastructure projects, including by committing to establishing a joint schedule for such projects, preparation of a single EIS and joint ROD, elevation of delays and dispute resolution, and setting a goal of completing environmental reviews for such projects within two years.[32] Subsequently, CEQ and OMB issued guidance for the Secretary of Transportation regarding the applicability of the OFD policy to States under the Surface Transportation Project Delivery Program,[33] and for the Secretary of Housing and Urban Development (HUD) regarding the applicability of the OFD policy to entities assuming HUD environmental review responsibilities.[34] CEQ also has provided direction to the Federal Energy Regulatory Commission (FERC) relating to the requirement for joint RODs under the OFD policy.[35]

3. Environmental Impact Statement Timelines and Page Count Reports

CEQ also has conducted reviews and prepared reports on the length of time it takes for agencies to prepare EISs and the length of these documents. These reviews found that the process for preparing EISs is taking much longer than CEQ advised, and that the documents are far longer than the CEQ regulations and guidance recommended. In December 2018, CEQ issued a report compiling information relating to the timelines for preparing EISs during the period of 2010–2017, and the NPRM included a summary of the report. CEQ has since updated this analysis to include EISs completed in 2018, and this section reflects the updated data.[36]

While CEQ's Forty Questions states that the time for an EIS, even for a complex project, should not exceed 1 year,[37] CEQ found that, across the Federal Government, the average time for completion of an EIS and issuance of a ROD was 4.5 years and the median was 3.5 years. One quarter of the EISs took less than 2.2 years, and one quarter of the EISs took more than 6 years.

As reflected in the timelines report, the period from publication of a NOI to prepare an EIS to the notice of availability of the draft EIS took, on average, 58.4 percent of the total time, while preparing the final EIS, including addressing comments received on the draft EIS, took, on average, 32.2 percent of the total time. The period from the final EIS to publication of the ROD took, on average, 9.4 percent of the total time. This report recognized that EIS timelines vary widely and many factors may influence the timing of the document, including variations in the scope and complexity of the actions, variations in the extent of work done prior to issuance of the NOI, and suspension of EIS activities due to external factors.

Additionally, in July 2019, CEQ issued a report on the length, by page count, of EISs (excluding appendices) finalized during the period of 2013–2017, and the NPRM included a summary of the report. CEQ has since updated this analysis to include EISs completed in 2018, and this section reflects the updated data.

While the CEQ regulations include recommended page limits for the text of final EISs of normally less than 150 pages, or normally less than 300 pages for proposals of ''unusual scope or complexity,'' 40 CFR 1502.7, CEQ found that many EISs are significantly longer. In particular, CEQ found that across all Federal agencies, draft EISs averaged 575 pages in total, with a median document length of 397 pages.[38] One quarter of the draft EISs were 279 pages or shorter, and one quarter were 621 pages or longer. For final EISs, the average document length was 661 pages, and the median document length was 447 pages. One quarter of the final EISs were 286 pages or shorter, and one quarter were 748 pages or longer. On average, the change in document length from draft EIS to final EIS was an additional 86 pages or a 15 percent increase.

With respect to final EISs, CEQ found that approximately 7 percent were 150 pages or shorter, and 27 percent were 300 pages or shorter.[39] Similar to the conclusions of its EIS timelines study, CEQ noted that a number of factors may influence the length of EISs, including variation in the scope and complexity of the decisions that the EIS is designed to inform, the degree to which NEPA documentation is used to document compliance with other statutes, and considerations relating to potential legal challenges. Moreover, variation in EIS length may reflect differences in management, oversight, and contracting practices among agencies that could result in longer documents.

While there can be many factors affecting the timelines and length of EISs, CEQ has concluded that revisions to the CEQ regulations to advance more timely reviews and reduce unnecessary paperwork are warranted. CEQ has determined that improvements to agency processes, such as earlier solicitation of information from States, Tribes, and local governments and the public, and improved coordination in the development of EISs, can achieve more useful and timely documents to support agency decision making.

C. Judicial Review of Agency NEPA Compliance

NEPA is the most litigated environmental statute in the United States.[40] Over the past 50 years, Federal courts have issued an extensive body of case law addressing appropriate implementation and interpretation of NEPA and the CEQ regulations.[41] The Supreme Court has directly addressed NEPA in 17 decisions, and the U.S. district and appellate courts issue approximately 100 to 140 decisions

[32] *See* Memorandum of Understanding Implementing One Federal Decision under Executive Order 13807 (2018), *https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf.*

[33] Guidance on the Applicability of E.O. 13807 to States with NEPA Assignment Authority Under the Surface Transportation Project Delivery Program, M–19–11 (Feb. 26, 2019), *https://www.whitehouse.gov/wp-content/uploads/2017/11/20190226OMB-CEQ327.pdf.*

[34] Guidance on the Applicability of E.O. 13807 to Responsible Entities Assuming Department of Housing and Urban Development Environmental Review Responsibilities, M–19–20 (June 28, 2019), *https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-20.pdf.*

[35] *See* Letter from the Hon. Mary B. Neumayr, Chairman, Council on Environmental Quality, to the Hon. Neil Chatterjee, Chairman, Federal Energy Regulatory Comm'n (Aug. 22, 2019), *https://www.whitehouse.gov/wp-content/uploads/2017/11/20190822FERCOFDLetter.pdf.*

[36] *See* Council on Environmental Quality, Environmental Impact Statement Timelines (2010–2018), (June 12, 2020), *https://ceq.doe.gov/nepa-practice/eis-timelines.html.*

[37] Forty Questions, *supra* note 2, at Question 35.

[38] *See* Council on Environmental Quality, Length of Environmental Impact Statements (2013–2018), (June 12, 2020) (''CEQ Length of EISs Report''), *https://ceq.doe.gov/nepa-practice/eis-length.html.*

[39] The page counts compiled for 2010–2017 include the text of the EIS as well as supporting content to which the page limit in 40 CFR 1502.7 does not apply. For 2018, CEQ analyzed the data to determine the length of the text of the EISs and found that 19 percent of the final EISs were 150 pages or shorter and 51 percent were 300 pages or shorter.

[40] James E. Salzman and Barton H. Thompson, Jr., *Environmental Law and Policy* 340 (5th ed. 2019) (''Perhaps surprisingly, there have been thousands of NEPA suits. It might seem strange that NEPA's seemingly innocuous requirement of preparing an EIS has led to more lawsuits than any other environmental statute.'').

[41] The 2019 edition of NEPA Law and Litigation includes a 115–page Table of Cases decisions construing NEPA. *See* Daniel R. Mandelker et al., NEPA Law and Litigation, Table of Cases (2d ed. 2019).

each year interpreting NEPA. The Supreme Court has construed NEPA and the CEQ regulations in light of a ''rule of reason,'' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of information to the decision-making process. *See Marsh* v. *Or. Nat. Res. Council,* 490 U.S. 360, 373–74 (1989). ''Although [NEPA] procedures are almost certain to affect the agency's substantive decision, it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.'' *Methow Valley,* 490 U.S. at 350 (citing *Strycker's Bay Neighborhood Council, Inc.,* 444 U.S. at 227–28; *Vt. Yankee,* 435 U.S. at 558; *see also Pub. Citizen,* 541 U.S. at 756–57 (''NEPA imposes only procedural requirements on [F]ederal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions.'' (citing *Methow Valley,* 490 U.S. at 349–50)). The thousands of decisions interpreting NEPA and the current CEQ regulations being amended here drive much of agencies' modern-day practice. A challenge for agencies is that courts have interpreted key terms and requirements differently, adding to the complexity of environmental reviews. For example, in 2018 and 2019, the U.S. Courts of Appeals issued 56 substantive decisions on a range of topics, including assessment of impacts, sufficiency of alternatives, whether an agency's action qualified as Federal action, and purpose and need statements.[42] As discussed below, the final rule codifies longstanding case law in some instances, and, in other instances, clarifies the meaning of the regulations where there is a lack of uniformity in judicial interpretation of NEPA and the CEQ regulations.

D. Statutory Developments

Since the enactment of NEPA in 1970, Congress has amended or enacted a large number of substantive environmental statutes. These have included significant amendments to the Clean Water Act and Clean Air Act, establishment of new Federal land management standards and planning processes for National forests, public lands, and coastal zones, and statutory requirements to conserve fish, wildlife, and plant species.[43] Additionally, the consideration of the effects on historic properties under the National Historic Preservation Act is typically integrated into the NEPA review.[44] NEPA has served as the umbrella procedural statute, integrating these laws into NEPA reviews and discussing them in NEPA documents.

Over the past two decades and multiple administrations, Congress has also undertaken efforts to facilitate more efficient environmental reviews by Federal agencies, and has enacted a number of statutes aimed at improving the implementation of NEPA, including in the context of infrastructure projects. In particular, Congress has enacted legislation to improve coordination among agencies, integrate NEPA with other environmental reviews, and bring more transparency to the NEPA process.

In 2005, Congress enacted 23 U.S.C. 139, ''Efficient environmental reviews for project decisionmaking,'' a streamlined environmental review process for highway, transit, and multimodal transportation projects (the ''section 139 process''), in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, sec. 6002(a), 119 Stat. 1144, 1857. Congress amended section 139 with additional provisions designed to improve the NEPA process in the 2012 Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, sec. 1305–1309, 126 Stat. 405, and the 2015 Fixing America's Surface Transportation (FAST) Act, Public Law 114–94, sec. 1304, 129 Stat. 1312, 1378. Section 139 provides for an environmental review process that is based on and codifies many aspects of the NEPA regulations, including provisions relating to lead and cooperating agencies, concurrent environmental reviews in a single NEPA document, coordination on the development of the purpose and need statement and reasonable alternatives, and adoption of environmental documents. Further, section 139 provides for referral to CEQ for issue resolution, similar to part 1504 of the NEPA regulations, and allows for the use of errata sheets, consistent with 40 CFR 1503.4(c).[45]

When Congress enacted section 2045 of the Water Resources Development Act of 2007, Public Law 110–114, 121 Stat. 1041, 1103, it created a similar environmental review provision for water resources development projects by the U.S. Army Corps of Engineers (Corps). 33 U.S.C. 2348.[46] This project acceleration provision also requires a coordinated environmental review process, provides for dispute resolution, and codifies aspects of the NEPA regulations such as lead and cooperating agencies, concurrent environmental reviews, and the establishment of CEs. Section 2348(o) also directs the Corps to consult with CEQ on the development of guidance for implementing this provision.

In 2015 Congress enacted Title 41 of the FAST Act (FAST–41), to provide for a more efficient environmental review and permitting process for ''covered projects.'' *See* Public Law 114–94, sec. 41001–41014, 129 Stat. 1312, 1741 (42 U.S.C. 4370m—4370m–12). These are projects that require Federal environmental review under NEPA, are expected to exceed $200 million, and involve the construction of infrastructure for certain energy production, electricity transmission, water resource projects, broadband, pipelines, manufacturing, and other sectors. *Id.* FAST–41 codified certain roles and responsibilities required by the NEPA regulations. In particular, FAST–41 imports the concepts of lead and cooperating agencies, and the different levels of NEPA analysis—EISs, EAs, and CEs. Consistent with 40 CFR 1501.5(e) through (f), CEQ is required to resolve any dispute over designation of a facilitating or lead agency for a covered project. 42 U.S.C. 4370m–2(a)(6)(B). Section 4370m–4 codified several requirements from the CEQ

[42] National Association of Environmental Professionals, 2019 Annual NEPA Report of the National Environmental Policy Act (NEPA) Practice (2020) at 30–31, *https://naep.memberclicks.net/assets/annual-report/2019_NEPA_Annual_Report/NEPA_Annual_Report_2019.pdf;* National Association of Environmental Professionals, 2018 Annual NEPA Report of the National Environmental Policy Act (NEPA) Practice (2019) at 41–51, *https://naep.memberclicks.net/assets/documents/2019/NEPA_Annual_Report_2018.pdf.*

[43] *See, e.g.,* the Clean Air Act, 42 U.S.C. 7401–7671q; Clean Water Act, 33 U.S.C. 1251–1388; Coastal Zone Management Act, 16 U.S.C. 1451–1466; Federal Land Policy and Management Act, 43 U.S.C. 1701–1787; Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. 1600–1614; Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801–1884; Endangered Species Act, 16 U.S.C. 1531–1544; Oil Pollution Act of 1990, 33 U.S.C. 2701–2762; Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, 1202, and 1211; and Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675.

[44] Similar to NEPA, section 106 (54 U.S.C. 306108) of the National Historic Preservation Act is a procedural statute.

[45] To facilitate the NEPA process for transportation projects subject to section 139, the statute specifically calls for development of a coordination plan, including development of a schedule, and publicly tracking the implementation of that schedule through use of the Permitting Dashboard. *See infra* sec. I.E. In addition, the section 139 process provides for ''participating'' agencies, which are any agencies invited to participate in the environmental review process. Section 139 also requires, to the maximum extent practicable, issuance of a combined final EIS and ROD.

[46] Congress significantly revised this provision in the Water Resources Reform and Development Act of 2014, Public Law 113–121, sec. 1005(a)(1), 128 Stat. 1193 1199.

regulations, including the requirement for concurrent environmental reviews, which is consistent with 40 CFR 1500.2(c), 1501.7(a)(6), and 1502.25(a), and the tools of adoption, incorporation by reference, supplementation, and use of State documents, consistent with 40 CFR 1506.3, 1502.21, 1502.9(c), and 1506.2.[47] Finally, 42 U.S.C. 4370m–4 addresses interagency coordination on key aspects of the NEPA process, including scoping (40 CFR 1501.7), identification of the range of reasonable alternatives for study in an EIS (40 CFR 1502.14), and the public comment process (40 CFR part 1503).

To ensure a timely NEPA process so that important infrastructure projects can move forward, Congress has also established shorter statutes of limitations for challenges to certain types of projects. SAFETEA–LU created a 180-day statute of limitations for highway or public transportation capital projects, which MAP–21 later reduced to 150 days. 23 U.S.C. 139(l). The Water Resources Reform and Development Act of 2014 established a three-year statute of limitations for judicial review of any permits, licenses, or other approvals for water resources development project studies. 33 U.S.C. 2348(k). Most recently in FAST–41, Congress established a two-year statute of limitations for covered projects. 42 U.S.C. 4370m–6.

There are a number of additional instances where Congress has enacted legislation to facilitate more timely environmental reviews. For example, similar to the provisions described above, there are other statutes where Congress has called for a coordinated and concurrent environmental review. *See, e.g.,* 33 U.S.C. 408(b) (concurrent review for river and harbor permits); 49 U.S.C. 40128 (coordination on environmental reviews for air tour management plans for national parks); 49 U.S.C. 47171 (expedited and coordinated environmental review process for airport capacity enhancement projects).

Additionally, Congress has established or directed agencies to establish CEs to facilitate NEPA compliance. *See, e.g.,* 16 U.S.C. 6554(d) (applied silvicultural assessment and research treatments); 16 U.S.C. 6591d (hazardous fuels reduction projects to carry out forest restoration treatments); 16 U.S.C. 6591e (vegetation management activity in greater sage-grouse or mule deer habitat); 33 U.S.C. 2349 (actions to repair, reconstruct, or rehabilitate water resources projects in response to emergencies); 42 U.S.C. 15942 (certain activities for the purpose of exploration or development of oil or gas); 43 U.S.C. 1772(c)(5) (development and approval of vegetation management, facility inspection, and operation and maintenance plans); MAP–21, Public Law 112–141, sec. 1315 (actions to repair or reconstruct roads, highways, or bridges damaged by emergencies), 1316 (projects within the operational right-of-way), and 1317 (projects with limited Federal assistance); FAA Modernization and Reform Act of 2012, Public Law 112–95, sec. 213(c), 126 Stat. 11, 46 (navigation performance and area navigation procedures); and Omnibus Appropriations Act, 2009, Public Law 111–8, sec. 423, 123 Stat. 524, 748 (Lake Tahoe Basin Management Unit hazardous fuel reduction projects).

Further, in the context of emergency response, including economic crisis, Congress has enacted legislation to facilitate timely NEPA reviews or to exempt certain actions from NEPA review. Congress has directed the use or development of alternative arrangements in accordance with 40 CFR 1506.11 for reconstruction of transportation facilities damaged in an emergency (FAST Act, Pub. L. 114–94, sec. 1432, 129 Stat. 1312, 1429) and for projects by the Departments of the Interior and Commerce to address invasive species (Water Infrastructure Improvements for the Nation Act, Pub. L. 114–322, sec. 4010(e)(3), 130 Stat. 1628, 1877). Section 1609(c) of the American Recovery and Reinvestment Act of 2009 directed agencies to complete environmental reviews under NEPA on an expedited basis using the most efficient applicable process. Public Law 111–5, sec. 1609, 123 Stat. 115, 304.

In 2013, Congress also enacted section 429 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''Stafford Act''), 42 U.S.C. 5189g, which directed the President, in consultation with CEQ and the Advisory Council on Historic Preservation, to ''establish an expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law.'' Sandy Recovery Improvement Act of 2013, Public Law 113–2, sec. 1106, 127 Stat. 4, 45–46. This unified Federal environmental and historic preservation review (UFR) process is a framework for coordinating Federal agency environmental and historic preservation reviews for disaster recovery projects associated with presidentially declared disasters under the Stafford Act. The goal of the UFR process is to enhance the ability of Federal environmental review and authorization processes to inform and expedite disaster recovery decisions for grant applicants and other potential beneficiaries of disaster assistance by improving coordination and consistency across Federal agencies, and assisting agencies in better leveraging their resources and tools.[48]

Finally, in some instances, Congress has exempted actions from NEPA. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act, which authorized the waiver of NEPA for the construction of the physical barriers and roads between the United States and Mexico border when necessary to ''ensure expeditious construction.'' Public Law 104–208, sec. 102(c), 110 Stat. 3009.[49] In 2013, Congress exempted certain disaster recovery actions or financial assistance to restore ''a facility substantially to its condition prior to the disaster or emergency.'' 42 U.S.C. 5159. In 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act, which created an exemption from NEPA for the General Services Administration's acquisition of real property and interests in real property or improvements in real property in response to coronavirus in

[47] For covered projects, section 4370m–4 authorizes lead agencies to adopt or incorporate by reference existing environmental analyses and documentation prepared under State laws and procedures if the analyses and documentation meet certain requirements. 42 U.S.C. 4370m–4(b)(1)(A)(i). This provision also requires that the lead agency, in consultation with CEQ, determine that the analyses and documentation were prepared using a process that allowed for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to what a Federal agency would have prepared pursuant to NEPA. *Id.*

[48] *See generally* Memorandum of Understanding Establishing the Unified Federal Environmental and Historic Preservation Review Process for Disaster Recovery Projects (July 29, 2014), *https://www.fema.gov/media-library-data/1414507626204-f156c4795571b85a4f8e1c1f4c4b7de1/Final_Signed_UFR_MOU_9_24_14_508_ST.PDF.*

[49] The Homeland Security Act of 2002 transferred responsibility for the construction of border barriers from the Attorney General to the Department of Homeland Security. Public Law 107–296, 116 Stat. 2135. In 2005, the REAL ID Act amended the waiver authority of section 102(c) expanding the Secretary of DHS' authority to waive ''all legal requirements'' that the Secretary, in his or her own discretion, determines ''necessary to ensure expeditious construction'' of certain ''barriers and roads.'' Public Law 109–13, Div. B, tit. I, sec. 102, 119 Stat. 231, 302, 306. It also added a judicial review provision that limited the district court's jurisdiction to hear any causes or claims concerning the Secretary's waiver authority to solely constitutional claims. *Id.* sec. 102(c)(2)(A). Further, the provision directed that any review of the district court's decision be raised by petition for a writ of certiorari with the Supreme Court of the United States. *Id.* sec. 102(c)(2)(C). *See In re Border Infrastructure Envtl. Litig.,* 284 F. Supp. 3d 1092 (S.D. Cal. 2018).

conjunction with the provision of additional funding to prevent, prepare for, and respond to the coronavirus. Public Law 116–136, Div. B.

These statutes reflect that Congress has recognized that the environmental review process can be more efficient and effective, including for infrastructure projects, and that in certain circumstances, Congress has determined it appropriate to exempt certain actions from NEPA review. Congress also has identified specific process improvements that can accelerate environmental reviews, including improved interagency coordination, concurrent reviews, and increased transparency.

E. Presidential Directives

Over the past two decades and multiple administrations, Presidents also have recognized the need to improve the environmental review process to make it more timely and efficient, and have directed agencies, through Executive orders and Presidential memoranda, to undertake various initiatives to address these issues. In 2002, President Bush issued E.O. 13274 titled ''Environmental Stewardship and Transportation Infrastructure Project Reviews,'' [50] which stated that the development and implementation of transportation infrastructure projects in an efficient and environmentally sound manner is essential, and directed agencies to conduct environmental reviews for transportation projects in a timely manner.

In 2011, President Obama's memorandum titled ''Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review'' [51] directed certain agencies to identify up to three high-priority infrastructure projects for expedited environmental review and permitting decisions to be tracked publicly on a ''centralized, online tool.'' This requirement led to the creation of what is now the Permitting Dashboard, *www.permits.performance.gov*.

In 2012, E.O. 13604, titled ''Improving Performance of Federal Permitting and Review of Infrastructure Projects,'' [52] established an interagency Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (''Steering Committee'') to facilitate improvements in Federal permitting and review processes for infrastructure projects. The Executive order directed the Steering Committee to develop a plan ''to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment.'' Similarly, E.O. 13616, titled ''Accelerating Broadband Infrastructure Deployment,'' [53] established an interagency working group to, among other things, avoid duplicative reviews and coordinate review processes to advance broadband deployment.

A 2013 Presidential Memorandum titled ''Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures'' [54] directed the Steering Committee established by E.O. 13604 to work with agencies, OMB, and CEQ to ''modernize Federal infrastructure review and permitting regulations, policies, and procedures to significantly reduce the aggregate time required by the Federal Government to make decisions in the review and permitting of infrastructure projects, while improving environmental and community outcomes'' and develop a plan to achieve this goal. Among other things, the memorandum directed that the plan create process efficiencies, including additional use of concurrent and integrated reviews; expand coordination with State, Tribal, and local governments; and expand the use of information technology tools. CEQ and OMB led the effort to develop a comprehensive plan to modernize the environmental review and permitting process while improving environmental and community outcomes, including budget proposals for funding and new authorities. Following the development of the plan, CEQ continued to work with agencies to improve the permitting process, including through expanded collection of timeframe metrics on the Permitting Dashboard. In late 2015, these ongoing efforts were superseded by the enactment of FAST–41, which codified the use of the Permitting Dashboard, established the Federal Permitting Improvement Steering Council (''Permitting Council''), and established other requirements for managing the environmental review and permitting process for covered infrastructure projects.

On August 15, 2017, President Trump issued E.O. 13807 titled ''Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.'' [55] Section 5(e)(i) directed CEQ to develop an initial list of actions to enhance and modernize the Federal environmental review and authorization process, including issuing such regulations as CEQ deems necessary to: (1) Ensure optimal interagency coordination of environmental review and authorization decisions; (2) ensure that multi-agency environmental reviews and authorization decisions are conducted in a manner that is concurrent, synchronized, timely, and efficient; (3) provide for use of prior Federal, State, Tribal, and local environmental studies, analysis, and decisions; and (4) ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays, including by using CEQ's authority to interpret NEPA to simplify and accelerate the NEPA review process. In response to E.O. 13807, CEQ published an initial list of actions and stated its intent to review its existing NEPA regulations in order to identify potential revisions to update and clarify these regulations.[56]

F. Advance Notice of Proposed Rulemaking

Consistent with E.O. 13807 and CEQ's initial list of actions, and given the length of time since CEQ issued its regulations, on June 20, 2018, CEQ published an ANPRM titled ''Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.'' [57] The ANPRM requested public comments on how CEQ could ensure a more efficient, timely, and effective NEPA process consistent with the Act's national environmental policy and provided for a 30-day comment period.[58]

The ANPRM requested comment on potential revisions to update and clarify the NEPA regulations, and included a list of questions on specific aspects of the regulations. For example, with respect to the NEPA process, the ANPRM asked whether there are provisions that CEQ could revise to ensure more efficient environmental reviews and authorization decisions, such as facilitating agency use of existing environmental studies, analyses and decisions, as well as improving interagency coordination. The ANPRM also requested comments on the scope of NEPA reviews, including whether CEQ should revise, clarify, or add definitions. The ANPRM also asked whether additional revisions relating to

[50] 67 FR 59449 (Sept. 23, 2002).

[51] *https://www.govinfo.gov/content/pkg/DCPD-201100601/pdf/DCPD-201100601.pdf.*

[52] 77 FR 18887 (Mar. 28, 2012).

[53] 77 FR 36903 (June 20, 2012).

[54] 78 FR 30733 (May 22, 2013).

[55] 82 FR 40463 (Aug. 24, 2017).

[56] 82 FR 43226 (Sept. 14, 2017).

[57] 83 FR 28591 (June 20, 2018).

[58] In response to comments, CEQ extended the comment period 31 additional days to August 20, 2018. 83 FR 32071 (July 11, 2018).

environmental documentation issued pursuant to NEPA, including CEs, EAs, EISs, and other documents, would be appropriate. Finally, the ANPRM requested general comments, including whether there were obsolete provisions that CEQ could update to reflect new technologies or make the process more efficient, or that CEQ could revise to reduce unnecessary burdens or delays.

In response to the ANPRM, CEQ received over 12,500 comments, which are available for public review.[59] These included comments from a wide range of stakeholders, including States, Tribes, localities, environmental organizations, trade associations, NEPA practitioners, and interested members of the public. While some commenters opposed any updates to the regulations, other commenters urged CEQ to consider potential revisions. Though the approaches to the update of the NEPA regulations varied, most of the substantive comments supported some degree of updating of the regulations. Many noted that overly lengthy documents and the time required for the NEPA process remain real and legitimate concerns despite the NEPA regulations' explicit direction with respect to reducing paperwork and delays. In general, numerous commenters requested that CEQ consider revisions to modernize its regulations, reduce unnecessary burdens and costs, and make the NEPA process more efficient, effective, and timely.

G. Notice of Proposed Rulemaking

On January 9, 2020, President Trump announced the release of CEQ's NPRM titled ''Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act'' and the rule was published in the **Federal Register** on January 10, 2020.[60] The NPRM provided a 60-day comment period, and the comment period ended on March 10, 2020.

CEQ hosted two public hearings in Denver, Colorado on February 11, 2020, and in Washington, DC on February 25, 2020.[61] CEQ also notified all federally recognized Tribes and over 400 interested groups, including State, Tribal, and local officials, environmental organizations, trade associations, NEPA practitioners, and interested members of the public representing a broad range of diverse views, that CEQ had issued the proposed rule for public comment.[62] Additionally, CEQ made information to aid the public's review of the proposed rule available on its websites at *www.whitehouse.gov/ceq* and *www.nepa.gov,* including a redline version of the proposed changes to the regulations posted on *www.regulations.gov,* along with a presentation on the proposed rule and other background information.[63] CEQ also conducted additional public outreach to solicit comments, including meetings with Tribal representatives in Denver, Colorado, Anchorage, Alaska, and Washington, DC.[64]

In response to the NPRM, CEQ received comments from a broad range of stakeholders on a diversity of issues relating to the proposed rule. These included comments from members of Congress, State, Tribal, and local officials, environmental organizations, trade associations, NEPA practitioners, and interested members of the public. CEQ also received a large number of campaign comments, including comments with multiple signatories or groups of comments that were identical or very similar in form or content. The comments received on the NPRM raised a variety of issues related to the rulemaking and contents of the proposed rule, including procedural, legal, and technical issues. The Final Rule Response to Comments provides a summary of the comments and responses to those comments.

II. Summary of Final Rule

In this section, CEQ summarizes the NPRM proposed changes and the final rule, including any changes or additions to what CEQ proposed. CEQ makes the additions, clarifications, and updates to its regulations based on its record evaluating the implementation of the NEPA regulations, suggestions in response to the ANPRM, and comments provided in response to the NPRM. The revisions finalized in this rule advance the original objectives of the 1978 regulations[65] ''[t]o reduce paperwork, to reduce delays, and at the same time to produce better decisions [that] further the national policy to protect and enhance the quality of the human environment.''[66]

In this final rule, CEQ makes various revisions to align the regulations with the text of the NEPA statute, including revisions to reflect the procedural nature of the statute, including under section 102(2). CEQ also revises the regulations to ensure that environmental documents prepared pursuant to NEPA are concise and serve their purpose of informing decision makers regarding significant potential environmental effects of proposed major Federal actions and the public of the environmental issues in the pending decision-making process. CEQ makes changes to ensure that the regulations reflect changes in technology, increase public participation in the process, and facilitate the use of existing studies, analyses, and environmental documents prepared by States, Tribes, and local governments.

CEQ also makes its regulations consistent with the OFD policy established by E.O. 13807 for multi-agency review and related permitting and other authorization decisions. The Executive order specifically instructed CEQ to take steps to ensure optimal interagency coordination, including through a concurrent, synchronized, timely, and efficient process for environmental reviews and authorization decisions. In response to the NPRM, CEQ received many comments supporting revisions to codify key aspects of the OFD policy in the NEPA regulations, including by providing greater specificity on the roles and responsibilities of lead and cooperating agencies. Commenters also suggested that the regulations require agencies to establish and adhere to timetables for the completion of reviews, another key element of the OFD policy. To promote improved interagency coordination and more timely and efficient reviews and in response to these comments, CEQ codifies and generally applies a number of key elements from the OFD policy in this final rule. These include development by the lead agency of a joint schedule, procedures to elevate delays or disputes, preparation of a single EIS and joint ROD to the extent practicable, and a two-year goal for completion of environmental reviews. Consistent with section 104 of NEPA (42 U.S.C. 4334), codification of these policies will not limit or affect the authority or legal responsibilities of agencies under other statutory mandates that may be covered by joint schedules,

[59] *See https://www.regulations.gov,* docket no. CEQ–2018–0001.

[60] *Supra* note 8.

[61] Transcripts of the two public hearings with copies of testimony and written comments submitted at the hearings are available in the docket on *www.regulations.gov,* docket ID CEQ–2019–0003.

[62] Notices are available under ''Supporting Documents'' in the docket, *www.regulations.gov,* docket ID CEQ–2019–0003, *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=SR%2BO&D=CEQ-2019-0003.*

[63] *Id.*

[64] CEQ also includes meeting summaries under supplemental materials. *Id.*

[65] In this final rule, CEQ uses the term ''1978 regulations'' to refer to the regulations as they exist prior to this final rule's amendment thereof, which includes the 1986 amendment to 40 CFR 1502.22.

[66] 43 FR 55978 (Nov. 29, 1978).

and CEQ includes language to that effect in § 1500.6.[67]

CEQ also clarifies the process and documentation required for complying with NEPA by amending part 1501 to add sections on threshold considerations, determination of the appropriate level of NEPA review, and the application of CEs; and revising sections in part 1501 on EAs and findings of no significant impact (FONSIs), and EISs in part 1502. CEQ further revises the regulations to promote more efficient and timely environmental reviews, including revisions to promote interagency coordination by amending sections of parts 1501, 1506, and 1507 relating to lead, cooperating, and participating agencies, timing of agency action, scoping, and agency NEPA procedures.

To promote a more efficient and timely NEPA process, CEQ amends provisions in parts 1501, 1506, and 1507 relating to applying NEPA early in the process, scoping, tiering, adoption, use of current technologies, and avoiding duplication of State, Tribal, and local environmental reviews; revises parts 1501 and 1502 to provide for presumptive time and page limits; and amends part 1508 to clarify the definitions. For example, CEQ includes two new mechanisms to facilitate the use of CEs when appropriate. Under § 1506.3(d), an agency can adopt another agency's determination that a CE applies to a proposed action when the adopting agency's proposed action is substantially the same. This extends the adoption process and standards from EISs to CE determinations.[68] This allows agencies to ''piggyback'' where more than one agency is taking an action related to the same project or activity. Alternatively, to apply CEs listed in another agency's procedures (without that agency already having made a determination that a CE applies to a substantially similar action), agencies can establish a process in their agency NEPA procedures to coordinate and apply CEs listed in other agencies' procedures.

Another efficiency included in this final rule is the ability for agencies to identify other requirements that serve the function of agency compliance with NEPA. Under §§ 1501.1 and 1507.3(d)(6), agencies may determine that another statute's requirements serve the function of agency compliance with NEPA. Alternatively, agencies may designate in their agency NEPA procedures one or more procedures or documents under other statutes or Executive orders that satisfy one or more requirements in the NEPA regulations, consistent with § 1507.3(c)(5). Finally, § 1506.9 allows agencies to substitute processes and documentation developed as part of the rulemaking process for corresponding requirements in these regulations.

As noted above, NEPA is a procedural statute that has twin aims. The first is to promote informed decision making, while the second is to inform the public about the agency's decision making. In this final rule, CEQ amends parts 1500, 1501, 1502, 1503, 1505, and 1508 to ensure that agencies solicit and consider relevant information early in the NEPA process and have the maximum opportunity to take that information into account in their decision making.

In situations where an EIS is required, this process takes place in two discrete steps. First, § 1501.9(d) directs agencies to include information on the proposed action in the NOI, including its expected impacts and alternatives, and a request for comments from interested parties on the potential alternatives, information, and analyses relevant to the proposed action. Second, § 1503.1(a) requires agencies to request comments on the analysis and conclusions of the draft EIS. The purpose of these two provisions is to bring relevant comments, information, and analyses to the agency's attention, as early in the process as possible, to enable the agency to make maximum use of this information.

To facilitate this process, § 1503.3 requires comments on the draft EIS to be submitted on a timely basis and to be as specific as possible. Similarly, § 1503.1(a)(3) requires agencies to invite interested parties to comment specifically on the alternatives, information, and analyses submitted for consideration in the development of the draft EIS. Finally, § 1503.3(b) provides that comments, information, and analyses on the draft EIS not timely received are deemed unexhausted and therefore forfeited. The intent of these amendments is two-fold: (1) To ensure that comments are timely received and at a level of specificity where they can be meaningfully taken into account, where appropriate; and (2) to prevent unnecessary delay in the decision-making process.

Consistent with this intent, § 1500.3(b)(2) also directs agencies to include a new section in both the draft and final EIS that summarizes all alternatives, information, and analyses submitted by interested parties in response to the agency's requests for comment in the NOI and on the draft EIS. In addition, §§ 1502.17(a)(2) and 1503.1(a)(3) direct agencies to request comment on the summary in the draft EIS. The purpose of these provisions is to ensure that the agency, through outreach to the public, has identified all relevant information submitted by State, Tribal, and local governments and other public commenters. Although not a substitute for the entire record, the summary will assist agency decision makers in their consideration of the record for the proposed action. As the Supreme Court observed in *Metropolitan Edison Co.* v. *People Against Nuclear Energy,* ''[t]he scope of [an] agency's inquiries must remain manageable if NEPA's goal of '[insuring] a fully informed and well-considered decision' . . . is to be accomplished.'' 460 U.S. at 776 (quoting *Vt. Yankee,* 435 U.S. at 558).

Finally, informed by the summary included in the final EIS pursuant to §§ 1500.3(b)(2) and 1502.17 and the response to comments pursuant to § 1503.4, together with any other material in the record that he or she determines to be relevant, the decision maker is required under § 1505.2(b) to certify in the ROD that the agency has considered the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters for consideration in the development of the final EIS. Section 1505.2(b) further provides that a decision certified in this manner is entitled to a presumption that the agency has adequately considered the submitted alternatives, information, and analyses, including the summary thereof, in reaching its decision. This presumption will advance the purposes of the directive in E.O. 11991 to ensure that EISs are supported by evidence that agencies have performed the necessary environmental analyses. *See* E.O. 11991, sec. 1 amending E.O. 11514, sec. 3(h). This presumption is also consistent with the longstanding presumption of regularity that government officials have properly discharged their official duties. *See U.S. Postal Serv.* v. *Gregory,* 534 U.S. 1, 10 (2001) (''[W]e note that a presumption of regularity attaches to the actions of government agencies.'' (citing *United States* v. *Chem. Found., Inc.,* 272 U.S. 1, 14–15 (1926)); *INS* v. *Miranda,* 459 U.S. 14, 18 (1982) (specific evidence required to overcome presumption that public officers have executed their responsibilities properly); *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402, 415 (1971) (Although a

[67] In the preamble, CEQ uses the section symbol (§) to refer to the final regulations as set forth in this final rule and 40 CFR to refer to the 1978 CEQ regulations as set forth in 40 CFR parts 1500–1508.

[68] The final rule also extends the adoption process and standards, which only applies to EISs under the 1978 regulations, to EAs as well.

statute prohibited Federal funds for roads through parks absent a feasible and prudent alternative, and although the Secretary of Transportation approved funds without formal findings, the Secretary's decision-making process was nevertheless entitled to a presumption of regularity.); *Fed. Commc'ns Comm'n* v. *Schreiber,* 381 U.S. 279, 296 (1965) (noting ''the presumption to which administrative agencies are entitled—that they will act properly and according to law''); *Phila. & T. Ry.* v. *Stimpson,* 39 U.S. (14 Pet.) 448, 458 (1840) (Where a statute imposed certain conditions before a corrected patent could issue, the signatures of the President and the Secretary of State on a corrected patent raised a presumption that the conditions were satisfied, despite absence of recitals to that effect on face of patent.); *Martin* v. *Mott,* 25 U.S. (12 Wheat.) 19, 33 (1827) (''Every public officer is presumed to act in obedience to his duty, until the contrary is shown . . . .''); *Udall* v. *Wash., Va. & Md. Coach Co.,* 398 F.2d 765, 769 (D.C. Cir. 1968) (The Secretary of the Interior's determination that limitation of commercial bus service was required to preserve a parkway's natural beauty was entitled to presumption of validity, and the burden was on the challenger to overcome it.).

In light of this precedent and the interactive process established by these regulations, under which the agency and interested parties exchange information multiple times, the agency compiles and evaluates summaries of that information, and a public official is required to certify the agency's consideration of the record, it is CEQ's intention that this presumption may be rebutted only by clear and convincing evidence that the agency has not properly discharged its duties under the statute.

Finally, CEQ revises the regulations to make them easier to understand and apply. CEQ reorganizes the regulatory text to move topics addressed in multiple sections and sometimes multiple parts into consolidated sections. CEQ simplifies and clarifies part 1508 to focus on definitions by moving operative requirements to the relevant regulatory provisions. CEQ revises the regulations to consolidate provisions and reduce duplication. Such consolidation, reordering, and reorganization promotes greater clarity and ease of use.

A. Changes Throughout Parts 1500–1508

CEQ proposed several revisions throughout parts 1500–1508 to provide consistency, improve clarity, and correct grammatical errors. CEQ proposed to make certain grammatical corrections in the regulations where it proposed other changes to the regulations to achieve the goals of this rulemaking, or where CEQ determined the changes are necessary for the reader to understand fully the meaning of the sentence. CEQ proposed to revise sentences from passive voice to active voice to help identify the responsible parties. CEQ also proposed to correct the usage of the term ''insure'' with ''ensure'' consistent with modern usage. ''Insure'' is typically used in the context of providing or obtaining insurance, whereas ''ensure'' is used in the context of making something sure, certain, or safe. While NEPA uses the term ''insure,'' the context in which it is used makes it clear that Congress meant ''ensure'' consistent with modern usage. Similarly, CEQ proposed to correct the use of ''which'' and ''that'' throughout the rule.

CEQ proposed to add paragraph letters to certain introductory paragraphs where it would improve clarity. Finally, CEQ invited comment on whether it should make these types of grammatical and editorial changes throughout the rule or if there are additional specific instances where CEQ should make these types of changes. In the final rule, CEQ adopts the proposed revisions to provide consistency and clarity and to correct grammatical errors and makes these types of changes throughout.

CEQ proposed to add ''Tribal'' to the phrase ''State and local'' throughout the rule to ensure consultation with Tribal entities and to reflect existing NEPA practice to coordinate or consult with affected Tribal governments and agencies, as necessary and appropriate for a proposed action. CEQ also proposed this change in response to comments on the ANPRM supporting expansion of the recognition of the sovereign rights, interests, and expertise of Tribes. CEQ proposed to eliminate the provisions in the regulations that limit Tribal interest to reservations. CEQ adopts these proposals in the final rule and makes these additions and revisions in §§ 1500.3(b)(2)–(4), 1500.4(p), 1500.5(j), 1501.2(b)(4)(ii), 1501.3(b)(2)(iv), 1501.5(e), 1501.7(b) and (d), 1501.8(a), 1501.9(b), 1501.10(f), 1502.5(b), 1502.16(a)(5), 1502.17(a) and (b), 1502.20(a), 1503.1(a)(2)(i) and (ii), 1505.2(b), and 1506.1(b), 1506.2, 1506.6(b)(3)(i)–(iii), and 1508.1(e), (k), and (w). As noted in the NPRM, these changes are consistent with and in support of government-to-government consultation pursuant to E.O. 13175, titled ''Consultation and Coordination With Indian Tribal Governments.'' [69]

CEQ proposed several changes for consistent use of certain terms. In particular, CEQ proposed to change ''entitlements'' to the defined term ''authorizations'' proposed in § 1508.1(c) throughout the regulations and added ''authorizations'' where appropriate to reflect the mandate in E.O. 13807 for better integration and coordination of authorization decisions and related environmental reviews. CEQ is adopting these revisions in the final rule in §§ 1501.2(a), 1501.7(i), 1501.9(d)(4) and (f)(4), 1502.13, 1502.24(b), 1503.3(d), and 1508.1(w).

CEQ proposed to use the term ''decision maker'' to refer to an individual responsible for making decisions on agency actions and ''senior agency official'' to refer to the individual who oversees the agency's overall compliance with NEPA. CEQ adopts these changes in the final rule. There may be multiple individuals within certain departments or agencies that have these responsibilities, including where subunits have developed agency procedures or NEPA compliance programs.

CEQ proposed to replace ''circulate'' or ''circulation'' with ''publish'' or ''publication'' throughout the rule and make ''publish or publication'' a defined term in § 1508.1(y), which provides agencies with the flexibility to make environmental review and information available to the public by electronic means not available at the time of promulgation of the CEQ regulations in 1978. As explained in the NPRM, historically, the practice of circulation included mailing of hard copies or providing electronic copies on disks or CDs. While it may be necessary to provide a hard copy or copy on physical media in limited circumstances, agencies now provide most documents in an electronic format by posting them online and using email or other electronic forms of communication to notify interested or affected parties. This change will help reduce paperwork and delays, and modernize the NEPA process to be more accessible to the public. CEQ finalizes these changes in §§ 1500.4(o), 1501.2(b)(2), 1502.9(b) and (d)(3), 1502.20, 1503.4(b) and (c), 1506.3(b)(1) and (2), and 1506.8(c)(2).

CEQ proposed to change the term ''possible'' to ''practicable'' in the NPRM in a number of sections of the regulations. As noted in the NPRM, ''practicable'' is the more commonly used term in regulations to convey the ability for something to be done,

[69] 65 FR 67249 (Nov. 9, 2000).

considering the cost, including time required, technical and economic feasibility, and the purpose and need for agency action. The term ''practicable,'' which is in the statute (42 U.S.C. 4331(a), (b)) and used many times in the 1978 regulations,[70] is consistent with notions of feasibility, which the case law has recognized as part of the NEPA process. *See, e.g., Vt. Yankee,* 435 U.S. at 551 (''alternatives must be bounded by some notion of feasibility''); *Kleppe,* 427 U.S. at 414 (''[P]ractical considerations of feasibility might well necessitate restricting the scope'' of an agency's analysis.) CEQ makes these changes in the final rule in §§ 1501.7(h)(1) and (2), 1501.8(b)(1), 1502.5, 1502.9(b), 1504.2, and 1506.2(b) and (c).

Similarly, CEQ proposed to change ''no later than immediately'' to ''as soon as practicable'' in § 1502.5(b), and CEQ finalizes this change. Finally, CEQ proposed to refer to the procedures required in § 1507.3 using the term ''agency NEPA procedures'' throughout. CEQ makes this change in the final rule.

CEQ proposed to eliminate obsolete references and provisions in several sections of the CEQ regulations. In particular, CEQ proposed to remove references to the 102 Monitor in 40 CFR 1506.6(b)(2) and 1506.7(c) because the publication no longer exists, and OMB Circular A–95, which was revoked pursuant to section 7 of E.O. 12372 (47 FR 30959, July 16, 1982), including the requirement to use State and area-wide clearinghouses in 40 CFR 1501.4(e)(2), 1503.1(a)(2)(iii), 1505.2, and 1506.6(b)(3)(i). CEQ removes these references in the final rule.

CEQ proposed changes to citations and authorities in parts 1500 through 1508. CEQ is updating the authorities sections for each part to correct the format. CEQ also is removing cross-references to the sections of part 1508, ''Definitions,'' and updates or inserts new cross-references throughout the rule to reflect revised or new sections. CEQ makes these changes throughout the final rule.

Finally, CEQ is reorganizing chapter V of title 40 of the Code of Federal Regulations to place the NEPA regulations into a new subchapter A, ''National Environmental Policy Act Implementing Regulations,'' and organizing its other regulations into their own new subchapter B, ''Administrative Procedures and Operations.'' References to ''parts 1500 through 1508'' in the proposed rule are referenced to ''this subchapter'' in the final rule. CEQ notes that the provisions of the NEPA regulations, which the final rule comprehensively updates, should be read in their entirety to understand the requirements under the modernized regulations.[71]

B. Revisions To Update the Purpose, Policy, and Mandate (Part 1500)

In part 1500, CEQ proposed several revisions to update the policy and mandate sections of the regulations to reflect statutory, judicial, policy, and other developments since the CEQ regulations were issued in 1978. CEQ includes the proposed changes with some revisions in the final rule.

1. Purpose and Policy (§ 1500.1)

In the NPRM, CEQ proposed to retitle and revise § 1500.1, ''Purpose and policy,'' to align this section with the statutory text of NEPA and certain case law, and reflect the procedural requirements of section 102(2) (42 U.S.C. 4332(2)). These changes also are consistent with the President's directive to CEQ to ''[i]ssue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)).'' E.O. 11514, as amended by E.O. 11991, sec. 3(h). Many commenters supported these revisions to promote more efficient and timely reviews under NEPA, while others opposed the changes and requested that CEQ maintain the existing language. CEQ revises this section in the final rule consistent with its proposal.

Section 1500.1 provides that NEPA is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. The Supreme Court has made clear that NEPA is a procedural statute that does not mandate particular results; ''[r]ather, NEPA imposes only procedural requirements on [F]ederal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions.'' *Pub. Citizen,* 541 U.S. at 756–57 (citing *Methow Valley,* 490 U.S. at 349–50); *see also Vt. Yankee,* 435 U.S. at 558 (''NEPA does set forth significant substantive goals for the Nation, but its mandate to the agencies is essentially procedural.'').

As proposed in the NPRM, CEQ revises § 1500.1(a) to summarize section 101 of the Act (42 U.S.C. 4331) and to reflect that section 102(2) establishes the procedural requirements to carry out the policy stated in section 101. CEQ revises § 1500.1(a) consistent with the case law to reflect that the purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information and the public has been informed regarding the decision-making process, and to reflect that NEPA does not mandate particular results or substantive outcomes. *Marsh,* 490 U.S. at 373–74; *Vt. Yankee,* 435 U.S. at 558. CEQ replaces the vague reference to ''action-forcing'' provisions ensuring that Federal agencies act ''according to the letter and spirit of the Act'' (as well as consistently with their organic and program-specific governing statutes) with a more specific reference to the consideration of environmental impacts of their actions in agency decisions. These changes codify the Supreme Court's interpretation of section 102 in two important respects: Section 102 ''ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision[-]making process and the implementation of that decision.'' *Methow Valley,* 490 U.S. at 349; *see also Winter* v. *Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 23 (2008); *Pub. Citizen,* 541 U.S. at 756–58.

Consistent with CEQ's proposal in the NPRM, CEQ revises § 1500.1(b) to describe the NEPA regulations as revised in this final rule. In particular, CEQ revises this paragraph to reflect that the regulations include direction to Federal agencies to determine what actions are subject to NEPA's procedural requirements and the level of NEPA review, where applicable. The revisions also ensure that Federal agencies identify and consider relevant environmental information early in the process in order to promote informed decision making. These revisions reduce unnecessary burdens and delays consistent with E.O. 13807 and the purposes of the regulations as originally promulgated in 1978. These amendments emphasize that the policy of integrating NEPA with other environmental reviews is to promote concurrent and timely reviews and decision making consistent with statutes, Executive orders, and CEQ guidance. *See, e.g.,* 42 U.S.C. 5189g; 23 U.S.C. 139; 42 U.S.C. 4370m *et seq.;* E.O. 13604; E.O. 13807; Mitigation

[70] *See* 40 CFR 1500.2(f), 1501.4(b), 1501.7, 1505.2(c), 1506.6(f) and 1506.12(a).

[71] While the final rule retains, in large part, the numbering scheme used in the 1978 regulations, the final rule comprehensively updates the prior regulations. The new regulations should be consulted and reviewed to ensure application is consistent with the modernized provisions. Assumptions should not be made concerning the degree of change to, similarity to, or any interpretation of the prior version of the regulations.

Guidance, *supra* note 29, and Timely Environmental Reviews Guidance, *supra* note 29.

2. Remove and Reserve Policy (§ 1500.2)

CEQ proposed to remove and reserve 40 CFR 1500.2, ''Policy.'' The section included language that is identical or similar to language in E.O. 11514, as amended. That Executive order directed CEQ to develop regulations that would make the ''[EIS] process more useful to decision makers and the public; and . . . reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives.'' *See* E.O. 11514, as amended by E.O. 11991, sec. 3(h). The Executive order also directed CEQ to require EISs to be ''concise, clear and to the point, and supported by evidence that agencies have made the necessary environmental analyses.'' *Id.* CEQ proposed to remove this section because it is duplicative of other sections of the regulations, thereby eliminating redundancy. CEQ is making this change in the final rule.

Specifically, 40 CFR 1500.2(a) restated the statutory text in section 102 of NEPA (42 U.S.C. 4332) and is duplicative of language in § 1500.6, ''Agency authority,'' requiring each agency to interpret the provisions of NEPA as a supplement to its existing authority and as a mandate to view policies and missions in light of the Act's national environmental objectives. Paragraph (b) required agencies to implement procedures to make the NEPA process more useful to decision makers and the public; reduce paperwork and accumulation of extraneous background data; emphasize relevant environmental issues and alternatives; and make EISs concise, clear, and to the point and supported by evidence that thy have made the necessary analyses. This paragraph is duplicative of language in § 1502.1, ''Purpose of environmental impact statement,'' and paragraphs (c) through (i) of § 1500.4, ''Reducing paperwork.''

Paragraph (c) of 40 CFR 1500.2, requiring agencies to integrate NEPA requirements with other planning and review procedures to run concurrently rather than consecutively, is duplicative of language in § 1502.24, ''Environmental review and consultation requirements,'' § 1501.2, ''Apply NEPA early in the process,'' § 1501.9, ''Scoping,'' and § 1500.4, ''Reducing paperwork.'' Paragraph (d) encouraging public involvement is duplicative of sections that direct agencies to provide notice and information to and seek comment from the public regarding proposed actions and environmental documents, including provisions in § 1506.6, ''Public involvement,'' § 1501.9, ''Scoping,'' and § 1503.1, ''Inviting comments and requesting information and analyses.'' [72] Paragraph (e), which required agencies to use the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects, is duplicative of language in § 1502.1, ''Purpose of environmental impact statement,'' and paragraph (c) of § 1505.2, ''Record of decision in cases requiring environmental impact statements.''

Paragraph (f) of 40 CFR 1500.2 required agencies to use all practicable means, consistent with the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment. The rule specifically directs agencies to consider reasonable alternatives to avoid or minimize adverse environmental impacts in § 1502.1, ''Purpose of environmental impact statement.'' The final rule also provides direction to agencies about the relevant environmental information to be considered in the decision-making process, including potential adverse effects and alternatives, and expressly directs agencies to identify alternatives considered (§§ 1502.14 and 1502.16), and to state in their RODs whether they have adopted all practicable means to avoid or minimize environmental harm from the alternative selected (§ 1505.2).

3. NEPA Compliance (§ 1500.3)

CEQ proposed numerous changes and additions to § 1500.3, ''NEPA compliance,'' including the addition of paragraph headings to improve readability. In paragraph (a), ''Mandate,'' CEQ proposed to update the authorities under which it issues the regulations. CEQ adds these references, including to E.O. 13807, in the final rule. In the NPRM, CEQ proposed to add a sentence to this paragraph regarding agency NEPA procedures not imposing additional procedures or requirements beyond those set forth in the regulations. To address confusion expressed by some commenters, CEQ does not include this sentence in the final rule because it includes this requirement in § 1507.3, ''Agency NEPA procedures.''

CEQ proposed to add a new paragraph (b), ''Exhaustion,'' to summarize public comment requirements and an exhaustion requirement. Specifically, CEQ proposed in paragraph (b)(1) to require that, in a NOI to prepare an EIS, agencies request comments from interested parties on the potential effects of and potential alternatives to proposed actions, and also request that interested parties identify any relevant information, studies, or analyses of any kind concerning such effects. CEQ includes this provision in the final rule to ensure that agencies solicit and consider relevant information early in the development of an EIS.

In paragraph (b)(2) of § 1500.3, CEQ proposed to require that the EIS include a summary of all the comments received for consideration in developing the EIS. CEQ includes this provision in the final rule with some changes. For consistency with the language in § 1502.17, the final rule specifies that the draft and final EISs must include a summary of ''all alternatives, information, and analyses.'' Also, in response to comments requesting clarification on the meaning of ''public commenters,'' the final rule changes this phrase in paragraphs (b)(2) and (3) of § 1500.3 and in § 1502.17 to ''State, Tribal, and local governments and other public commenters'' for consistency with §§ 1501.9 and 1506.6 and to clarify that public commenters includes governments as well as other commenters such as organizations, associations, and individuals.

In paragraph (b)(3) of § 1500.3, CEQ proposed to require that public commenters timely submit comments on draft EISs and any information on environmental impacts or alternatives to a proposed action to ensure informed decision making by Federal agencies. CEQ further proposed to provide that comments not timely raised and information not provided shall be deemed unexhausted and forfeited. This reinforces the principle that parties may not raise claims based on issues they themselves did not raise during the public comment period. *See, e.g., Pub. Citizen,* 541 U.S. at 764–65 (finding claims forfeited because respondents had not raised particular objections to the EA in their comments); *Karst Envtl. Educ. & Prot., Inc.* v. *Fed. Highway Admin.,* 559 Fed. Appx. 421, 426–27

[72] Section 1506.6 includes detailed provisions directing agencies to facilitate public involvement, including by providing the public with notice regarding actions, holding or sponsoring public hearings, and providing notice of NEPA-related hearings, public meetings, and other opportunities for public involvement, and the availability of environmental documents. Section 1501.9 requires agencies to issue a public notice regarding proposed actions for which the agencies will be preparing an EIS and to include specific information for, and to solicit information from the public regarding such proposed actions. Section 1503 provides direction to agencies regarding inviting comments from the public and requesting information and analyses.

(6th Cir. 2014) (concluding that comments did not raise issue with ''sufficient clarity'' to alert the Federal Highway Administration to concerns); *Friends of the Norbeck* v. *U.S. Forest Serv.,* 661 F.3d 969, 974 (8th Cir. 2011) (concluding that comments were insufficient to give the Forest Service an opportunity to consider claim and that judicial review was therefore improper); *Exxon Mobil Corp.* v. *U.S. EPA,* 217 F.3d 1246, 1249 (9th Cir. 2000) (arguments not raised in comments are waived); *Ass'n of Mfrs.* v. *Dep't of the Interior,* 134 F.3d 1095, 1111 (D.C. Cir. 1998) (failure to raise argument in rulemaking constitutes failure to exhaust administrative remedies). Finally, CEQ proposed to require that the public raise any objections to the submitted alternatives, information, and analyses section within 30 days of the notice of availability of the final EIS.

The final rule includes paragraph (b)(3) with some modifications. The final rule requires State, Tribal, and local governments and other public commenters to submit comments within the comment periods provided under § 1503.1 and that comments be as specific as possible under § 1503.3. The rule specifies that comments or objections of any kind not submitted ''shall be forfeited as unexhausted'' to clarify any ambiguity about forfeiture and exhaustion. CEQ received comments opposing the proposal to require the public to raise objections to the submitted alternatives, information, and analyses section within 30 days of the notice of availability of the final EIS. The final rule does not include the proposed mandatory 30-day comment period. However, § 1506.11 retains from the 1978 regulations the 30-day waiting period prior to issuance of the ROD, subject to limited exceptions, and under § 1503.1(b), agencies may solicit comments on the final EIS if they so choose. Each commenter should put its own comments into the record as soon as practicable to ensure that the agency has adequate time to consider the commenter's input as part of the agency's decision-making process. Finally, to ensure commenters timely identify issues, CEQ expresses its intention that commenters rely on their own comments and not those submitted by other commenters in any subsequent litigation, except where otherwise provided by law.

CEQ also proposed in paragraph (b)(4) of § 1500.3 to require that the agency decision maker certify in the ROD that the agency has considered all of the alternatives, information, and analyses submitted by public commenters based on the summary in the EIS. CEQ includes this section in the final rule with some modifications. The final rule requires the decision maker, informed by the final EIS (including the public comments, summary thereof, and responses thereto) and other relevant material in the record, certify that she or he considered the alternatives, information, and analyses submitted by States, Tribes, and local governments and other public commenters. Relevant material includes both the draft and final EIS as well as any supporting materials incorporated by reference or appended to the document. The final rule does not specify the decision maker ''for the lead agency'' to account for multiple decision makers, consistent with the OFD policy.

CEQ proposed to add a new paragraph (c), ''Review of NEPA compliance,'' to § 1500.3 to reflect the development of case law since the promulgation of the CEQ regulations. Specifically, CEQ proposed to revise the sentence regarding timing of judicial review to strike references to the filing of an EIS or FONSI and replace them with the issuance of a signed ROD or the taking of another final agency action. CEQ includes this change in the final rule. Judicial review of NEPA compliance for agency actions can occur only under the APA, which requires finality. 5 U.S.C. 704. A private right of action to enforce NEPA, which is lacking, would be required to review non-final agency action. In addition, non-final agency action may not be fit for judicial review as a matter of prudential standing. *See Abbott Labs* v. *Gardner,* 387 U.S. 136, 148–49 (1967). Under the APA, judicial review does not occur until an agency has taken final agency action. *Bennett* v. *Spear,* 520 U.S. 154, 177–78 (1997) (''[T]he action must mark the 'consummation' of the agency's decision[-]making process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which 'rights or obligations have been determined' or from which 'legal consequences will flow'" (citations omitted)). Because NEPA's procedural requirements apply to proposals for agency action, judicial review should not occur until the agency has completed its decision-making process, and there are ''direct and appreciable legal consequences.'' *Id.* at 178. Final agency action for judicial review purposes is not necessarily when the agency publishes the final EIS, issues a FONSI, or makes the determination to categorically exclude an action.

CEQ also proposed in paragraph (c) to clarify that any allegation of noncompliance be resolved as expeditiously as possible, and that agencies may structure their decision making to allow private parties to seek agency stays or provide for efficient mechanisms, such as imposition of bonds, for seeking, granting, and imposing conditions on stays. The final rule clarifies that it is CEQ's intention that any allegation of noncompliance be resolved as expeditiously as possible. The final rule also clarifies that agencies may structure their procedures consistent with their organic statutes, and as part of implementing the exhaustion provisions in paragraph (b) of § 1500.3, to include an appropriate bond or other security requirement to protect against harms associated with delays.

Consistent with their statutory authorities, agencies may impose, as appropriate, bond and security requirements or other conditions as part of their administrative processes, including administrative appeals, and a prerequisite to staying their decisions, as courts do under rule 18 of the Federal Rules of Appellate Procedure and other rules.[73] *See, e.g.,* Fed. R. App. P. 18(b); Fed. R. App. P. 8(a)(2)(E); Fed. R. Civ. P. 65(c); Fed. R. Civ. P. 62(b); Fed. R. Civ. P. 62(d). CEQ notes that there is no ''NEPA exception'' that exempts litigants bringing NEPA claims from otherwise applicable bond or security requirements or other appropriate conditions, and that some courts have imposed substantial bond requirements in NEPA cases. *See, e.g., Save Our Sonoran, Inc.* v. *Flowers,* 408 F.3d 1113, 1125–26 (9th Cir. 2005) (concluding that district court's imposition of a $50,000 bond was appropriate and supported by the record); *Stockslager* v. *Carroll Elec. Co-op Corp.,* 528 F.2d 949 (8th Cir. 1976) (concluding that district court's imposition of a $10,000 bond was appropriate).

CEQ proposed to add a new paragraph (d), ''Remedies,'' to § 1500.3. CEQ proposed to state explicitly that harm from the failure to comply with NEPA can be remedied by compliance with NEPA's procedural requirements, and that CEQ's regulations do not create a cause of action for violation of NEPA. The statute does not create any cause of action, and agencies may not create private rights of action by regulation; ''[l]ike substantive [F]ederal law itself, private rights of action to enforce [F]ederal law must be created by Congress.'' *Alexander* v. *Sandoval,* 532 U.S. 275, 286 (2001) (citing *Touche Ross*

[73] *See, e.g.,* 26 CFR 2.6 (Bureau of Indian Affairs' regulatory provision that allows a person that believes he or she may suffer a measurable and substantial financial loss as a result of the delay caused by an appeal to request that the official require the posting of a reasonable bond).

& Co. v. *Redington,* 442 U.S. 560, 578 (1979)). This is particularly relevant where, as here, the counterparty in any action to enforce NEPA would be a Federal officer or agency. *See San Carlos Apache Tribe* v. *United States,* 417 F.3d 1091, 1096–97 (9th Cir. 2005) (''[C]reating a direct private action against the federal government makes little sense in light of the administrative review scheme set out in the APA.'').

The CEQ regulations create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm. As the Supreme Court has held, the irreparable harm requirement, as a prerequisite to the issuance of preliminary or permanent injunctive relief, is neither eliminated nor diminished in NEPA cases. A showing of a NEPA violation alone does not warrant injunctive relief and does not satisfy the irreparable harm requirement. *See Monsanto Co.* v. *Geertson Seed Farms,* 561 U.S. 139, 157 (2010) (''[T]he statements quoted [from prior Ninth Circuit cases] appear to presume that an injunction is the proper remedy for a NEPA violation except in unusual circumstances. No such thumb on the scales is warranted.''); *Winter,* 555 U.S. at 21–22, 31–33; *see also Amoco Prod. Co.* v. *Vill. of Gambell,* 480 U.S. 531, 544–45 (1987) (rejecting proposition that irreparable damage is presumed when an agency fails to evaluate thoroughly the environmental impact of a proposed action). Moreover, a showing of irreparable harm in a NEPA case does not entitle a litigant to an injunction or a stay. *See Winter,* 555 U.S. at 20 (''A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, *and* that an injunction is in the public interest.'') (emphasis added); *Geertson Seed Farms,* 561 U.S. at 157 (''The traditional four-factor test applies when a plaintiff seeks a permanent injunction to remedy a NEPA violation . . . . An injunction should issue only if the traditional four-factor test is satisfied.'').

Consistent with the Supreme Court's analysis in *Geertson Seed Farms,* agencies (as well as applicants) should give practical consideration to measures that might serve to anticipate, reduce, or eliminate possible adverse effects from a project. To the extent such measures are incorporated into an agency's ROD, they may provide grounds upon which a court, presented with an alleged violation of NEPA, might reasonably conclude that injunctive relief is not warranted because the measures prevent any irreparable harm from occurring. *See* § 1505.3. For example, regular inspections or requirements that applicants obtain third-party insurance, for example, might constitute such measures in certain circumstances. Inspections can reveal defects before they cause harm. Third-party insurers, because of their exposure to risk, have an economic incentive to conduct thorough inspections, facilitating discovery of defects. Such measures would be relevant to whether a valid claim of irreparable harm has been established.

CEQ also proposed to state that any actions to review, enjoin, vacate, stay, or alter an agency decision on the basis of an alleged NEPA violation be raised as soon as practicable to avoid or minimize any costs to agencies, applicants, or any affected third parties. As reflected in comments received in response to the ANPRM, delays have the potential to result in substantial costs. CEQ also proposed to replace the language providing that trivial violations should not give rise to an independent cause of action with language that states that minor, non-substantive errors that have no effect on agency decision making shall be considered harmless and shall not invalidate an agency action. Invalidating actions due to minor errors does not advance the goals of the statute and adds delays and costs. CEQ includes paragraph (d) in the final rule with a change to clarify that it is CEQ's intention that the regulations create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm. As noted above, NEPA is a procedural statute and any harm is thus reparable by providing the necessary environmental documentation in accordance with the Act and these regulations. CEQ also adds ''vacate, or otherwise'' to the types of actions that may alter a decision to address situations where there may be a nationwide or other vacatur and ''after final agency action'' to clarify when the actions should be raised.

Finally, CEQ proposed to add a new paragraph (e), ''Severability,'' to § 1500.3 to address the possibility that this rule, or portions of this rule, may be challenged in litigation. CEQ finalizes this paragraph as proposed, correcting the cross reference. As stated in the NPRM, it is CEQ's intention that the individual sections of this rule be severable from each other, and that if a court stays or invalidates any sections or portions of the regulations, this will not affect the validity of the remainder of the sections, which will continue to be operative.

4. Reducing Paperwork and Delay (§§ 1500.4 and 1500.5)

In the NPRM, CEQ proposed to reorder the paragraphs in § 1500.4, ''Reducing paperwork,'' and § 1500.5, ''Reducing delay,'' for a more logical ordering, consistent with the three levels of NEPA review. CEQ also proposed edits to §§ 1500.4 and 1500.5 for consistency with proposed edits to the cross-referenced sections. CEQ makes these proposed changes in the final rule. Additionally, the final rule revises the language in paragraphs (a) and (b) of §§ 1500.4 and 1500.5 to make the references to CEs and FONSIs consistent with the language in §§ 1501.4(a) and 1501.6(a), respectively. CEQ also proposed conforming edits to § 1500.4(c) to broaden the paragraph to include EAs by changing ''environmental impact statements'' to ''environmental documents'' and changing ''setting'' to ''meeting'' since page limits would be required for both EAs and EISs. CEQ makes these changes in the final rule and corrects the cross-reference. CEQ revises paragraph (h) of § 1500.4 to add ''*e.g.*'' to the citations to clarify that these are just examples of the useful portions of EISs and to correct the cross-reference to background material from § 1502.16 to § 1502.1. CEQ revises the citations in paragraph (k) of § 1500.4 to make them sequential. Finally, CEQ revises paragraph (d) of § 1500.5 for clarity.

5. Agency Authority (§ 1500.6)

CEQ proposed to add a savings clause to § 1500.6, ''Agency authority,'' to clarify that the CEQ regulations do not limit an agency's other authorities or legal responsibilities. This clarification is consistent with section 104 of NEPA (42 U.S.C. 4334), section 2(g) of E.O. 11514, and the 1978 regulations, but acknowledges the possibility of different statutory authorities that may set forth different requirements, such as timeframes. In the final rule, CEQ makes the proposed changes and clarifies further that agencies interpret the provisions of the Act as a mandate to view the agency's policies and missions in the light of the Act's national environmental objectives, to the extent NEPA is consistent with the agency's existing authority. This is consistent with E.O. 11514, which provides that Federal agencies shall ''[i]n carrying out their responsibilities under the Act and this Order, comply with the [CEQ regulations] except where such compliance would be inconsistent with statutory requirements.'' E.O. 11514, as amended by E.O. 11991, sec. 2(g). CEQ also proposed to clarify that compliance

with NEPA means the Act ''as interpreted'' by the CEQ regulations. CEQ makes this change in the final rule in § 1500.6, as well as in §§ 1502.2(d) and 1502.9(b), to clarify that agencies should implement the statute through the framework established in these regulations. Finally, CEQ revises the sentence explaining the meaning of the phrase ''to the fullest extent possible'' in section 102, to replace ''unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible'' with ''consistent with § 1501.1.'' As discussed in section II.C.1, § 1501.1 sets forth threshold considerations for assessing whether NEPA applies or is otherwise fulfilled, including considerations related to other statutes with which agencies must comply.

C. Revisions to NEPA and Agency Planning (Part 1501)

CEQ proposed significant changes to modernize and clarify part 1501. CEQ proposed to replace the current 40 CFR 1501.1, ''Purpose,'' because it is unnecessary and duplicative, with a new section, ''NEPA threshold applicability analysis,'' to address threshold considerations of NEPA applicability. CEQ proposed to add additional sections to address the level of NEPA review and CEs. CEQ further proposed to consolidate and clarify provisions on EAs and FONSIs, and relocate to part 1501 from part 1502 the provisions on tiering and incorporation by reference. CEQ also proposed to set presumptive time limits for the completion of NEPA reviews, and clarify the roles of lead and cooperating agencies to further the OFD policy and encourage more efficient and timely NEPA reviews. CEQ makes many of these changes in the final rule with modifications as discussed further in this section.

1. NEPA Thresholds (§ 1501.1)

Since the enactment of NEPA, courts have examined the applicability of NEPA to proposed agency activities and decisions, based on a variety of considerations. Courts have found that NEPA is inapplicable when an agency's statutory obligations clearly or fundamentally conflict with NEPA compliance; when Congress has established requirements under another statute that displace NEPA compliance in some fashion; when an agency is carrying out a non-discretionary duty or obligation (in whole or in part); or when environmental review and public participation procedures under another statute satisfy the requirements (*i.e.,* are functionally equivalent) of NEPA.

CEQ proposed a new § 1501.1 to provide a series of considerations to assist agencies in a threshold analysis for determining whether NEPA applies to a proposed activity or whether NEPA is satisfied through another mechanism. CEQ proposed to title this section ''NEPA threshold applicability analysis'' in the NPRM. CEQ includes this provision in the final rule at § 1501.1, ''NEPA thresholds.'' This section recognizes that the application of NEPA by Congress and the courts has evolved over the last four decades in light of numerous other statutory requirements implemented by Federal agencies. CEQ reorders these considerations in the final rule and adds a new consideration to paragraph (a)(1)—whether another statute expressly exempts a proposed activity or decision from NEPA. *See, e.g.,* 15 U.S.C. 793(c)(1) (exempting Environmental Protection Agency (EPA) actions under the Clean Air Act); 33 U.S.C. 1371(c)(1) (exempting certain EPA actions under the Clean Water Act); 42 U.S.C. 5159 (exempting certain actions taken or assistance provided within a Presidentially declared emergency or disaster area); and 16 U.S.C. 3636(a) (exempting regulation of Pacific salmon fishing).

The second consideration in paragraph (a)(2) is whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute. *See, e.g., Flint Ridge Dev. Co.* v. *Scenic Rivers Ass'n,* 426 U.S. 776, 791 (1976) (concluding that the Secretary of Housing and Urban Development could not comply with NEPA's EIS requirement because it conflicted with requirements of the Interstate Land Sales Full Disclosure Act). The third consideration in paragraph (a)(3) is whether compliance with NEPA would be inconsistent with congressional intent expressed in another statute. *See, e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495, 1503 (9th Cir. 1995) (holding that NEPA was displaced by the Endangered Species Act's procedural requirements for designating critical habitat); and *Merrell* v. *Thomas,* 807 F.2d 776, 778–80 (9th Cir. 1986) (holding that NEPA did not apply to the EPA's registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

The fourth and fifth considerations in paragraphs (a)(4) and (5) are whether the proposed activity or decision meets the definition of a major Federal action generally and whether the proposed activity or decision does not meet the definition because it is non-discretionary such that the agency lacks authority to consider environmental effects as part of its decision-making process. *See, e.g., Pub. Citizen,* 541 U.S. at 768–70 (concluding that, because the Federal Motor Carrier Safety Administration lacked discretion to prevent the entry of Mexican trucks into the United States, the agency did not need to consider under NEPA the environmental effects of Mexican trucks' cross-border operations that the President authorized); *Nat'l Wildlife Fed'n* v. *Sec'y of the U.S. Dep't. of Transp.,* 2020 U.S. App. LEXIS 17723, at *15–18 (6th Cir. June 5, 2010) (applying *Public Citizen* and finding NEPA not applicable as EPA lacked discretion to reject Clean Water Act oil spill response plans that satisfied enumerated criteria); *Citizens Against Rails-To-Trails* v. *Surface Transp. Bd.,* 267 F.3d 1144, 1152–54 (D.C. Cir. 2001) (concluding that because the Surface Transportation Board lacked significant discretion regarding issuance of a certificate of interim trail use under the National Trails System Act, NEPA was not applicable); *South Dakota* v. *Andrus,* 614 F.2d 1190, 1193–95 (8th Cir. 1980) (concluding that the granting of a mineral patent for a mining claim was a non-discretionary, ministerial act and non-discretionary acts should be exempt from NEPA). Consistent with *Public Citizen,* 541 U.S. at 768–70, NEPA applies to the portion of an agency decision that is discretionary. In *Public Citizen,* the Supreme Court considered whether the Federal Motor Carrier Safety Administration was required to consider the effects of a non-discretionary action in its NEPA document and concluded that it was not required to do so because it had no authority to prevent the cross-border entry of Mexican motor carriers, which was the result of presidential action. *Id.*

Finally, the sixth consideration in paragraph (a)(6) is whether the proposed action is an action for which another statute's requirements serve the function of agency compliance with NEPA. *See, e.g., Envtl. Def. Fund, Inc.* v. *U.S. EPA,* 489 F.2d 1247, 1256–57 (D.C. Cir. 1973) (concluding that the substantive and procedural standards of FIFRA were functionally equivalent to NEPA and therefore formal compliance was not necessary); *W. Neb. Res. Council* v. *U.S. EPA,* 943 F.2d 867, 871–72 (8th Cir. 1991) (finding that the procedures of the Safe Drinking Water Act were functionally equivalent to those required by NEPA); *Cellular Phone Taskforce* v. *Fed. Commc'ns Comm'n,* 205 F.3d 82, 94–95 (2d Cir. 2000) (concluding that the procedures followed by the Federal Communications Commission were

functionally compliant with EA and FONSI requirements under NEPA). Paragraph (b) of § 1501.1 clarifies that agencies can make this determination in their agency NEPA procedures in accordance with § 1507.3(d) or on a case-by-case basis. The final rule adds a new paragraph (b)(1) to state that agencies may request assistance from CEQ in making a case-by-case determination under this section, and a new paragraph (b)(2) to require agencies to consult with other Federal agencies for their concurrence when making a determination where more than one Federal agency administers the statute (*e.g.,* the Endangered Species Act (ESA)). Agencies may document these consultations, as appropriate. Agencies will only apply the thresholds in this section after consideration on a case-by-case basis, or after agencies have determined whether and how to incorporate them into their own agency NEPA procedures.

Some agencies already include information related to the applicability of NEPA to their actions in their agency NEPA procedures. For example, EPA's NEPA procedures include an applicability provision that explains which EPA actions NEPA does not apply to, including actions under the Clean Air Act and certain actions under the Clean Water Act. *See* 40 CFR 6.101. The final rule codifies the agency practice of including this information in agency NEPA procedures but also provides agencies' flexibility to make case-by-case determinations as needed.

2. Apply NEPA Early in the Process (§ 1501.2)

CEQ proposed to amend § 1501.2, ''Apply NEPA early in the process,'' designating the introductory paragraph as paragraph (a) and changing ''shall'' to ''should'' and ''possible'' to ''reasonable.'' CEQ makes these changes in the final rule. Agencies need the discretion to structure the timing of their NEPA processes to align with their decision-making processes, consistent with their statutory authorities. Agencies also need flexibility to determine the appropriate time to start the NEPA process, based on the context of the particular proposed action and governed by the rule of reason, so that the NEPA analysis meaningfully informs the agency's decision. The appropriate time to begin the NEPA process is dependent on when the agency has sufficient information, and on how it can most effectively integrate the NEPA review into the agency's decision-making process. Further, some courts have viewed this provision as a legally enforceable standard, rather than an opportunity for agencies to integrate NEPA into their decision-making programs and processes. *See, e.g., N.M. ex rel. Richardson* v. *Bureau of Land Mgmt.,* 565 F.3d 683 (10th Cir. 2009); *Metcalf* v. *Daley,* 214 F.3d 1135 (9th Cir. 2000). As discussed above, only final agency action is subject to judicial review under the APA. CEQ's view is that agencies should have discretion with respect to timing, consistent with the regulatory provisions in §§ 1501.11 and 1502.4 for deferring NEPA analysis to appropriate points in the decision-making process. As noted in the NPRM, this change is consistent with CEQ guidance that agencies should ''concentrate on relevant environmental analysis'' in their EISs rather than ''produc[ing] an encyclopedia of all applicable information.'' Timely Environmental Reviews Guidance, *supra* note 29; *see also* §§ 1500.4(b), 1502.2(a). Therefore, CEQ makes these changes to clarify that agencies have discretion to structure their NEPA processes in accordance with the rule of reason. CEQ also proposed to change ''possible'' to ''reasonable'' in paragraph (b)(4)(iii) and ''shall'' to ''should'' in the introductory paragraph of § 1502.5 for consistency with the changes to § 1501.2. CEQ makes these changes in the final rule.

CEQ also proposed to change ''planning and decisions reflect environmental values'' to ''agencies consider environmental impacts in their planning and decisions'' in paragraph (a). CEQ makes this change in the final rule because ''consider environmental impacts'' provides more explicit direction to agencies and is more consistent with the Act and the CEQ regulations.

CEQ proposed to redesignate the remaining paragraphs in § 1501.2 to list out other general requirements for agencies. In paragraph (b)(1), the final rule removes the direct quote of NEPA consistent with the **Federal Register's** requirements for the Code of Federal Regualtions. In paragraph (b)(2), CEQ proposed to clarify that agencies should consider economic and technical analyses along with environmental effects. This change is consistent with section 102(2)(B) of NEPA, which directs agencies, in consultation with CEQ, to identify and develop methods and procedures to ensure environmental amenities and values are considered along with economic and technical considerations in decision making. CEQ makes this change in the final rule and revises the second sentence in this paragraph to qualify that agencies must review and publish environmental documents and appropriate analyses at the same time as other planning documents ''whenever practicable.'' CEQ recognizes that it is not always practicable to publish such documents at the same time because it can delay publication of one or the other. Finally, CEQ proposed to amend paragraph (b)(4)(ii) to change ''agencies'' to ''governments'' consistent with and in support of government-to-government consultation pursuant to E.O. 13175 [74] and E.O. 13132, ''Federalism.'' [75] CEQ makes these changes in the final rule.

3. Determine the Appropriate Level of NEPA Review (§ 1501.3)

As discussed in the NPRM, NEPA requires a ''detailed statement'' for ''major Federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(2)(C). To determine whether an action requires such a detailed statement, the 1978 regulations provided three levels of review for Federal agencies to assess proposals for agency action. Specifically, the CEQ regulations allow agencies to review expeditiously those actions that normally do not have significant effects by using CEs or, for actions that are not likely to have significant effects, by preparing EAs. By using CEs and EAs whenever appropriate, agencies then can focus their limited resources on those actions that are likely to have significant effects and require the ''detailed statement,'' or EIS, required by NEPA.

While the 1978 CEQ regulations provided for these three levels of NEPA review, they do not clearly set out the decisional framework by which agencies should assess their proposed actions and select the appropriate level of review. To provide this direction and clarity, the NPRM proposed to add a new section at § 1501.3, ''Determine the appropriate level of NEPA review.'' The proposal described the three levels of NEPA review and the basis upon which an agency makes a determination regarding the appropriate level of review for a proposed action. CEQ includes the proposal in the final rule at paragraph (a) of § 1501.3.

CEQ proposed to address the consideration of significance in paragraph (b) since it is central to determining the appropriate level of review. CEQ proposed to move the language from 40 CFR 1508.27, ''Significantly,'' since it did not contain a definition, but rather set forth factors for considering whether an effect is significant, to paragraph (b). CEQ also proposed to eliminate most of the

[74] *Supra* note 69.

[75] 64 FR 43255 (Aug. 10, 1999).

factors in favor of a simpler, more flexible approach for agencies to assess significance. Specifically, CEQ proposed to change ''context'' to ''potentially affected environment'' and ''intensity'' to ''degree'' to provide greater clarity as to what agencies should consider in assessing potential significant effects. The phrase ''potentially affected environment'' relates more closely to physical, ecological, and socio-economic aspects than ''context.'' The final rule reorganizes several factors formerly categorized under ''intensity'' to clarify further this distinction. The final rule uses the term ''degree'' because some effects may not necessarily be of an intense or severe nature, but nonetheless should be considered when determining significance. While 40 CFR 1508.27 used several different words to explain what was meant by ''intensity,'' it also used ''degree'' numerous times. Therefore, the consistent use of ''degree'' throughout is clearer. In the final rule, CEQ includes these proposed changes in paragraph (b) with some additional revisions in response to comments. CEQ clarifies in paragraph (b)(1) that agencies ''should'' (rather than ''may'') consider the affected area specific to the proposed action, consistent with the construction of paragraph (b)(2), and the affected area's resources. The final rule includes one example, listed species and designated critical habitat under the Endangered Species Act, but this could include any type of resource such as historic, cultural, or park lands. The final rule also modifies the example of significance varying with the setting, because there was some misunderstanding of the proposed change from ''world'' to ''Nation.'' This sentence merely serves as an example. Consistent with the NPRM, paragraph (b)(2) addresses considerations of the degree of effects. CEQ moves short- and long-term effects from ''affected environment'' in (b)(1) to ''degree'' in paragraph (b)(2)(i). CEQ proposed to exclude consideration of controversy (40 CFR 1508.27(b)(4)) because the extent to which effects may be controversial is subjective and is not dispositive of effects' significance. Further, courts have interpreted controversy to mean scientific controversy, which the final rule addresses within the definition of effects, as the strength of the science informs whether an effect is reasonably foreseeable. The controversial nature of a project is not relevant to assessing its significance.

Additionally, CEQ proposed to remove the reference in 40 CFR 1508.27(b)(7) to ''[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts'' because this is addressed in the criteria for scope in §§ 1501.9(e) and 1502.4(a), which would provide that agencies evaluate in a single EIS proposals or parts of proposals that are related closely enough to be, in effect, a single course of action. Commenters noted that §§ 1501.9 and 1502.4 are applicable only to EISs. Therefore, in the final rule CEQ includes a sentence in paragraph (b) stating that agencies should consider connected actions when determining the significance of the effects of the proposed action.

4. Categorical Exclusions (§ 1501.4)

Under the 1978 regulations, agencies could categorically exclude actions from detailed review where the agency has found in its agency NEPA procedures that the action normally would not have significant effects. Over the past 4 decades, Federal agencies have developed more than 2,000 CEs.[76] CEQ estimates that each year, Federal agencies apply CEs to approximately 100,000 Federal agency actions that typically require little or no documentation.[77] While CEs are the most commonly used level of NEPA review, CEQ has addressed CE development and implementation in only one comprehensive guidance document, *see* CE Guidance, *supra* note 29, and the 1978 regulations did not address CEs in detail.

In response to the ANPRM, many commenters requested that CEQ update the NEPA regulations to provide more detailed direction on the application of CEs. To provide greater clarity, CEQ proposed to add a new section on CEs in proposed § 1501.4, ''Categorical exclusions,'' to address in more detail the process by which an agency considers whether a proposed action is categorically excluded under NEPA.

Proposed paragraph (a) stated that agencies identify CEs in their NEPA procedures. CEQ adds this paragraph to the final rule, reiterating the requirement in § 1507.3(e)(2)(ii) that agencies establish CEs in their agency NEPA procedures. The NPRM proposed in paragraph (b) to set forth the requirement to consider extraordinary circumstances once an agency determines that a CE covers a proposed action, consistent with the current requirement in 40 CFR 1508.4. CEQ includes this provision in the final rule, changing the language from passive to active voice. CEQ proposed in paragraph (b)(1) to provide that, when extraordinary circumstances are present, agencies may consider whether mitigating circumstances, such as the design of the proposed action to avoid effects that create extraordinary circumstances, are sufficient to allow the proposed action to be categorically excluded. CEQ includes this paragraph in the final rule, but revises it to address confusion over whether CEQ is creating a ''mitigated CE.'' In the final rule, paragraph (b)(1) provides that an agency can categorically exclude a proposed action when an environmental resource or condition identified as a potential extraordinary circumstance is present if the agency determines that there are ''circumstances that lessen the impacts'' or other conditions sufficient to avoid significant effects. This paragraph clarifies that agencies' extraordinary circumstances criteria are not intended to necessarily preclude the application of a CE merely because a listed factor may be present or implicated. Courts have rejected a ''mere presence'' test for CEs. *Sierra Club* v. *U.S. Forest Serv.,* 828 F.3d 402 (6th Cir. 2016); *Sierra Club* v. *Bosworth,* 510 F.3d 1016 (9th Cir. 2007); *Utah Envtl. Cong.* v. *Bosworth,* 443 F.3d 732 (10th Cir. 2006); *Sw. Ctr. for Biological Diversity* v. *U.S. Forest Serv.,* 100 F.3d 1443, 1450 (9th Cir. 1996); *cf. Rhodes* v. *Johnson,* 153 F.3d 785 (7th Cir. 1998). Instead, the agency may consider in light of the extraordinary circumstances criteria, whether the proposed action would take place in such a way that it would not have significant effects, or whether the agency could modify the proposed action to avoid the extraordinary circumstances so that the action remains eligible for categorical exclusion. While this reflects current practice for some agencies,[78] this revision would assist agencies as they consider whether to categorically exclude an action that would otherwise be considered in an EA and FONSI.

Finally, CEQ proposed paragraph (b)(2) to address agencies' obligation to prepare an EA or EIS, as appropriate, if the agency cannot categorically exclude

[76] *See* Council on Environmental Quality, List of Federal Agency Categorical Exclusions (June 18, 2020), *https://ceq.doe.gov/nepa-practice/categorical-exclusions.html.*

[77] *See, e.g.,* Council on Environmental Quality, The Eleventh and Final Report on the National Environmental Policy Act Status and Progress for American Recovery and Reinvestment Act of 2009 Activities and Projects (Nov. 2, 2011), *https://ceq.doe.gov/docs/ceq-reports/nov2011/CEQ_ARRA_NEPA_Report_Nov_2011.pdf.*

[78] *See, e.g.,* Forest Service categorical exclusions, 36 CFR 220.6(b)(2); surface transportation categorical exclusions, 23 CFR 771.116–771.118.

a proposed action. CEQ includes this provision in the final rule revising the language to active voice and making it consistent with the format of paragraph (b).

CEQ invited comment on the proposed revisions and asked whether it should address any other aspects of CEs in its regulations. CEQ also invited comment on whether it should establish government-wide CEs in its regulations to address routine administrative activities, for example, internal orders or directives regarding agency operations, procurement of office supplies and travel, and rulemakings to establish administrative processes such as those established under the Freedom of Information Act or Privacy Act. After considering the comments, as discussed in the Final Rule Response to Comments, CEQ is not including any additional provisions on CEs in the final rule.

5. Environmental Assessments (§ 1501.5)

Under the 1978 regulations, when an agency has not categorically excluded a proposed action, the agency can prepare an EA to document its effects analysis. If the analysis in the EA demonstrates that the action's effects would not be significant, the agency documents its reasoning in a FONSI, which completes the NEPA process; otherwise, the agency uses the EA to help prepare an EIS. CEQ estimates that Federal agencies prepare over 10,000 EAs each year.[79]

CEQ proposed to consolidate the requirements for EAs that are scattered throughout the 1978 regulations into a new § 1501.5, ''Environmental assessments.'' CEQ proposed to revise paragraph (a) to state when agencies are required to prepare EAs. CEQ proposed minor clarifying edits to paragraph (b), which states that agencies may prepare an EA to assist in agency planning and decision making. The NPRM proposed to move the operative language regarding the requirements for an EA from the definition of EA in 40 CFR 1508.9 to paragraph (c). CEQ makes these proposed changes in the final rule.

Under the final rule, the format for an EA is flexible and responsive to agency decision-making needs and the circumstances of the particular proposal for agency action. Requirements for documenting the proposed action and alternatives in an EA continue to be more limited than EIS requirements. An agency must briefly describe the need for the proposed action by describing the existing conditions, projected future conditions, and statutory obligations and authorities that may relate to the proposed agency action with cross-references to supporting documents. The final rule continues to require agencies to describe briefly the proposed action and any alternatives it is considering that would meet the need of the proposed agency action. For actions to protect or restore the environment, without unresolved conflicts concerning alternative uses of available resources, CEQ expects agencies to examine a narrower range of alternatives to the proposed action. When the action may have significant impacts, the agency should consider reasonable alternatives that would avoid those impacts or otherwise mitigate those impacts to less than significant levels.

An agency does not need to include a detailed discussion of each alternative in an EA, nor does it need to include any detailed discussion of alternatives that it eliminated from study. While agencies have discretion to include more information in their EAs than is required to determine whether to prepare an EIS or a FONSI, they should carefully consider their reasons and have a clear rationale for doing so. Agencies should focus on analyzing material effects and alternatives, rather than marginal details that may unnecessarily delay the environmental review process.

Under the final rule, an agency must describe the environmental impacts of its proposed action and alternatives, providing enough information to support a decision to prepare either a FONSI or an EIS. The EA should focus on whether the proposed action (including mitigation) would ''significantly'' affect the quality of the human environment and tailor the length of the discussion to the relevant effects. The agency may contrast the impacts of the proposed action and alternatives with the current and expected future conditions of the affected environment in the absence of the action, which constitutes consideration of a no-action alternative.

Under the final rule, agencies should continue to list persons, relevant agencies, and applicants involved in preparing the EA to document agency compliance with the requirement to involve the public in preparing EAs to the extent practicable, consistent with paragraph (e). This may include incorporation by reference of records related to compliance with other environmental laws such as the National Historic Preservation Act, Clean Water Act, Endangered Species Act, or Clean Air Act.

CEQ adds a new paragraph (d) to the final rule to move the language from 40 CFR 1502.5(b) regarding when to begin preparing an EA that is required for an application to the agency.[80] Agencies may specify in their NEPA procedures when an application is complete such that it can commence the NEPA process. While the NPRM did not propose this change, the move is consistent with CEQ's proposal to consolidate EA requirements in § 1501.5.

The final rule continues to provide that agencies may prepare EAs by and with other agencies, applicants, and the public. Modern information technology can help facilitate this collaborative EA preparation, allowing the agency to make a coordinated but independent evaluation of the environmental issues and assume responsibility for the scope and content of the EA. CEQ proposed to move the public involvement requirements for EAs from the current 40 CFR 1501.4(b) to § 1501.5 and change ''environmental'' to ''relevant'' agencies to include all agencies that may contribute information that is relevant to the development of an EA. CEQ makes these changes in paragraph (e) in the final rule. CEQ also adds to and reorders the list to ''the public, State, Tribal, and local governments, relevant agencies, and any applicants,'' to address some confusion by public commenters that interpreted relevant to modify the public and applicants. In addition, this revision acknowledges that there will not be an applicant in all instances. Consistent with the 1978 regulations, the final rule does not specifically require publication of a draft EA for public review and comment, but continues to require agencies to reasonably involve the public prior to completion of the EA, so that they may provide meaningful input on those subject areas that the agency must consider in preparing the EA. Depending on the circumstances, the agency could provide adequate information through public meetings or by a detailed scoping notice, for example. There is no single correct approach for public involvement. Rather, agencies should consider the circumstances and have discretion to conduct public involvement tailored to the interested public, to available means of communications to reach the interested and affected parties, and to

[79] *See, e.g.,* Council on Environmental Quality, Fourth Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, Attachment A (Oct. 4, 2016), *https://ceq.doe.gov/docs/ceq-reports/Attachment-A-Fourth-Cooperating-Agency-Report_Oct2016.pdf.*

[80] CEQ also retains the statement in § 1502.5(b), as proposed, with respect to EISs.

the particular circumstances of each proposed action.

The NPRM proposed to establish a presumptive 75-page limit for EAs, but allow a senior agency official to approve a longer length and establish a new page limit in writing. CEQ adds this new requirement at paragraph (f) in the final rule. As noted in the NPRM, while Question 36a of the Forty Questions, *supra* note 2, stated that EAs should be approximately 10 to 15 pages, in practice, such assessments are often longer to address compliance with other applicable laws, and to document the effects of mitigation to support a FONSI. To achieve the presumptive 75-page limit, agencies should write all NEPA environmental documents in plain language, follow a clear format, and emphasize important impact analyses and relevant information necessary for those analyses, rather than providing extensive background material. An EA should have clear and concise conclusions and may incorporate by reference data, survey results, inventories, and other information that support these conclusions, so long as this information is reasonably available to the public.

The presumptive EA page limit promotes more readable documents and provides agencies flexibility to prepare longer documents, where necessary, to support the agency's analysis. This presumptive page limit is consistent with CEQ's guidance on EAs, which advises agencies to avoid preparing lengthy EAs except in unusual cases where a proposal is so complex that a concise document cannot meet the goals of an EA and where it is extremely difficult to determine whether the proposal could cause significant effects. Page limits will encourage agencies to identify the relevant issues, focus on significant environmental impacts, and prepare concise readable documents that will inform decision makers as well as the public. Voluminous, unfocused environmental documents do not advance the goals of informed decision making or protection of the environment.

CEQ proposed to add a new paragraph (f) to § 1501.5 to clarify that agencies also may apply, as appropriate, certain provisions in part 1502 regarding incomplete or unavailable information, methodology and scientific accuracy, and environmental review and consultation requirements to EAs. CEQ includes this new paragraph at § 1501.5(g) in the final rule.

In addition to the new § 1501.5, CEQ incorporates reference to EAs in other sections of the regulations to codify existing agency practice where it would make the NEPA process more efficient and effective. As discussed in section II.C.9, CEQ makes a presumptive time limit applicable to EAs in § 1501.10. Further, for some agencies, it is a common practice to have lead and cooperating agencies coordinate in the preparation of EAs where more than one agency may have an action on a proposal; therefore, CEQ adds EAs to §§ 1501.7 and 1501.8, as discussed in section II.C.7. Finally, as discussed in section II.C.10, CEQ proposed to add EAs to § 1501.11, ''Tiering,'' to codify current agency practice of using EAs where the effects of a proposed agency action are not likely to be significant. These include program decisions that may facilitate later site-specific EISs as well as the typical use of EAs as a second-tier document tiered from an EIS. CEQ makes these changes in the final rule.

6. Findings of No Significant Impact (§ 1501.6)

When an agency determines in its EA that an EIS is not required, it typically prepares a FONSI. The FONSI reflects that the agency has engaged in the necessary review of environmental impacts under NEPA. The FONSI shows that the agency examined the relevant data and explained the agency findings by providing a rational connection between the facts presented in the EA and the conclusions drawn in the finding. Any finding should clearly identify the facts found and the conclusions drawn by the agency based on those facts.

In response to the ANPRM, CEQ received comments requesting that CEQ update its regulations to consolidate provisions and provide more detailed requirements for FONSIs. CEQ proposed to consolidate the operative language of 40 CFR 1508.13, ''Finding of no significant impact'' with 40 CFR 1501.4, ''Whether to prepare an environmental impact statement,'' in the proposed § 1501.6, ''Findings of no significant impact.'' CEQ proposed to strike paragraph (a) as the requirements in that paragraph are addressed in § 1507.3(d)(2) (§ 1507.3(e)(2) in the final rule). As noted in section II.C.5, CEQ proposed to move 40 CFR 1501.4(b) to § 1501.5, ''Environmental assessments.'' Similarly, CEQ proposed to strike 40 CFR 1501.4(d), because § 1501.9, ''Scoping,'' addresses this requirement. CEQ makes these changes in the final rule.

CEQ proposed to make 40 CFR 1501.4(e) the new § 1501.6(a), and revise the language to clarify that an agency must prepare a FONSI when it determines that a proposed action will not have significant effects based on the analysis in the EA, consistent with the definition of FONSI. The proposed rule had erroneously included the standard for preparing an EA—''is not likely to have significant effects.'' CEQ proposed to clarify in paragraph (a)(2) that the circumstances listed in paragraphs (a)(2)(i) and (ii) are the situations where the agency must make a FONSI available for public review. CEQ makes these changes in the final rule.

CEQ proposed to move the operative requirement that a FONSI include the EA or a summary from the definition of FONSI in 40 CFR 1508.13 to a new paragraph (b). CEQ also proposed to change the requirement that the FONSI include a summary of the EA to ''incorporate it by reference.'' Consistent with § 1501.12, in order to incorporate the EA by reference, the agency would need to briefly summarize it. Making this change ensures that the EA is available to the public. CEQ makes these changes in the final rule.

Finally, CEQ proposed a new paragraph (c) to address mitigation, which CEQ includes in the final rule. The first sentence addresses mitigation generally in a FONSI, requiring agencies to state the authority for any mitigation adopted and any applicable monitoring or enforcement provisions. This sentence applies to all FONSIs. CEQ omits the ''means of'' mitigation from the final rule because it is unnecessary and many commenters misunderstood its meaning or found it confusing. The second sentence codifies the practice of mitigated FONSIs, consistent with CEQ's Mitigation Guidance.[81] This provision requires the agency to identify the enforceable mitigation requirements and commitments, which are those mitigation requirements and commitments needed to reduce the effects below the level of significance.[82] When preparing an EA, many agencies develop, consider, and commit to mitigation measures to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts that would otherwise require preparation of an EIS. An agency can commit to mitigation

[81] The Mitigation Guidance, *supra* note 29, amended and supplemented the Forty Questions, *supra* note 2, specifically withdrawing Question 39 insofar as it suggests that mitigation measures developed during scoping or in an EA ''[do] not obviate the need for an EIS.''

[82] As discussed in sections I.B.1 and II.B, NEPA is a procedural statute and does not require adoption of a mitigation plan. However, agencies may consider mitigation measures that would avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts and may require mitigation pursuant to substantive statutes.

measures for a mitigated FONSI when it can ensure that the mitigation will be performed, when the agency expects that resources will be available, and when the agency has sufficient legal authorities to ensure implementation of the proposed mitigation measures. CEQ does not intend this codification of CEQ guidance to create a different standard for analysis of mitigation for a ''mitigated FONSI,'' but to provide clarity regarding the use of FONSIs.

7. Lead and Cooperating Agencies (§§ 1501.7 and 1501.8)

The 1978 CEQ regulations created the roles of lead agency and cooperating agencies for NEPA reviews, which are critical for actions, such as non-Federal projects, requiring the approval or authorization of multiple agencies. Agencies need to coordinate and synchronize their NEPA processes to ensure an efficient environmental review that does not cause delays. In recent years, Congress and several administrations have worked to establish a more synchronized procedure for multi-agency NEPA reviews and related authorizations, including through the development of expedited procedures such as the section 139 process and FAST–41. In response to the ANPRM, CEQ received comments requesting that CEQ update its regulations to clarify the roles of lead and cooperating agencies.

CEQ proposed a number of modifications to § 1501.7, ''Lead agencies,'' and § 1501.8, ''Cooperating agencies,'' (40 CFR 1501.5 and 1501.6, respectively, in the 1978 regulations) to improve interagency coordination, make development of NEPA documents more efficient, and facilitate implementation of the OFD policy. As stated in the NPRM, CEQ intends these modifications to improve the efficiency and outcomes of the NEPA process—including cost reduction, improved relationships, and better outcomes that avoid litigation—by promoting environmental collaboration.[83] These modifications are consistent with Questions 14a and 14c of the Forty Questions, *supra* note 2. CEQ proposed to apply §§ 1501.7 and 1501.8 to EAs as well as EISs consistent with agency practice. CEQ makes these changes in the final rule, but clarifies that the provisions apply to ''complex'' EAs and not routine EAs where involving multiple agencies could slow down an already efficient and effective process.[84]

CEQ proposed to clarify in § 1501.7(d) that requests for lead agency designations should be sent in writing to the senior agency officials of the potential lead agencies. CEQ makes this change in the final rule. CEQ did not propose any changes to paragraphs (e) and (f) of § 1501.7, but makes clarifying edits by reorganizing phrases and changing the language to active voice in the final rule.

Consistent with the OFD policy to ensure coordinated and timely reviews, CEQ proposed to add a new paragraph (g) to § 1501.7 to require that Federal agencies evaluate proposals involving multiple Federal agencies in a single EIS and issue a joint ROD [85] or single EA and joint FONSI when practicable. CEQ adds this paragraph to the final rule with edits to the EA sentence to make the language consistent with the EIS sentence.

CEQ proposed to move language from the cooperating agency provision, 40 CFR 1501.6(a), that addresses the lead agency's responsibilities with respect to cooperating agencies to proposed paragraph (h) in § 1501.7 so that all of the lead agency's responsibilities are in a single section. CEQ also proposed to clarify in paragraph (h)(4) that the lead agency is responsible for determining the purpose and need, and alternatives in consultation with any cooperating agencies.[86] CEQ makes this move and addition in the final rule. In response to comments, the final rule eliminates the phrase ''consistent with its responsibility as lead agency'' in paragraph (h)(2) because it is non-specific and could cause agencies to reject germane and informative scientific research.

CEQ proposed new paragraphs (i) and (j) in § 1501.7, and (b)(6) and (7) in § 1501.8, to require development of and adherence to a schedule for the environmental review of and any authorizations required for a proposed action, and resolution of disputes and other issues that may cause delays in the schedule. CEQ includes these provisions in the final rule with minor edits for clarity. These provisions are consistent with current practices at agencies that have adopted elevation procedures pursuant to various statutes and directives, including 23 U.S.C. 139, FAST–41, and E.O. 13807. In response to comments, CEQ includes a new paragraph (b)(8) in § 1501.8 requiring cooperating agencies to jointly issue environmental documents with the lead agency, to the maximum extent practicable. This addition is consistent with the goal of interagency cooperation and efficiency.

CEQ proposed to move the operative language that State, Tribal, and local agencies may serve as cooperating agencies from the definition of cooperating agency (40 CFR 1508.5) to paragraph (a) of § 1501.8. Upon the request of the lead agency, non-Federal agencies should participate in the environmental review process to ensure early collaboration on proposed actions where such entities have jurisdiction by law or special expertise. CEQ also proposed in paragraph (a) to codify current practice to allow a Federal agency to appeal to CEQ a lead agency's denial of a request to serve as cooperating agency. Resolving disputes among agencies early in the process furthers the OFD policy and the goal of more efficient and timely NEPA reviews. CEQ makes these changes in the final rule with minor edits for clarity. Finally, CEQ proposed clarifications and grammatical edits throughout § 1501.8. CEQ makes these changes in the final rule.

8. Scoping (§ 1501.9)

In response to the ANPRM, CEQ received comments requesting that CEQ update its regulations related to scoping,

[83] *See, e.g.,* Federal Forum on Environmental Collaboration and Conflict Resolution, Environmental Collaboration and Conflict Resolution (ECCR): Enhancing Agency Efficiency and Making Government Accountable to the People (May 2, 2018), *https://ceq.doe.gov/docs/nepa-practice/ECCR_Benefits_Recommendations_Report_%205-02-018.pdf.*

[84] This is consistent with CEQ's reports on cooperating agencies, which have shown that use of cooperating agencies for EAs has remained low. Council on Environmental Quality, Attachment A, The Fourth Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (NEPA) 1 (Oct. 2016), *https://ceq.doe.gov/docs/ceq-reports/Attachment-A-Fourth-Cooperating-Agency-Report_Oct2016.pdf* (percentage of EAs with cooperating agencies was 6.8 percent for Fiscal Years 2012 through 2015); *see also* Council on Environmental Quality, Attachment A, The Second Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (NEPA) 2 (May 2012), *https://ceq.doe.gov/docs/ceq-reports/Cooperating_Agency_Report_2005-11_Attachment_23May2012.pdf* (percentage of EAs with cooperating agencies was 5.9 percent for Fiscal Years 2005 through 2011).

[85] A ''single ROD,'' as used in E.O. 13807, is the same as a ''joint ROD,'' which is a ROD addressing all Federal agency actions covered in the single EIS and necessary for a proposed project. 40 CFR 1508.25(a)(3). The regulations would provide flexibility for circumstances where a joint ROD is impracticable. Examples include the statutory directive to issue a combined final EIS and ROD for transportation actions and the FERC's adjudicatory process.

[86] *See* OFD Framework Guidance, *supra* note 30, sec. VIII.A.5 (''The lead agency is responsible for developing the Purpose and Need, identifying the range of alternatives to be analyzed, identifying the preferred alternative and determining whether to develop the preferred alternative to a higher level of detail.''); Connaughton Letter, *supra* note 29 (''[J]oint lead or cooperating agencies should afford substantial deference to the [ ] agency's articulation of purpose and need.'')

including comments requesting that agencies have greater flexibility in how to conduct scoping. CEQ proposed to reorganize in more chronological order, § 1501.9, ''Scoping,'' (40 CFR 1501.7 in the 1978 regulations), consolidate all the requirements for the NOI and the scoping process into the same section, and add paragraph headings to improve clarity. CEQ makes these changes in the final rule with minor edits as described further in this section.

Specifically, CEQ proposed to revise paragraph (a) to state the general requirement to use scoping for EISs. Rather than requiring publication of an NOI as a precondition to the scoping process, CEQ proposed to modify paragraph (a) so that agencies can begin the scoping process as soon as the proposed action is developed sufficiently for meaningful agency consideration. Some agencies refer to this as pre-scoping under the existing regulations to capture scoping work done before publication of the NOI. Rather than tying the start of scoping to the agency's decision to publish an NOI to prepare an EIS, the timing and content of the NOI would instead become an important step in the scoping process itself, thereby obviating the artificial distinction between scoping and pre-scoping. However, agencies should not unduly delay publication of the NOI and should be transparent about any work done prior to publication of the NOI. CEQ makes the changes as proposed in the final rule.

Paragraph (b) addresses the responsibility of the lead agency to invite cooperating and participating agencies as well as other likely affected or interested persons. CEQ proposed to add ''likely'' to this paragraph to capture the reality that, at the scoping stage, agencies may not know the identities of all affected parties and that one of the purposes of scoping is to identify affected parties. CEQ makes this change in the final rule. In the final rule, CEQ strikes ''on environmental grounds'' from the parenthetical noting that likely affected or interested persons include those who might not agree with the action because the clause is unnecessarily limiting. Agencies should invite the participation of those who do not agree with the action irrespective of whether it is on environmental grounds.

The NPRM proposed to move the existing (b)(4) to paragraph (c), ''Scoping outreach.'' CEQ proposed to broaden the types of activities agencies might hold during scoping, including meetings, publishing information, and other means of communication to provide agencies additional flexibility in how to reach interested or affected parties in the scoping process. CEQ finalizes this change as proposed.

Paragraph (d) proposed to address the NOI requirements. CEQ proposed a list of what agencies must include in an NOI to standardize NOI format, achieve greater consistency across agencies, provide the public with more information and transparency, and ensure that agencies conduct the scoping process in a manner that facilitates implementation of the OFD policy for multi-agency actions, including by proactively soliciting comments on alternatives, impacts, and relevant information to better inform agency decision making. CEQ makes these changes in the final rule with minor edits for clarity and edits to paragraph (d)(7) for consistency with §§ 1500.3 and 1502.17 and to correct the cross-reference.

CEQ proposed to move the criteria for determining scope from the definition of scope, 40 CFR 1508.25, to paragraph (e) and to strike the paragraph on ''cumulative actions'' for consistency with the proposed revisions to the definition of ''effects'' discussed below. CEQ makes this change in the final rule, but does not include the reference to ''similar actions'' in proposed paragraph (e)(1)(ii) because commenters expressed confusion regarding whether the determination of the scope of the environmental documentation, as discussed in proposed § 1501.9(e)(1)(i)(C) was directly related to the discussion of the ''effects of the action'' as effects are defined in § 1508.1(g). To eliminate this confusion, CEQ strikes the language in proposed § 1501.9(e)(1)(i)(C) (40 CFR 1508.25(a)(3)) regarding similar actions. Further, CEQ notes that, in cases where the question of the consideration of similar actions to determine the scope of the NEPA documentation was raised, courts noted the discretionary nature of the language (use of the word ''may'' and ''should'' in proposed § 1501.9(e)(1)(i)(C) (40 CFR 1508.25(a)(3)) and have held that determinations as to the scope of a NEPA document based on a consideration of similar actions was left to the agency's discretion. *See e.g., Klamath-Siskiyou Wildlands Ctr.* v. *Bureau of Land Mgmt.,* 387 F.3d 989, 1000–01 (9th Cir. 2004). CEQ also notes that the reference to ''other reasonable courses of action'' in paragraph (e)(2) are within the judgement of the agency. Agencies have discretion to address similar actions through a single analysis, pursuant to revised § 1502.4(b).

Finally, paragraph (f) addresses other scoping responsibilities, including identifying and eliminating from detailed study non-significant issues, allocating assignments among lead and cooperating agencies, indicating other related NEPA documents, identifying other environmental review requirements, and indicating the relationship between the environmental review and decision-making schedule. CEQ retains this paragraph in the final rule as proposed with minor grammatical edits.

9. Time Limits (§ 1501.10)

In response to the ANPRM, CEQ received many comments on the lengthy timelines and costs of environmental reviews, and many suggestions for more meaningful time limits for the completion of the NEPA process. Accordingly, and to promote timely reviews, CEQ proposed to establish presumptive time limits for EAs and EISs consistent with E.O. 13807 and prior CEQ guidance. In Question 35 of the Forty Questions, *supra* note 2, CEQ stated its expectation that ''even large complex energy projects would require only about 12 months for the completion of the entire EIS process'' and that, for most major actions, ''this period is well within the planning time that is needed in any event, apart from NEPA.'' CEQ also recognized that ''some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS.'' *Id.* Finally, Question 35 stated that an EA ''should take no more than 3 months, and in many cases substantially less as part of the normal analysis and approval process for the action.''

Based on agency experience with the implementation of the regulations, CEQ proposed in § 1501.10, ''Time limits,'' to change the introductory text to paragraph (a) and add a new paragraph (b) to establish a presumptive time limit for EAs of one year and a presumptive time limit for EISs of two years. However, the NPRM also proposed that a senior agency official could approve in writing a longer period. CEQ proposed to define the start and end dates of the period consistent with E.O. 13807. CEQ makes these changes in the final rule. CEQ eliminates the sentence regarding lead agency from paragraph (a) because it is no longer needed given the revisions to this section changing ''agency'' to ''senior agency official.'' In response to comments, the final rule also adds ''FONSI'' to paragraph (b)(1) to clarify that the time limit for EAs is measured from the date of decision to prepare to the publication of an EA or FONSI, since agencies may not publish

the EA separately. The final rule also clarifies that the time period is measured from the date the agency decides to prepare an EA, since applicants sometimes prepare EAs on behalf of agencies.

Consistent with CEQ and OMB guidance, agencies should begin scoping and development of a schedule for timely completion of an EIS prior to issuing an NOI and commit to cooperate, communicate, share information, and resolve conflicts that could prevent meeting milestones.[87] CEQ recognizes that agency capacity, including those of cooperating and participating agencies, may affect timing, and that agencies should schedule and prioritize their resources accordingly to ensure effective environmental analyses and public involvement. Further, agencies have flexibility in the management of their internal processes to set shorter time limits and to define the precise start and end times for measuring the completion time of an EA. Therefore, CEQ proposed to retain the factors for determining time limits in paragraph (c). CEQ proposed to revise paragraph (c)(6) for clarity and strike paragraph (c)(7) regarding controversial actions because it overlaps with numerous other factors, and because whether or not an action is controversial is not relevant to the analysis under NEPA. CEQ also proposed to retain with edits for clarity the list of parts of the NEPA process for which the senior agency official may set time limits in paragraph (d). CEQ retains paragraphs (c) and (d) in the final rule with the changes as proposed.

CEQ proposed conforming edits to § 1500.5(g) to change ''establishing'' to ''meeting'' time limits and add ''environmental assessment.'' CEQ makes these edits in the final rule.

10. Tiering (§ 1501.11)

CEQ proposed to move 40 CFR 1502.20, ''Tiering,'' to a new § 1501.11 and revise it to make clear that this provision is applicable to both EAs and EISs. CEQ proposed a number of revisions in § 1501.11 to clarify when agencies can use existing studies and environmental analyses in the NEPA process and when agencies would need to supplement such studies and analyses. The revisions clarify that agencies do not need to conduct site-specific analyses prior to an irretrievable commitment of resources, which in most cases will not be until the decision at the site-specific stage. CEQ makes these changes with additional updates in the final rule.

Specifically, the final rule splits proposed paragraph (a) into two paragraphs. In the new paragraph (a), CEQ changes ''are encouraged to'' to ''should'' and moves to the end of this paragraph the sentence stating that tiering may also be appropriate for different stages of actions. The new paragraph (b) addresses the relationship between the different levels of tiered documents, and CEQ makes additional edits to this paragraph for clarity.

CEQ also proposed to move the operative language addressing specific examples of when tiering is appropriate from the definition of tiering in 40 CFR 1508.28 to proposed paragraph (b). CEQ moves this language to paragraph (c) in the final rule with the edits as proposed.

11. Incorporation by Reference (§ 1501.12)

CEQ proposed to move 40 CFR 1502.21, ''Incorporation by reference,'' to a new § 1501.12 and change ''environmental impact statements'' to ''environmental documents'' because this provision is applicable generally, not just to EISs. CEQ makes this change in the final rule. CEQ makes additional changes in the final rule to revise sentences from passive to active voice. In response to comments, CEQ adds examples to the types of material that agencies may incorporate, including planning studies and analyses.

D. Revisions to Environmental Impact Statements (Part 1502)

As stated in the NPRM, the most extensive level of NEPA analysis is an EIS, which is the ''detailed statement'' required under section 102(2)(C) of NEPA. When an agency prepares an EIS, it typically issues a ROD at the conclusion of the NEPA review. Based on the Environmental Protection Agency (EPA) weekly Notices of Availability published in the **Federal Register** between 2010 and 2019, Federal agencies published approximately 176 final EISs per year. CEQ proposed to update the format, page length, and timeline to complete EISs to better achieve the purposes of NEPA. CEQ also proposed several changes to streamline, allow for flexibility in, and improve the preparation of EISs. CEQ includes provisions in part 1502 to promote informed decision making by agencies and to inform the public about the decision-making process. The final rule continues to encourage application of NEPA early in the process and early engagement with applicants for non-Federal projects.

1. Purpose of Environmental Impact Statement (§ 1502.1)

CEQ proposed to revise § 1502.1 for consistency with the statutory language of NEPA and make other non-substantive revisions for clarity. CEQ makes these changes in the final rule. The final rule also retitles this section.

2. Implementation (§ 1502.2)

CEQ proposed to strike the introductory text of § 1502.2 as unnecessary and revise the text in paragraphs (a) and (c) for clarity and consistency with the language in the rule and regulatory text generally. CEQ makes these changes in the final rule with minor clarifying edits. The final rule clarifies in paragraph (d) that, in preparing an EIS, agencies shall state how the alternatives considered in it and decisions based on it serve the purposes of the statute as interpreted in the CEQ regulations. The final rule strikes ''ultimate agency'' in paragraph (e) because there may be multiple individuals within certain departments or agencies that have decision-making responsibilities, including where subunits have developed agency procedures or NEPA compliance programs.

3. Statutory Requirements for Statements (§ 1502.3)

CEQ proposed to revise § 1502.3 to make it a single paragraph, remove cross-references to the definition, and make minor clarifying edits. CEQ makes these changes in the final rule.

4. Major Federal Actions Requiring the Preparation of Environmental Impact Statements (§ 1502.4)

CEQ proposed to revise § 1502.4 to clarify in paragraph (a) that a ''properly defined'' proposal is one that is based on the statutory authorities for the proposed action. CEQ proposed to change ''broad'' and ''program'' to ''programmatic'' in this section, as well as §§ 1500.4(k) and 1506.1(c), since ''programmatic'' is the term commonly used by NEPA practitioners. The NPRM proposed further revisions to paragraph (b), including eliminating reference to programmatic EISs that ''are sometimes required,'' to focus the provision on the discretionary use of programmatic EISs in support of clearly defined decision-making purposes. For consistency, CEQ proposed to change the mandatory language to be discretionary in proposed paragraph (c)(3) (paragraph (b)(1)(iii) in the final rule). As CEQ stated in its 2014 guidance, programmatic NEPA reviews

[87] *See* OFD Framework Guidance, *supra* note 30 (''[w]hile the actual schedule for any given project may vary based upon the circumstances of the project and applicable law, agencies should endeavor to meet the two-year goal . . . .'').

''should result in clearer and more transparent decision[ ]making, as well as provide a better defined and more expeditious path toward decisions on proposed actions.'' [88] Other statutes or regulations may grant discretion or otherwise identify circumstances for when to prepare a programmatic EIS. *See, e.g.,* National Forest Management Act, 16 U.S.C. 1604(g); 36 CFR 219.16. CEQ makes these changes in the final rule, and reorganizes proposed paragraphs (c) and (d) to be paragraphs (b)(1) and (2) since these paragraphs all address programmatic reviews. Finally, CEQ proposed to add a new sentence to proposed paragraph (d) (paragraph (b)(2) in the final rule) to clarify that when conducting programmatic reviews, agencies may tier their analyses to defer detailed analysis of specific program elements until they are ripe for decisions that would involve an irreversible or irretrievable commitment of resources. The final rule removes this latter clause and simplifies it to elements ''ripe for final agency action'' because NEPA review occurs pursuant to the APA and ''final agency action,'' as construed in *Bennett* v. *Spear,* is the test for when judicial review can commence. *See* 520 U.S. at 177–78.

5. Timing (§ 1502.5)

For the reasons discussed in section II.C.2 and consistent with the edits to § 1501.2, CEQ proposed to change ''shall'' to ''should'' in the introductory text so that agencies can exercise their best judgement about when to begin the preparation of an EIS. CEQ also proposed to revise paragraph (b) to clarify that agencies should work with potential applicants and applicable agencies before applicants submit applications. CEQ makes these changes in the final rule. Also, as noted in section II.C.7, CEQ revises paragraph (b) in the final rule to only address EISs in this section and move the discussion of EAs to § 1501.5. Finally, CEQ adds ''and governments'' to ''State, Tribal, and local agencies'' to be comprehensive and consistent with similar changes made throughout the rule.

6. Interdisciplinary Preparation (§ 1502.6)

CEQ proposed minor edits to § 1502.6 consistent with the global changes discussed in section II.A. CEQ includes these changes in the final rule and revises this provision from passive to active voice.

7. Page Limits (§ 1502.7)

In response to the ANPRM, CEQ received many comments on the length, complexity, and readability of environmental documents, and many suggestions for more meaningful page limits. As the President Carter noted in 1977 regarding issuance of E.O. 11991, ''to be more useful to decision[ ]makers and the public, [EISs] must be concise, readable, and based upon competent professional analysis. They must reflect a concern with quality, not quantity. We do not want [EISs] that are measured by the inch or weighed by the pound.'' [89] The core purpose of page limits from the original regulations remains—documents must be a reasonable length and in a readable format so that it is practicable for the decision maker to read and understand the document in a reasonable time period. If documents are unreasonable in their length or unwieldly, there is a risk that they will not inform the decision maker, thereby undermining the purposes of the Act. As the Supreme Court noted in *Metropolitan Edison Co.* v. *People Against Nuclear Energy,* ''[t]he scope of the agency's inquiries must remain manageable if NEPA's goal of '[insuring] a fully informed and well-considered decision,' . . . is to be accomplished.'' 460 U.S. at 776 (quoting *Vt. Yankee,* 435 U.S. at 558). Therefore, CEQ proposed to reinforce the page limits for EISs set forth in § 1502.7, while allowing a senior agency official to approve a statement exceeding 300 pages when it is useful to the decision-making process. CEQ makes these changes in the final rule.

As captured in CEQ's updated report on the length of final EISs, these documents average over 600 pages. *See* CEQ Length of EISs Report, *supra* note 38. While the length of an EIS will vary based on the complexity and significance of the proposed action and environmental effects the EIS considers, every EIS must be bounded by the practical limits of the decision maker's ability to consider detailed information. CEQ proposed this change to ensure that agencies develop EISs focused on significant effects and on the information useful to decision makers and the public to more successfully implement NEPA.

CEQ intends for senior agency officials to take responsibility for the quantity, quality, and timelines of environmental analyses developed in support of the decisions of their agencies. Therefore, the senior agency official approving an EA or EIS in excess of the page limits should ensure that the final environmental document meets the informational needs of the agency's decision maker. For example, the agency decision makers may have varying levels of capacity to consider the information presented in the environmental document. In ensuring that the agency provides the resources necessary to implement NEPA, in accordance with § 1507.2, senior agency officials should ensure that agency staff have the resources and competencies necessary to produce timely, concise, and effective environmental documents. Decisions as to page length for these documents are therefore closely related to an agency's decision as to how to structure its decision-making process, and for that reason must ultimately remain within the discretion of the agency.

8. Writing (§ 1502.8)

CEQ did not propose any changes to § 1502.8. In the final rule, CEQ revises this provision to correct grammatical errors, including revising it from passive to active voice.

9. Draft, Final and Supplemental Statements (§ 1502.9)

CEQ proposed to include headings for each of the paragraphs in § 1502.9, ''Draft, final, and supplemental statements,'' to improve readability. CEQ proposed edits to paragraph (b) for clarity, replacing ''revised draft'' with ''supplemental draft.'' CEQ makes these changes in the final rule and makes additional clarifying edits in § 1502.9, including to revise the language from passive to active voice.

CEQ also received many comments in response to the ANPRM requesting clarification regarding when supplemental statements are required. CEQ proposed revisions to paragraph (d)(1) to clarify that agencies need to update environmental documents when there is new information or a change in the proposed action only if a major Federal action remains to occur and other requirements are met. CEQ makes this change in the final rule. As noted in the NPRM, this revision is consistent with Supreme Court case law holding that a supplemental EIS is required only ''[i]f there remains 'major Federal actio[n]' to occur, and if the new information is sufficient to show that the remaining action will 'affec[t] the quality of the human environment' in a significant manner or to a significant extent not already considered . . . .'' *Marsh,* 490 U.S. at 374 (quoting 42 U.S.C. 4332(2)(C)); *see also Norton* v. *S. Utah Wilderness All.,* 542 U.S. 55, 73 (2004). For example, supplementation

[88] Programmatic Guidance, *supra* note 29, at 7.

[89] The Environment—Message to the Congress, 1977 Pub. Papers 967, 985 (May 23, 1977).

may be triggered after an agency executes a grant agreement but before construction is complete because the agency has yet to provide all of the funds under that grant agreement. On the other hand, when an agency issues a final rule establishing a regulatory scheme, there is no remaining action to occur, and therefore supplementation is not required. If there is no further agency action after the agency's decision, supplementation does not apply because the Federal agency action is complete. *S. Utah Wilderness All.,* 542 U.S. at 73 (''although the '*[a]pproval* of a [land use plan]' is a 'major Federal action' requiring an EIS . . . that action is completed when the plan is approved. . . . There is no ongoing 'major Federal action' that could require supplementation (though BLM *is* required to perform additional NEPA analyses if a plan is amended or revised . . . .)'') (emphasis in original).

In order to determine whether a supplemental analysis is required, CEQ proposed a new paragraph (d)(4) to provide that an agency may document its determination of whether a supplemental analysis is required consistent with its agency NEPA procedures or may, although it is not required, do so in an EA. CEQ adds this paragraph to the final rule, codifying the existing practice of several Federal agencies, such as the Department of Transportation's reevaluation provided for highway, transit, and railroad projects (23 CFR 771.129); the Bureau of Land Management's Determination of NEPA Adequacy (Department of the Interior Departmental Manual, Part 516, Chapter 11, § 11.6); and the Corps' Supplemental Information Report (section 13(d) of Engineering Regulation 200–2–2).

10. Recommended Format (§ 1502.10)

CEQ proposed to revise § 1502.10 to provide agencies with more flexibility in formatting an EIS given that most EISs are prepared and distributed electronically. Specifically, CEQ proposed to eliminate the requirement to have a list of agencies, organizations and persons to whom copies of the EIS are sent since EISs are published online, and an index, as this is no longer necessary when most documents are produced in an electronically searchable format. Proposed changes to this section would also allow agencies to use a different format so that they may customize EISs to address the particular proposed action and better integrate environmental considerations into agency decision-making processes. CEQ makes these changes in the final rule.

11. Cover (§ 1502.11)

CEQ proposed to retitle and amend § 1502.11 to remove the reference to a ''sheet'' since agencies prepare EISs electronically. CEQ also proposed to add a requirement to include the estimated cost of preparing the EIS to the cover in new paragraph (g) to provide transparency to the public on the costs of EIS-level NEPA reviews. To track costs, the NPRM proposed that agencies must prepare an estimate of environmental review costs, including costs of the agency's full-time equivalent (FTE) personnel hours, contractor costs, and other direct costs related to the environmental review of the proposed action.[90] CEQ also proposed this amendment to address the concerns raised by the U.S. Government Accountability Office that agencies are not tracking the costs of NEPA analyses, as well as the many comments CEQ received from stakeholders regarding the costs associated with development of NEPA analyses.[91] CEQ noted in the NPRM that including such costs on the cover sheet would also be consistent with current OMB direction to Federal agencies to track costs of environmental reviews and authorizations for major infrastructure projects pursuant to E.O. 13807 and would provide the public with additional information regarding EIS-level NEPA documents.

CEQ adds this new paragraph (g) in the final rule with additional changes to clarify that agencies should provide the estimate on the final EIS, and that it should include the costs of preparing both the draft EIS and the final EIS. The final rule also adds a sentence to clarify that agencies should include the costs of cooperating and participating agencies if practicable. If not practicable, agencies must so indicate. For integrated documents where an agency is preparing a document pursuant to multiple environmental statutory requirements, it may indicate that the estimate reflects costs associated with NEPA compliance as well as compliance with other environmental review and authorization requirements. Agencies can develop methodologies for preparing these cost estimates and include them in their implementing procedures.

12. Summary (§ 1502.12)

CEQ proposed to change ''controversy'' to ''disputed'' in § 1502.12. CEQ makes this and grammatical changes in the final rule. This change will better align the second clause of the sentence, ''areas of disputed issues raised by agencies and the public,'' with the final clause of the sentence, ''and the issues to be resolved (including the choice among alternatives).''

13. Purpose and Need (§ 1502.13)

CEQ received a number of comments in response to the ANPRM recommending that CEQ better define the requirements for purpose and need statements. The focus of a purpose and need statement is the purpose and need for the proposed action, and agencies should develop it based on consideration of the relevant statutory authority for the proposed action. The purpose and need statement also provides the framework in which the agency will identify ''reasonable alternatives'' to the proposed action. CEQ has advised that this discussion of purpose and need should be concise (typically one or two paragraphs long) and that the lead agency is responsible for its definition. *See* Connaughton Letter, *supra* note 29 (''Thoughtful resolution of the purpose and need statement at the beginning of the process will contribute to a rational environmental review process and save considerable delay and frustration later in the decision[-]making process.''). ''In situations involving two or more agencies that have a decision to make for the same proposed action and responsibility to comply with NEPA or a similar statute, it is prudent to jointly develop a purpose and need statement that can be utilized by both agencies. An agreed-upon purpose and need statement at this stage can prevent problems later that may delay completion of the NEPA process.'' *Id.* The lead agency is responsible for developing the purpose and need, and cooperating agencies should give deference to the lead agency and identify any substantive concerns early in the process to ensure swift resolution. *See* OFD Framework Guidance, sec. VIII.A.5 and XII, *supra* note 30; Connaughton Letter, *supra* note 29.

[90] *See, e.g.,* U.S. Department of the Interior, Reporting Costs Associated with Developing Environmental Impact Statements (July 23, 2018), *https://www.doi.gov/sites/doi.gov/files/uploads/dep_sec_memo_07232018_-_reporting_costs_associated_w_developing_environmental_impact_statements.pdf.*

[91] In a 2014 report, the U.S. Government Accountability Office found that Federal agencies do not routinely track data on the cost of completing NEPA analyses, and that the cost can vary considerably, depending on the complexity and scope of the project. U.S. Gov't Accountability Office, GAO–14–370, National Environmental Policy Act: Little Information Exists on NEPA Analyses (Apr. 15, 2014) (''GAO NEPA Report''), *https://www.gao.gov/products/GAO-14-370.* The report referenced the 2003 CEQ task force analysis referenced above which estimated that a typical EIS costs from $250,000 to $2 million. *See* NEPA Task Force Report, *supra* note 28, at p. 65.

Agencies should tailor the purpose and need statement to meet the authorization requirements of both the lead and cooperating agencies.

Consistent with CEQ guidance and in response to the ANPRM comments, CEQ proposed to revise § 1502.13, ''Purpose and need,'' to clarify that the statement should focus on the purpose and need for the proposed action. In particular, CEQ proposed to strike ''to which the agency is responding in proposing the alternatives including'' to focus on the proposed action. CEQ further proposed, as discussed below, to address the relationship between the proposed action and alternatives in the definition of reasonable alternatives and other sections that refer to alternatives. Additionally, CEQ proposed to add a sentence to clarify that when an agency is responsible for reviewing applications for authorizations, the agency shall base the purpose and need on the applicant's goals and the agency's statutory authority. *See, e.g., Citizens Against Burlington, Inc.* v. *Busey,* 938 F.2d 190, 196 (D.C. Cir. 1991) (agencies must consider the relevant factors including the needs and goals of the applicants and Congress' views as expressed in the agency's statutory authorization). This addition is consistent with the definition of reasonable alternatives, which must meet the goals of the applicant, where applicable. CEQ revises § 1502.13 in the final rule consistent with the NPRM proposal.

14. Alternatives Including the Proposed Action (§ 1502.14)

CEQ also received many comments on the ANPRM requesting clarification regarding ''alternatives'' under the regulations. This section of an EIS describes the proposed action and alternatives in comparative form, including their environmental impacts, such that the decision maker and the public can understand the basis for choice. However, as explained in § 1502.16, this section of the EIS should not duplicate the affected environment and environmental consequences sections, and agencies have flexibility to combine these three sections in a manner that clearly sets forth the basis for decision making.

CEQ proposed changes to § 1502.14, ''Alternatives including the proposed action,'' to simplify and clarify the language and provide further clarity on the scope of the alternatives analysis in an EIS. Specifically, CEQ proposed to revise the introductory paragraph to remove the colloquial language, including ''heart of'' the EIS and ''sharply defining,'' and clarify that the alternatives section of the EIS should present the environmental impacts in comparative form. CEQ makes these changes in the final rule.

In paragraph (a), CEQ proposed to delete ''all'' before ''reasonable alternatives'' and add ''to the proposed action'' afterward for clarity because NEPA does not require consideration of all alternatives and does not provide specific guidance concerning the range of alternatives an agency must consider for each proposal. Section 102(2)(C) provides only that an agency should prepare a detailed statement addressing, among other things, ''alternatives to the proposed action.'' 42 U.S.C. 4332(2)(C). Section 102(2)(E) requires only that agencies ''study, develop, and describe appropriate alternatives to recommended courses of action.'' 42 U.S.C. 4332(2)(E). Implementing this limited statutory direction, CEQ has long advised that ''[w]hen there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS.'' Forty Questions, *supra* note 2, at Question 1b. CEQ makes this change in the final rule and rephrases paragraph (a) from passive to active voice.

As stated in the NPRM, it is CEQ's view that NEPA's policy goals are satisfied when an agency analyzes reasonable alternatives, and that an EIS need not include every available alternative where the consideration of a spectrum of alternatives allows for the selection of any alternative within that spectrum. The reasonableness of the analysis of alternatives in a final EIS is resolved not by any particular number of alternatives considered, but by the nature of the underlying agency action and by the inherent practical limitations of the decision-making process. The discussion of environmental effects of alternatives need not be exhaustive, but must provide information sufficient to permit a reasoned choice of alternatives for the agency to evaluate available reasonable alternatives including significant alternatives that are called to its attention by other agencies, organizations, communities, or a member of the public.[92] As discussed in section II.C.8, to aid agencies in identification of alternatives, § 1501.9, ''Scoping,'' requires agencies to request identification of potential alternatives in the NOI. Analysis of alternatives also may serve purposes other than NEPA compliance, such as evaluation of the least environmentally damaging practicable alternative for the discharge of dredged or fill material under section 404(b)(1) of the Clean Water Act, 33 U.S.C. 1344(b)(1).

The number of alternatives that is appropriate for an agency to consider will vary. For some actions, such as where the Federal agency's authority to consider alternatives is limited by statute, the range of alternatives may be limited to the proposed action and the no action alternative. For actions where the Federal authority to consider a range of alternatives is broad, the final EIS itself should consider a broader range of reasonable alternatives. However, a process of narrowing alternatives is in accord with NEPA's ''rule of reason'' and common sense—agencies need not reanalyze alternatives previously rejected, particularly when an earlier analysis of numerous reasonable alternatives was incorporated into the final analysis and the agency has considered and responded to public comment favoring other alternatives. Furthermore, agencies should limit alternatives to those available to the decision maker at the time of decision.

For consistency with this change, CEQ proposed to strike ''the'' before ''reasonable alternatives'' in § 1502.1, and amend § 1502.16, ''Environmental consequences,'' to clarify in proposed paragraph (a)(1) that the discussion must include the environmental impacts of the ''proposed action and reasonable alternatives.'' CEQ makes these changes in the final rule.

In response to CEQ's ANPRM, some commenters urged that the regulations should not require agencies to account for impacts over which the agency has no control, including those resulting from alternatives outside its jurisdiction. CEQ proposed to strike 40 CFR 1502.14(c) requiring consideration of reasonable alternatives not within the jurisdiction of the lead agency for all EISs because it is not efficient or reasonable to require agencies to develop detailed analyses relating to alternatives outside the jurisdiction of the lead agency. CEQ removes this paragraph in the final rule. Further, the new definition of ''reasonable alternatives'' excludes alternatives outside the agency's jurisdiction when they would not be technically feasible due to the agency's lack of statutory authority to implement that alternative. However, an agency may discuss reasonable alternatives not within its jurisdiction when necessary for the agency's decision-making process such as when preparing an EIS to address

[92] Additionally, by crafting alternatives, agencies can ''bound'' different options and develop information on intermediate options that occupy the logical space in between different formal alternatives. *See, e.g.,* H.A. Simon, ''Bounded Rationality,'' in *Utility and Probability* (J. Eatwell, M. Milgate, & P. Newman P. eds. 1990).

legislative EIS requirements pursuant to § 1506.8 and to address specific congressional directives.

A concern raised by many ANPRM commenters is that agencies have limited resources and that it is important that agencies use those resources effectively. The provisions inviting commenters to identify potential alternatives will help to inform agencies as to how many alternatives are reasonable to consider, and allow agencies to assess whether any particular submitted alternative is reasonable to consider. Analyzing a large number of alternatives, particularly where it is clear that only a few alternatives would be economically and technically feasible and could be realistically implemented by the applicant, can divert limited agency resources. CEQ invited comment on whether the regulations should establish a presumptive maximum number of alternatives for evaluation of a proposed action, or alternatively for certain categories of proposed actions. CEQ sought comment on (1) specific categories of actions, if any, that should be identified for the presumption or for exceptions to the presumption; and (2) what the presumptive number of alternatives should be (*e.g.,* a maximum of three alternatives including the no action alternative). CEQ did not receive sufficient information to establish a minimum, but adds a new paragraph (f) to the final rule to state that agencies shall limit their consideration to a reasonable number of alternatives. The revisions to the regulations to promote earlier solicitation of information and identification of alternatives, and timely submission of comments, will assist agencies in establishing how many alternatives are reasonable to consider and assessing whether any particular submitted alternative is reasonable to consider.

15. Affected Environment (§ 1502.15)

CEQ proposed in § 1502.15, ''Affected environment,'' to explicitly allow for combining of affected environment and environmental consequences sections to adopt what has become a common practice in some agencies. This revision would ensure that the description of the affected environment focuses on those aspects of the environment that the proposed action affects. CEQ makes this change in the final rule. Additionally, the final rule adds a clause to emphasize that the affected environment includes reasonably foreseeable environmental trends and planned actions in the affected areas. This change responds to comments raising concerns that eliminating the definition of cumulative impact (40 CFR 1508.7) would result in less consideration of changes in the environment. To the extent environmental trends or planned actions in the area(s) are reasonably foreseeable, the agency should include them in the discussion of the affected environment. Consistent with current agency practice, this also may include non-Federal planned activities that are reasonably foreseeable.

In response to the NPRM, commenters expressed concerns that impacts of climate change on a proposed project would no longer be taken into account. Under the final rule, agencies will consider predictable environmental trends in the area in the baseline analysis of the affected environment. Trends determined to be a consequence of climate change would be characterized in the baseline analysis of the affected environment rather than as an effect of the action. Discussion of the affected environment should be informative but should not be speculative.

16. Environmental Consequences (§ 1502.16)

CEQ proposed to reorganize § 1502.16, ''Environmental consequences.'' CEQ proposed to designate the introductory paragraph as paragraph (a), move up the sentence that it should not duplicate the alternatives discussion, and create subordinate paragraphs (a)(1) through (10) for clarity. In paragraph (a)(1), CEQ proposed to consolidate into one paragraph the requirements regarding effects scattered throughout 40 CFR 1502.16, including paragraphs (a), (b), and (d), to include a discussion of the effects of the proposed action and reasonable alternatives. Also consistent with the definition of effects, CEQ proposed to strike references to direct, indirect, and cumulative effects. The combined discussion should focus on those effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action, consistent with the proposed revised definition of effects addressed in § 1508.1(g). CEQ proposed to move 40 CFR 1502.16(c) and (e) through (h) to be paragraphs (a)(5) through (9). To align with the statute, CEQ also proposed to add a new paragraph (a)(10) to provide that discussion of environmental consequences should include, where applicable, economic and technical considerations consistent with section 102(2)(B) of NEPA. CEQ makes these changes in the final rule with minor edits to clarify that ''this section'' in paragraph (a) refers to the ''environmental consequences'' section; address the dangling modifier, ''their significance,'' in paragraph (a)(1); correct the usage of ''which'' and ''that'' throughout; and clarify the language in paragraph (b).

Further, CEQ proposed to move the operative language that addresses when agencies need to consider economic and social effects in EISs from the definition of human environment in 40 CFR 1508.14 to proposed § 1502.16(b). CEQ also proposed to amend the language for clarity, explain that the agency makes the determination of when consideration of economic and social effects is interrelated with consideration of natural or physical environmental effects at which point the agency should give appropriate consideration to those effects, and strike ''all of'' as unnecessary. CEQ makes these changes in the final rule.

17. Submitted Alternatives, Information, and Analyses (§ 1502.17)

To ensure agencies have considered the alternatives, information, and analyses submitted by the public, including State, Tribal, and local governments as well as individuals and organizations, CEQ proposed to add a new § 1502.17 to require a new ''submitted alternatives, information, and analyses'' section in draft and final EISs. CEQ includes this new provision in the final rule with some modifications to separate the requirements for draft and final EISs, as discussed in this section.

To ensure agencies receive and consider relevant information as early in the process as possible, § 1501.9, ''Scoping,'' requires agencies to specifically solicit such information in their notices of intent. Under § 1502.17, agencies must include a summary in the EIS identifying all alternatives, information, and analyses the agency received from State, Tribal, and local governments and other public commenters. In developing the summary, agencies may refer to other relevant sections of the EIS or to appendices. A new paragraph (a)(1) requires agencies to append to the draft EIS or otherwise publish the comments received during scoping and, consistent with the proposed rule, paragraph (a)(2) requires the lead agency to invite comment on the summary. Finally, paragraph (b) requires agencies to prepare a summary in the final EIS based on all comments received on the draft EIS.

CEQ proposed to require in a new § 1502.18, ''Certification of alternatives, information, and analyses section,'' that, informed by the alternatives, information, and analyses section

required under § 1502.17, the decision maker for the lead agency certify that the agency has considered such information and include the certification in the ROD under proposed § 1505.2(e). CEQ moves this provision to § 1505.2(b) in the final rule, as discussed in further detail in section II.G.2.

18. List of Preparers (§ 1502.18)

CEQ proposed to move ''List of preparers'' from § 1502.17 to § 1502.19 to accommodate the two new sections addressing submitted alternatives, information, and analyses. The final rule moves this section to § 1502.18 and makes minor revisions to change the language from passive to active voice and remove the erroneous cross-references.

19. Appendix (§ 1502.19)

CEQ proposed to move ''Appendix'' from § 1502.18 to § 1502.20 and revise the language for clarity. The final rule moves this provision to § 1502.19 with additional clarifying revisions. The final rule also adds a new paragraph (d) to reflect the potential appendix for scoping comments on alternatives, information, and analyses pursuant to § 1502.17(a)(1) and a new paragraph (e) for the potential appendix of draft EIS comments pursuant to §§ 1503.1 and 1503.4(b).

20. Publication of the Environmental Impact Statement (§ 1502.20)

CEQ proposed to move ''Circulation of the environmental impact statement'' from § 1502.19 to § 1502.21 and retitle it ''Publication of the environmental impact statement.'' CEQ moves this to § 1502.20 in the final rule. CEQ proposed to modernize this provision, changing circulate to publish and eliminating the option to circulate the summary of an EIS given that agencies electronically produce most EISs. CEQ proposed to require agencies to transmit the EIS electronically, but provide for paper copies by request. CEQ makes these changes in the final rule.

21. Incomplete or Unavailable Information (§ 1502.21)

CEQ proposed several revisions to proposed § 1502.22, ''Incomplete or unavailable information,'' which CEQ redesignates as § 1502.21 in the final rule. Specifically, CEQ proposed to further subdivide the paragraphs for clarity and strike the word ''always'' from paragraph (a) as unnecessarily limiting and inconsistent with the rule of reason, and replaced the term ''exorbitant'' with ''unreasonable'' in paragraphs (b) and (c), which is consistent with CEQ's description of ''overall cost'' considerations in its 1986 promulgation of amendments to this provision.[93] CEQ reiterates that the term ''overall cost'' as used in this section includes ''financial costs and other costs such as costs in terms of time (delay) and personnel.'' [94] CEQ invited comment on whether the ''overall costs'' of obtaining incomplete of unavailable information warrants further definition to address whether certain costs are or are not ''unreasonable.'' CEQ does not include any definition in the final rule.

For clarity and in response to comments, the final rule inserts ''but available'' in paragraph (b) to clarify that agencies will continue to be required to obtain available information essential to a reasoned choice between alternatives where the overall costs are not unreasonable and the means of obtaining that information are known.[95] New scientific or technical research is unavailable information and is addressed in § 1502.23. Where the overall costs are unreasonable or means of obtaining the information are not known, agencies will continue to be required to disclose in the EIS that information is incomplete or unavailable and provide additional information to assist in analyzing the reasonably foreseeable significant adverse impacts. However, § 1502.23 does not require agencies to undertake new scientific and technical research to inform their analyses.

Finally, CEQ proposed to eliminate 40 CFR 1502.22(c) addressing the applicability of the 1986 amendments to this section because this paragraph is obsolete. CEQ does not include this provision in the final rule.

22. Cost-Benefit Analysis (§ 1502.22)

CEQ did not propose changes to the cost-benefit analysis section other than an update to the citation. In the final rule, CEQ moves this provision from § 1502.23 to § 1502.22 and adds a parenthetical after ''section 102(2)(B) of NEPA'' that paraphrases the statutory text relating to considering unquantified environmental amenities and values along with economic and technical considerations. This is consistent with the policy established in section 101(a), which also refers to fulfilling the social, economic, and other requirements of present and future generations of Americans. Finally, CEQ revises the language for clarity, including changing from passive to active voice.

23. Methodology and Scientific Accuracy (§ 1502.23)

CEQ proposed revisions to update proposed § 1502.24, which CEQ redesigantes § 1502.23 in the final rule. The NPRM proposed to broaden this provision to environmental documents and CEQ makes this change in the final rule. CEQ proposed to clarify that agencies must make use of reliable existing data and resources when they are available and appropriate. CEQ also proposed to revise this section to allow agencies to draw on any source of information (such as remote sensing and statistical modeling) that the agency finds reliable and useful to the decision-making process. As noted in the NPRM, these changes will promote the use of reliable data, including information gathered using modern technologies. CEQ makes these changes in the final rule with minor changes. The final rule revises the sentence regarding placing the discussion of methodology in an appendix from singular to plural for consistency with the rest of the language in this section. In response to comments, CEQ moves the proposed sentence regarding new scientific and technical research to a new sentence at the end of the section and adds a sentence clarifying that nothing in this provision is intended to prohibit agencies from compliance with the requirements of other statutes pertaining to scientific and technical research. Agencies must continue to conduct surveys and collect data where required by other statutes.

24. Environmental Review and Consultation Requirements (§ 1502.24)

CEQ proposed to revise this section to clarify that agencies must integrate, to the fullest extent possible, their NEPA analysis with all other applicable Federal environmental review laws and Executive orders in furtherance of the OFD policy established by E.O. 13807 and to make the environmental review process more efficient.[96] CEQ redesignates this section in the final rule to § 1502.24, updates a statutory

[93] 51 FR at 15622 (Apr. 25, 1986).

[94] *Id.*

[95] *See, e.g. Pub. Citizen,* 541 U.S. at 767 (''Also, inherent in NEPA and its implementing regulations is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decision[-]making process.''); *see also Marsh,* 490 U.S. at 373–74 (agencies should apply a ''rule of reason'').

[96] The Permitting Council has compiled a list of environmental laws and Executive orders that may apply to a proposed action. *See* Federal Environmental Review and Authorization Inventory, *https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory.*

citation, and revises the text as proposed.

E. Revisions to Commenting on Environmental Impact Statements (Part 1503)

Section 102(2)(C) of NEPA requires that agencies obtain views of Federal agencies with jurisdiction by law or expertise with respect to any environmental impact, and also directs that agencies make copies of the EIS and the comments and views of appropriate Federal, State, and local agencies available to the President, CEQ and the public. 42 U.S.C. 4332(2)(C). Part 1503 of the CEQ regulations include provisions relating to inviting and responding to comments. CEQ proposed to modernize part 1503 given modern technologies not available at the time of the 1978 regulations. In particular, the proposed regulations encouraged agencies to use the current methods of electronic communication both to publish important environmental information and to structure public participation for greater efficiency and inclusion of interested persons. Additionally, CEQ proposed changes to encourage commenters to provide information early and to require comments to be as specific as possible to ensure agencies can consider them in their decision-making process. CEQ finalizes many of the proposed changes with modifications as this section discusses in further detail.

1. Inviting Comments and Requesting Information and Analyses (§ 1503.1)

CEQ proposed to retitle and revise § 1503.1, ''Inviting comments and requesting information and analyses,'' to better reach interested and affected parties and ensure agencies receive the relevant information they need to complete their analyses. CEQ proposed to revise paragraphs (a)(2)(i) and (ii) to include State, Tribal and local agencies and governments to be comprehensive and consistent with the addition of ''Tribal'' as discussed in section II.A. CEQ proposed to eliminate the obsolete reference to OMB Circular A–95 from paragraph (a)(2)(iii) and move paragraphs (a)(3) and (4) to (a)(2)(iv) and (v), respectively, since these are additional parties from which agencies should request comments. CEQ also proposed in paragraph (a)(2)(v) to give agencies flexibility to tailor their public involvement process to more effectively reach interested and affected parties by soliciting comments ''in a manner designed to inform'' parties interested or affected ''by the proposed action.'' CEQ makes these changes in the final rule.

CEQ also proposed to add a new paragraph (a)(3) that requires agencies to specifically invite comment on the completeness of the submitted alternatives, information and analyses section (§ 1502.17). CEQ includes this new paragraph in the final rule with revisions to clarify that agencies should invite comments on the submitted alternatives, information, and analyses generally as well as the summary required under § 1502.17, rather than on the completeness of the summary, as proposed. Interested parties who may seek to challenge the agency's decision have an affirmative duty to comment during the public review period in order for the agency to consider their positions. *See Vt. Yankee,* 435 U.S. at 553.

In paragraph (b), CEQ proposed to require agencies to provide a 30-day comment period on the final EIS's submitted alternatives, information and analyses section. As noted in the discussion of § 1500.3(b) in section II.B.3, CEQ does not include this requirement in the final rule. However, the final rule adds language that if an agency requests comments on a final EIS before the final decision, the agency should set a deadline for such comments. This provides agencies the flexibility to request comments on a final EIS. Agencies may use this option where it would be helpful to inform the agency's decision making process.

Finally, CEQ proposed a new paragraph (c) to require agencies to provide for commenting using electronic means while ensuring accessibility to those who may not have such access to ensure adequate notice and opportunity to comment. CEQ includes this proposed paragraph in the final rule.

2. Duty To Comment (§ 1503.2)

Section 1503.2, ''Duty to comment,'' addresses the obligations of other agencies to comment on an EIS. CEQ proposed to clarify that this provision applies to cooperating agencies and agencies authorized to develop and enforce environmental standards. CEQ makes this change in the final rule and makes additional revisions to change the language from passive to active voice.

3. Specificity of Comments and Information (§ 1503.3)

CEQ proposed to revise paragraph (a) and retitle § 1503.3, ''Specificity of comments and information,'' to explain that the purposes of comments is to promote informed decision making and further clarify that comments should provide sufficient detail for the agency to consider the comment in its decision-making process. *See Pub. Citizen,* 541 U.S. at 764; *Vt. Yankee,* 435 U.S. at 553 (while ''NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action, it is still incumbent upon [parties] who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the [parties'] position . . . .''). CEQ also proposed in this paragraph that comments should explain why the issues raised are significant to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and employment impacts, and other impacts affecting the quality of the human environment. In addition, CEQ proposed in this paragraph that comments should reference the section or page of the draft EIS, propose specific changes to those parts of the statement, where possible, and include or describe the data sources and methodologies supporting the proposed changes. *See Vt. Yankee,* 435 U.S. at 553 (''[Comments] must be significant enough to step over a threshold requirement of materiality before any lack of agency response or consideration becomes a concern. The comment cannot merely state that a particular mistake was made . . . ; it must show why the mistake was of possible significance in the results . . . .'' (quoting *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 394 (D.C. Cir. 1973)). CEQ includes these changes in the final rule to ensure that agencies are alerted to all interested and affected parties' concerns, but changes ''significant'' to ''important'' issues in the second sentence to avoid confusion with significant effects. Nothing in these revisions should be construed to limit public comment to those members of the public with scientific or technical expertise, and agencies should continue to solicit comment from all interested and affected members of the public. Consistent with the goal of promoting a manageable process and a meaningful focus on pertinent issues, CEQ also clarifies that commenters should submit information and raise issues as early in the process as possible, including during scoping to the extent practicable. Commenters should timely submit all comments and make their comments as specific as possible to promote informed and timely decision making.

CEQ also proposed a new paragraph (b) to emphasize that comments on the submitted alternatives, information, and analyses section should identify any additional alternatives, information, or

analyses not included in the draft EIS, and should be as specific as possible. The proposal required comments and objections to be raised within 30 days of publication of the notice of availability of the final EIS and noted that comments and objections not provided within those 30 days are considered exhausted and forfeited under § 1500.3(b). In the final rule, CEQ includes this paragraph with some changes. The final rule provides that comments should be on the submitted alternatives, information, and analyses themselves as well as the summary that § 1502.17 requires and be as specific as possible. It further provides that comments and objections on the draft EIS must be raised within the comment period provided by the agency, consistent with § 1506.11. The final rule does not include the 30-day comment period, as discussed in sections II.B.3 and II.E.1; however, it provides that if the agency requests comments on the final EIS, comments and objections must be raised within the comment period. The final rule also provides that comments and objections not provided within the relevant comment periods are considered unexhausted and forfeited under § 1500.3(b).

CEQ proposed to change ''commenting'' agency to ''participating'' agency in paragraph (c), and ''entitlements'' to ''authorizations'' in paragraph (d). CEQ makes these changes in the final rule. Finally, CEQ proposed to broaden paragraph (e) to require cooperating agencies with jurisdiction by law to specify the mitigation measures they consider necessary for permits, licenses, or related requirements, including the applicable statutory authority. CEQ includes this change in the final rule because it will provide greater transparency and clarity to the lead agency and the public when mitigation is required under another statute.

4. Response to Comments (§ 1503.4)

In practice, the processing of comments can require substantial time and resources. CEQ proposed to amend § 1503.4, ''Response to comments,'' to simplify and clarify in paragraph (a) that agencies are required to consider substantive comments timely submitted during the public comment period. CEQ also proposed to clarify that an agency may respond to comments individually or collectively. Consistent with this revision, CEQ proposed to clarify that, in the final EIS, agencies may respond by a variety of means, and to strike the detailed language in paragraph (a)(5) relating to comments that do not warrant further agency response. CEQ includes these changes with some modifications in the final rule. Specifically, CEQ changes ''individually'' to ''individual'' and ''collectively'' to ''groups of comments'' to clarify that agencies may respond to individual comments or group and respond once to a group of comments addressing the same issue. CEQ also modifies paragraph (a) introductory text to make clear that the list in paragraphs (a)(1) through (5) is how the agency may respond to comments. Finally, CEQ adds a clause to paragraph (a)(5) to reinforce that agencies do not have to respond to each comment individually. Under the 1978 regulations, agencies have had flexibility in how they structure their responses to comments, and CEQ does not consider this clarification to be a change in position.

CEQ proposed to clarify in paragraph (b) that agencies must append comments and responses to EISs rather than including them in the body of the EIS, or otherwise publish them. Under current practice, some agencies include these comment responses in the EISs themselves, which can contribute to excessive length. *See* CEQ Length of EISs Report, *supra* note 38. CEQ makes this change in the final rule. As noted in the NPRM, these changes do not preclude an agency from summarizing or discussing specific comments in the EIS as well.

Finally, CEQ proposed to amend paragraph (c) for clarity. CEQ makes the proposed changes and additional clarifying edits in the final rule.

F. Revisions to Pre-Decisional Referrals to the Council of Proposed Federal Actions Determined To Be Environmentally Unsatisfactory (Part 1504)

CEQ proposed edits to part 1504, ''Pre-decisional Referrals to the Council of Proposed Federal Actions Determined to be Environmentally Unsatisfactory,'' to improve clarity, including grammatical corrections. CEQ also proposed to reference specifically EAs in this part. Although infrequent, agencies have made referrals to CEQ on EAs. CEQ also proposed a minor revision to the title of part 1504, striking ''Predecision'' and inserting ''Pre-decisional.'' CEQ makes these changes in the final rule.

1. Purpose (§ 1504.1)

Section 1504.1, ''Purpose,'' addresses the purpose of part 1504, including CEQ referrals by the EPA. Section 309 of the Clean Air Act (42 U.S.C. 7609) requires EPA to review and comment on certain proposed actions of other Federal agencies and to make those comments public. Where appropriate, EPA may exercise its authority under section 309(b) of the Clean Air Act and refer the matter to CEQ, as stated in paragraph (b). The final rule revises this paragraph for clarity, changing it from passive to active voice. Paragraph (c) provides that other Federal agencies also may prepare such reviews. In the NPRM, CEQ proposed to change ''may make'' to ''may produce'' in this paragraph. The final rule changes this phrase to ''may prepare'' since ''prepare'' is the commonly used verb in these regulations.

2. Criterial for Referral (§ 1504.2)

CEQ proposed to change ''possible'' to ''practicable'' in the introductory paragraph of § 1504.2, ''Criteria for referral.'' CEQ makes this change in the final rule as discussed in section II.A. Consistent with the NEPA statute, CEQ proposed to add economic and technical considerations to paragraph (g) of § 1504.2, ''Criteria for referrals.'' CEQ includes this change in the final rule.

3. Procedure for Referrals and Response (§ 1504.3)

In § 1504.3, ''Procedure for referrals and response,'' CEQ proposed changes to simplify and modernize the referral process to ensure it is timely and efficient. CEQ proposed to change the language in this section from passive to active voice and make other clarifying edits to the language. CEQ includes these changes with some additional clarifying edits in the final rule. Specifically, in paragraphs (a)(1) and (2), CEQ changes ''advise'' and ''such advice'' to ''notify'' and ''a notification'' respectively. CEQ proposed to eliminate the exception in paragraph (a)(2) for statements that do not contain adequate information to permit an assessment of the matter's environmental acceptability. CEQ removes this clause in the final rule. The referring agency should provide the lead agency and CEQ with as much information as possible, including identification of when the information is inadequate to permit an assessment. In paragraph (a)(4), CEQ changes ''such advice'' to ''the referring agency's views'' in the final rule to clarify what the referring agency is sending to CEQ.

In paragraph (b), CEQ proposed to change ''commenting agencies'' to ''participating agencies,'' a change CEQ proposed throughout the rule, and to add a timeframe for referrals of EAs. CEQ makes these changes in the final rule. CEQ proposed to strike from paragraph (c)(1) the clause requiring the referral request that no action be taken to implement the matter until CEQ takes

action. CEQ removes this clause in the final rule because it is unnecessarily limiting. Agencies should have the flexibility to determine what they are requesting of the lead agency when making a referral, which may include a request not to take any action on the matter.

CEQ proposed to change ''material facts in controversy'' to ''disputed material facts'' in paragraph (c)(2)(i) for clarity and to simplify paragraph (c)(2)(iii) to focus on the reasons for the referral, which may include that the matter is environmentally unsatisfactory. CEQ proposed to revise paragraph (d)(2) to emphasize that the lead agency's response should include both evidence and explanations, as appropriate. CEQ proposed to revise paragraph (e) to simplify the process and to provide direction to applicants regarding the submittal of their views to the CEQ. CEQ proposed to strike the reference to public meetings or hearings in paragraph (f)(3) to provide more flexibility to CEQ in how it obtains additional views and information, which could include a public meeting or hearing. However, there may be other, more effective mechanisms to collect such information, including through use of current technologies. CEQ makes these changes in the final rule.

Finally, CEQ proposed to modify paragraph (h) to clarify that the referral process is not a final agency action that is judicially reviewable and to remove the requirement that referrals be conducted consistent with the APA where a statute requires that an action be determined on the record after an opportunity for a hearing. Where other statutes govern the referral process, those statutes continue to apply, and these regulations do not need to speculate about what process might be required. Therefore, CEQ eliminates this language in the final rule and replaces it with the clarification that the referral process does not create a private right of action because, among other considerations, there is no final agency action.

G. Revisions to NEPA and Agency Decision Making (Part 1505)

1. Remove and Reserve Agency Decisionmaking Procedures (§ 1505.1)

In the NPRM, CEQ proposed to move the text of 40 CFR 1505.1, ''Agency decisionmaking procedures,'' to § 1507.3(b). As discussed further in section II.I.3, CEQ makes this change in the final rule and reserves § 1505.1 for future use.

2. Record of Decision in Cases Requiring Environmental Impact Statements (§ 1505.2)

CEQ proposed to redesignate the introductory paragraph of § 1505.2, ''Record of decision in cases requiring environmental impact statements,'' as paragraph (a) and revise it to require agencies to ''timely publish'' a ROD. CEQ also proposed to clarify that the CEQ regulations allow for ''joint'' RODs by two or more Federal agencies; this change is also consistent with the OFD policy and E.O. 13807. Finally, CEQ proposed to remove references to OMB Circular A–95 as noted previously in section II.A.

CEQ proposed clarifying edits to proposed paragraphs (a) and (c) (paragraphs (a)(1) and (3) in the final rule) to change from passive to active voice for clarity. The final rule makes these changes in paragraphs (a)(1), (2), and (3) in the final rule. The final rule also removes ''all'' before ''alternatives'' in paragraph (a)(2) for consistency with the same change in § 1502.14(a).

CEQ proposed to include a requirement in proposed paragraph (d) to require agencies to respond to any comments on the submitted alternatives, information, and analyses section in the final EIS. As discussed in sections II.B.3 and II.E.1, CEQ does not include the proposed 30-day comment period in the final rule; therefore, CEQ is not including proposed § 1505.2(d) in the final rule.

In the NPRM, proposed paragraph (e) would require the ROD to include the decision maker's certification regarding consideration of the submitted alternatives, information, and analyses section, which proposed § 1502.18 required. The final rule replaces what was proposed paragraph (e) with the language moved from proposed § 1502.18, ''Certification of alternatives, information, and analyses section,'' in paragraph (b). In the NPRM, § 1502.18 stated that, based on the alternatives, information, and analyses section required under § 1502.17, the decision maker for the lead agency must certify that the agency has considered such information and include the certification in the ROD under § 1505.2(d) (as proposed). This provision also proposed a conclusive presumption that the agency has considered information summarized in that section because it is reasonable to presume the agency has considered such information based on the process to request and summarize public comments on the submitted alternatives, information, and analyses.

CEQ modifies the proposed text of § 1502.18 in the final rule and in paragraph (b) of § 1505.2 to clarify that the decision maker's certification in the ROD is informed by the summary of submitted alternatives, information, and analyses in the final EIS and any other material in the record that the decision maker determines to be relevant. This includes both the draft and final EIS as well as any supporting materials incorporated by reference or appended to the document. The final rule also changes ''conclusive presumption'' to a ''presumption'' and clarifies that the agency is entitled to a presumption that it has considered the submitted alternatives, information, and analyses, including the summary thereof in the final EIS. Establishing a rebuttable presumption will give appropriate weight to the process that culminates in the certification, while also allowing some flexibility in situations where essential information may have been inadvertently overlooked. The presumption and associated exhaustion requirement also will encourage commenters to provide the agency with all available information prior to the agency's decision, rather than disclosing information after the decision is made or in subsequent litigation. This is important for the decision-making process and efficient management of agency resources.

3. Implementing the Decision (§ 1505.3)

CEQ proposed minor edits to § 1505.3, ''Implementing the decision'' to change ''commenting'' agencies to ''participating'' in paragraph (c) and ''make available to the public'' to ''publish'' in paragraph (d). CEQ makes these changes in the final rule.

H. Revisions to Other Requirements of NEPA (Part 1506)

CEQ proposed a number of edits to part 1506 to improve the NEPA process to make it more efficient and flexible, especially where actions involve third-party applicants. CEQ also proposed several edits for clarity. CEQ finalizes many of these proposed changes in the final rule with some additional clarifying edits.

1. Limitations on Actions During NEPA Process (§ 1506.1)

CEQ proposed to add FONSIs to paragraph (a) of § 1506.1, ''Limitations on actions during NEPA process,'' to clarify existing practice and judicial determinations that the limitation on actions applies when an agency is preparing an EA as well as an EIS. CEQ proposed to consolidate paragraph (d) with paragraph (b) and revise the

language to provide additional clarity on what activities are allowable during the NEPA process. Specifically, CEQ proposed to eliminate reference to one specific agency, broadening the provision to all agencies and providing that this section does not preclude certain activities by an applicant to support an application of Federal, State, Tribal, or local permits or assistance. As an example of activities an applicant may undertake, CEQ proposed to add ''acquisition of interests in land,'' which includes acquisitions of rights-of-way and conservation easements. CEQ invited comment on whether it should make any additional changes to § 1506.1, including whether there are circumstances under which an agency may authorize irreversible and irretrievable commitments of resources. CEQ finalizes this provision as proposed with minor grammatical changes, and simplifying the references in paragraphs (c) introductory text and (c)(2) from programmatic environmental impact ''statement'' to ''review.''

2. Elimination of Duplication With State, Tribal, and Local Procedures (§ 1506.2)

CEQ proposed revisions to § 1506.2, ''Elimination of duplication with State, Tribal, and local procedures'' to promote efficiency and reduce duplication between Federal and State, Tribal, and local requirements. These changes are consistent with the President's directive in E.O. 13807 to provide for agency use, to the maximum extent permitted by law, of environmental studies, analysis, and decisions in support of earlier Federal, State, Tribal, or local environmental reviews or authorization decisions. E.O. 13807, sec. 5(e)(i)(C). CEQ proposed to revise paragraph (a) to acknowledge the increasing number of State, Tribal, and local governments conducting NEPA reviews pursuant to assignment from Federal agencies. *See, e.g.,* 23 U.S.C. 327, and 25 U.S.C. 4115 and 5389(a). CEQ makes this change in the final rule. The revision in paragraph (a) clarifies that Federal agencies are authorized to cooperate with such State, Tribal, and local agencies, and paragraph (b) requires cooperation to reduce duplication.

CEQ proposed to add examples to paragraph (b) to encourage use of prior reviews and decisions and modify paragraph (c) to give agencies flexibility to determine whether to cooperate in fulfilling State, Tribal, or local EIS or similar requirements. CEQ includes these proposed changes in the final rule and reorders the language to provide additional clarity. Additionally, the final rule makes further changes to paragraph (b) to remove potential impediments for agency use of studies, analysis, and decisions developed by State, Tribal, and local government agencies. Some commenters stated that CEQ proposed to limit agency use to only environmental studies, analysis, and decisions and exclude socio-economic and other information. The final rule clarifies that agencies should make broad use of studies, analysis, and decisions prepared by State, Tribal, and local agencies, as appropriate based on other requirements including § 1502.23. Finally, CEQ proposed to clarify in paragraph (d) that NEPA does not require reconciliation of inconsistencies between the proposed action and State, Tribal, or local plans or laws, although the EIS should discuss the inconsistencies. CEQ makes these revisions in the final rule.

3. Adoption (§ 1506.3)

CEQ proposed to expand adoption to EAs, consistent with current practice by many agencies, and CE determinations and clarify the process for documenting the decision to adopt. CEQ includes these proposed changes in the final rule with additional revisions to align the language for consistency in each paragraph and better organize § 1506.3 by grouping the provisions relating to EISs into paragraph (b), EAs in paragraph (c), and CE determinations in paragraph (d).

Paragraph (a) includes the general requirement for adoption, which is that any adoption must meet the standard for an adequate EIS, EA, or CE determination, as appropriate, under the CEQ regulations. CEQ proposed to reference EAs in this paragraph. The final rule includes CE determinations as well as EAs and reorders the documents for consistency with the ordering of paragraphs (b) through (d)—EISs, EAs (including portions of EISs or EAs), and CE determinations.

CEQ proposed clarifying edits in paragraph (b) and changed references from recirculation to republication consistent with this change throughout the rule. In the final rule, CEQ subdivides paragraph (b) into subordinate paragraphs (b)(1) and (2). Paragraph (b)(1) addresses EISs where the adopting agency is not a cooperating agency. CEQ moves the cooperating agency exception to republication to paragraph (b)(2). Consistent with the proposed rule, this paragraph also clarifies that the cooperating agency adopts such an EIS by issuing its own ROD.

In the NPRM, proposed paragraph (f) would allow an agency to adopt another agency's determination that its CE applies to an action if the adopting agency's proposed action is substantially the same. CEQ includes this provision in paragraph (d) of the final rule with clarifying edits. The final rule provides agencies the flexibility to adopt another agency's determination that a CE applies to an action when the actions are substantially the same to address situations where a proposed action would result in a CE determination by one agency and an EA and FONSI by another agency. For example, this would be the case when two agencies are engaging in similar activities in similar areas like small-scale prescribed burns, ecological restoration, and small-scale land management practices. Another example is when one agency's action may be a funding decision for a proposed project, and another agency's action is to consider a permit for the same project.

To allow agencies to use one another's CEs without the agency that promulgated the CE having to take an action, CEQ also proposed a new § 1507.3(e)(5), which would allow agencies to establish a process in their NEPA procedures to apply another agency's CE. CEQ notes that there was some confusion among commenters regarding the difference between the adoption of CEs under § 1506.3 and the provision in § 1507.3(f)(5) (proposed § 1507.3(e)(5)).[97] CEQ has made clarifying edits to address this confusion.

The adoption process in § 1506.3(d) first requires that an agency has applied a CE listed in its agency NEPA procedures. Then, the adopting agency must verify that its proposed action is substantially the same as the action for which it is adopting the CE determination. CEQ adds a sentence in § 1507.3(f)(5) of the final rule to clarify that agencies may establish a separate process for using another agency's listed CE and applying the CE to its proposed actions. The final rule also requires the adopting agency to document the adoption. Agencies may publish, where appropriate, such documentation or other information relating to the adoption.

4. Combining Documents (§ 1506.4)

CEQ proposed to amend § 1506.4, ''Combining documents,'' to encourage agencies ''to the fullest extent practicable'' to combine their environmental documents with other

[97] For a discussion of the differences between these two provisions, see section I.3 of the Final Rule Response to Comments.

agency documents to reduce duplication and paperwork. For example, the Corps routinely combines EISs with feasibility reports, and agencies may use their NEPA documents to satisfy compliance with section 106 of the National Historic Preservation Act under 36 CFR 800.8. CEQ includes the proposed revisions in the final rule with no changes.

5. Agency Responsibility for Environmental Documents (§ 1506.5)

As discussed in the NPRM, CEQ proposed to revise § 1506.5, ''Agency responsibility for environmental documents,'' in response to ANPRM comments urging CEQ to allow greater flexibility for the project sponsor (including private entities) to participate in the preparation of NEPA documents under the supervision of the lead agency. CEQ proposed updates to give agencies more flexibility with respect to the preparation of environmental documents while continuing to require agencies to independently evaluate and take responsibility for those documents. Under the proposal, applicants and contractors would be able to assume a greater role in contributing information and material to the preparation of environmental documents, subject to the supervision of the agency. However, agencies would remain responsible for taking reasonable steps to ensure the accuracy of information prepared by applicants and contractors. If a contractor or applicant prepares the document, proposed paragraph (c)(1) would require the decision-making agency official to provide guidance, participate in the preparation, independently evaluate the statement, and take responsibility for its content.

In the final rule, CEQ retains these concepts, but reorganizes § 1506.5 to better communicate the requirements. Specifically, paragraph (a) contains a clear statement that the Federal agency is ultimately responsible for the environmental document irrespective of who prepares it. While this is consistent with the 1978 regulations, CEQ provides this direct statement at the beginning of the section to respond to comments that suggested agencies would be handing over their responsibilities to project sponsors under the proposed rule.

Paragraph (b) introductory text and its subordinate paragraphs capture the requirements when a project sponsor or contractor prepares an environmental document, consolidating requirements for EISs and EAs into one because there is no longer a distinction between the requirements for each document in this context. Paragraph (b) allows an agency to require an applicant to submit environmental information for the agency's use in preparing an environmental document or to direct an applicant or authorize a contractor to prepare an environmental document under the agency's supervision. As noted in the NPRM, CEQ intends these changes to improve communication between proponents of a proposal for agency action and the officials tasked with evaluating the effects of the action and reasonable alternatives, to improve the quality of NEPA documents and efficiency of the NEPA process.

Paragraph (b)(1) requires agencies to provide guidance to the applicant or contractor and participate in the preparation of the NEPA document. Paragraph (b)(2) continues to require the agency to independently evaluate the information or environmental document and take responsibility for its accuracy, scope, and contents. Paragraph (b)(3) requires the agency to include the names and qualifications of the persons who prepared the environmental document. Adding ''qualifications'' is consistent with § 1502.18 and is important for transparency. For an EIS, this information would be included in the list of preparers as required by § 1502.18, but agencies have flexibility on where to include such information in an EA. Paragraph (b)(4) requires contractors or applicants preparing EAs or EISs to submit a disclosure statement to the lead agency specifying any financial or other interest in the outcome of the action, but it need not include privileged or confidential trade secrets or other confidential business information. In the NPRM, CEQ had proposed to remove the requirement for a disclosure statement. In response to comments, CEQ is retaining this concept in the final rule, recognizing that most applicants will have such a financial interest. However, as discussed above, CEQ finds that it is appropriate to allow applicants to prepare documents for the sake of efficiency and because agencies retain responsibility to oversee and take responsibility for the final environmental document.

6. Public Involvement (§ 1506.6)

CEQ proposed to update § 1506.6, ''Public involvement,'' to give agencies greater flexibility to design and customize public involvement to best meet the specific circumstances of their proposed actions. The NPRM proposed revisions to paragraphs (b) and (c) to add ''other opportunities for public engagement'' to recognize that there are other ways to engage with interested and affected parties besides hearings and meetings. CEQ finalizes these changes in the final rule but changes ''engagement'' to ''involvement'' consistent with the title of the section. Additionally, the final rule adds a sentence to these paragraphs to require agencies to consider interested and affected parties' access to electronic media, such as in rural locations or economically distressed areas. CEQ had proposed to state in a new paragraph (b)(3)(x) that notice may not be limited solely to electronic methods for actions occurring in an area with limited access to high-speed internet. However, CEQ is including this more general statement in paragraph (b) as it is a consideration for notice generally. In paragraph (b)(1), CEQ proposed to change the requirement to mail notice in paragraphs (b)(1) and (2) to the more general requirement to ''notify'' to give agencies the flexibility to use email or other mechanisms to provide such notice. CEQ makes this change in the final rule. CEQ also eliminates the requirement in paragraph (b)(2) to maintain a list of organizations reasonably expected to be interested in actions with effects of national concern because such a requirement is unnecessarily prescriptive given that agencies may collect and organize contact information for organizations that have requested regular notice in another format given advances in technology. In the proposed rule, CEQ proposed to change paragraph (b)(3)(i) to modify State clearinghouses to State and local agencies, and change paragraph (b)(3)(ii) to affected Tribal governments. In the final rule, CEQ modifies paragraph (b)(3)(i) to include notice to State, Tribal, and local agencies, and paragraph (b)(3)(ii) to include notice to interested or affected State, Tribal, and local governments for consistency with § 1501.9 and part 1503. CEQ proposed a new paragraph (b)(3)(x) to allow for notice through electronic media. CEQ includes this provision in the final rule, moving the language regarding consideration of access to paragraph (b), as noted previously.

In addition to the changes described above, CEQ proposed to strike the mandatory criteria in paragraph (c) for consideration of when to hold or sponsor public hearings or meetings. CEQ is removing this language in the final rule because such criteria are unnecessarily limiting. Agencies consider many factors in determining the most appropriate mechanism for promoting public involvement, including the particular location of the proposed action (if one exists), the types of effects it may have, and the needs of interested and affected parties, and may design their outreach in a manner that

best engages with those parties. The flexibility to consider relevant factors is critical especially in light of unexpected circumstances, such as the COVID–19 pandemic, which may require agencies to adapt their outreach as required by State, Tribal, and local authorities and conditions.

Finally, CEQ proposed to simplify paragraph (f) to require agencies to make EISs, comments and underlying documents available to the public consistent with the Freedom of Information Act (FOIA), removing the provisos regarding interagency memoranda and fees. Congress has amended FOIA numerous times since the enactment of NEPA, mostly recently by the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538. Additionally, the revised paragraph (f) is consistent with the text of section 102(2)(C) of NEPA, including with regard to fees. CEQ makes these changes as proposed in the final rule.

7. Further Guidance (§ 1506.7)

CEQ proposed to update and modernize § 1506.7, ''Further guidance,'' to remove the specific references to handbooks, memoranda, and the 102 monitor, and replace it with a statement that CEQ may provide further guidance concerning NEPA and its procedures consistent with E.O. 13807 and E.O. 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' [98] CEQ makes these changes in paragraph (a) in the final rule. This rule supersedes preexisting CEQ guidance and materials in many respects. CEQ intends to publish a separate notice in the **Federal Register** listing guidance it is withdrawing. CEQ will issue new guidance, as needed, consistent with the final rule and Presidential directives. In the interim, in any instances where an interpretation of the 1978 regulations is inconsistent with the new regulations or this preamble's interpretation of the new regulations, the new regulations and interpretations shall apply, and CEQ includes a new paragraph (b) in the final rule to provide this clarification. CEQ notes that guidance does not have the force and effect of law and is meant to provide clarity regarding existing law and policy.

8. Proposals for Legislation (§ 1506.8)

CEQ proposed to move the legislative EIS requirements from the definition of legislation in 40 CFR 1508.17 to paragraph (a) of § 1506.8, ''Proposals for legislation,'' and revise the section for clarity. As noted in the NPRM, agencies prepare legislative EISs for Congress when they are proposing specific actions. CEQ also invited comment on whether the legislative EIS requirement should be eliminated or modified because the President proposes legislation, and therefore it is inconsistent with the Recommendations Clause of the U.S. Constitution, which provides the President shall recommend for Congress' consideration ''such [m]easures as he shall judge necessary and expedient . . . .'' U.S. Const., art. II, § 3. The President is not a Federal agency, 40 CFR 1508.12, and the proposal of legislation by the President is not an agency action. *Franklin* v. *Mass.,* 505 U.S. 788, 800–01 (1992).

In the final rule, CEQ retains the provision, but removes the reference to providing ''significant cooperation and support in the development'' of legislation and the test for significant cooperation to more closely align this provision with the statute. The final rule clarifies that technical drafting assistance is not a legislative proposal under these regulations. Consistent with these edits, CEQ strikes the reference to the Wilderness Act. The mandate has expired.[99] Under the Wilderness Act, a study was required to make a recommendation to the President. If the President agreed with the recommendation, the President then provided ''advice'' to Congress about making a wilderness determination. The President is not subject to NEPA in his direct recommendations to Congress, but agencies subject to the APA are subject to NEPA, as appropriate, concerning legislative proposals they develop. This avoids the constitutional issue. *See Ashwander* v. *Tenn. Valley Auth.,* 297 U.S. 288, 347 (1936) (Brandeis, J., concurring); *Rescue Army* v. *Mun. Court of L.A.,* 331 U.S. 549, 569 (1947).

9. Proposals for Regulations (§ 1506.9)

CEQ proposed to add a new § 1506.9, ''Proposals for regulations,'' to address the analyses required for rulemakings and to promote efficiency and reduce duplication in the assessment of regulatory proposals. CEQ proposed criteria for agencies to identify analyses that could serve as the functional equivalent of the EIS. In response to comments, CEQ revises this section in the final rule. This section clarifies that one or more procedures and documentation prepared pursuant to other statutory or Executive order requirements may satisfy one or more requirements of the CEQ regulations. When a procedure or document satisfies one or more requirements of this subchapter, the agency may substitute it for the corresponding requirements in this subchapter and need not carry out duplicative procedures or documentation. Agencies must identify which corresponding requirements in this subchapter are satisfied and consult with CEQ to confirm such determinations.

CEQ invited comments on analyses agencies are already conducting that, in whole or when aggregated, can serve as the functional equivalent of the EIS. Aspects of the cost-benefit analysis prepared pursuant to E.O. 12866, ''Regulatory Planning and Review,'' the Regulatory Flexibility Act, or the Unfunded Mandates Reform Act, may overlap with aspects of the CEQ regulations. Further, an agency may rely on the procedures implementing the requirements of a variety of statutes and Executive orders that could meet some or all of the requirements of this subchapter. CEQ does not expressly include specific analyses in the final rule that satisfy the requirements of the CEQ regulations. In all instances, agencies should clearly identify how and which specific parts of the analyses serve the purpose of NEPA compliance, including which requirements in the CEQ regulations are satisfied.

10. Filing Requirements (§ 1506.10)

CEQ proposed to update § 1506.10, ''Filing requirements,'' to remove the obsolete process for filing paper copies of EISs with EPA and EPA's delivery of a copy to CEQ, and instead provide for electronic filing, consistent with EPA's procedures. CEQ proposed this change to provide flexibility to adapt as EPA changes its processes. CEQ revises this section in the final rule, making the proposed changes as well as phrasing the language in active voice.

11. Timing of Agency Action (§ 1506.11)

CEQ proposed to revise paragraph (a) of § 1506.11, ''Timing of agency action,'' to clarify the timing of EPA's notices of availability of EISs. In paragraph (b), CEQ proposed to add a clause to acknowledge statutory authorities that provide for the issuance of a combined final EIS and ROD. *See* 23 U.S.C. 139(n)(2); 49 U.S.C. 304a(b). CEQ makes these changes in the final rule.

In proposed paragraph (c), CEQ proposed to add introductory text and create subordinate paragraphs to address those situations where agencies may make an exception to the time provisions in paragraph (b). Specifically, paragraph (c)(1) addresses agencies with formal appeals processes. Paragraph (c)(2) provides exceptions for

[98] 84 FR 55235 (Oct. 15, 2019).

[99] 16 U.S.C. 1132(b)–(c).

rulemaking to protect public health or safety. Paragraph (d) addresses timing when an agency files the final EIS within 90 days of the draft EIS. Finally, paragraph (e) addresses when agencies may extend or reduce the time periods. The proposed rule made edits to clarify the language in these paragraphs without changing the substance of the provisions. CEQ includes these changes in the final rule and makes additional clarifying revisions.

12. Emergencies (§ 1506.12)

Section 1506.12, ''Emergencies,'' addresses agency compliance with NEPA when an agency has to take an action with significant environmental effects during emergency circumstances. Over the last 40 years, CEQ has developed significant experience with NEPA in the context of emergencies and disaster recoveries. Actions following Hurricanes Katrina, Harvey, and Michael, and other natural disasters, have given CEQ the opportunity to respond to a variety of circumstances where alternative arrangements for complying with NEPA are necessary. CEQ has approved alternative arrangements to allow a wide range of proposed actions in emergency circumstances including catastrophic wildfires, threats to species and their habitat, economic crisis, infectious disease outbreaks, potential dam failures, and insect infestations.[100] CEQ proposed to amend § 1506.12, ''Emergencies,'' to clarify that alternative arrangements are still meant to comply with section 102(2)(C)'s requirement for a ''detailed statement.'' This amendment is consistent with CEQ's longstanding position that it has no authority to exempt Federal agencies from compliance with NEPA, but that CEQ can appropriately provide for exceptions to specific requirements of CEQ's regulations to address extraordinary circumstances that are not addressed by agency implementing procedures previously approved by CEQ. *See* Emergencies Guidance, *supra* note 29. CEQ maintains a public description of all pending and completed alternative arrangements on its website.[101] CEQ makes this change in the final rule.

13. Effective Date (§ 1506.13)

Finally, CEQ proposed to modify § 1506.13, ''Effective date,'' to clarify that these regulations would apply to all NEPA processes begun after the effective date, but agencies have the discretion to apply them to ongoing NEPA processes. CEQ also proposed to remove the 1979 effective date from the introductory paragraph, and strike 40 CFR 1506.13(a) referencing the 1973 guidance and 40 CFR 1506.13(b) regarding actions begun before January 1, 1970 because they are obsolete. This final rule makes these changes.

I. Revisions to Agency Compliance (Part 1507)

CEQ proposed modifications to part 1507, which addresses agency compliance with NEPA, to consolidate provisions relating to agency procedures from elsewhere in the CEQ regulations, and add a new section to address the dissemination of information about agency NEPA programs. CEQ makes these changes in the final rule with some modifications to the proposed rule as discussed in the following sections.

1. Compliance (§ 1507.1)

CEQ proposed a change to § 1507.1, ''Compliance,'' to strike the second sentence regarding agency flexibility in adapting its implementing procedures to the requirements of other applicable laws for consistency with changes to paragraphs (a) and (b) of § 1507.3, ''Agency NEPA procedures.'' This change is also consistent with the direction of the President to Federal agencies to ''comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.'' E.O. 11514, as amended by E.O. 11991, sec. 2(g). CEQ makes this change in the final rule. Under the final rule, § 1507.1 requires all Federal agencies to comply with the CEQ regulations as set forth in parts 1500 through 1508.

2. Agency Capability To Comply (§ 1507.2)

CEQ proposed edits to the introductory paragraph of § 1507.2, ''Agency capability to comply,'' to clarify its meaning, which is to allow agencies to use the resources (including personnel and financial resources) of other parties, including agencies and applicants, and to specifically require agencies to account for the contributions of these other parties in complying with NEPA. This section also requires agencies to have their own capacity to comply with NEPA and the implementing regulations. This includes staff with the expertise to independently evaluate environmental documents, including those prepared by applicants and contractors. CEQ makes these clarifying edits in the final rule.

Additionally, CEQ proposed to revise paragraph (a) to make the senior agency official responsible for overall agency compliance with NEPA, including coordination, communication, and resolution of implementation issues. CEQ is finalizing this change. Under the final rule, the senior agency official is an official of assistant secretary rank or higher (or equivalent) with responsibilities consistent with the responsibilities of senior agency officials in E.O. 13807 to whom agencies elevate anticipated missed or extended permitting timetable milestones. The senior agency official is responsible for addressing disputes among lead and cooperating agencies and enforcing page and time limits. The senior agency official also is responsible for ensuring all environmental documents—even exceptionally lengthy ones—are provided to Federal agency decision makers in a timely, readable, and useful format. *See* §§ 1501.5(f), 1501.7(d), 1501.8(b)(6) and (c), 1501.10, 1502.7, 1507.2, 1508.1(dd).

CEQ proposed to amend paragraph (c) to emphasize agency cooperation, which includes commenting on environmental documents on which an agency is cooperating. CEQ makes this change in the final rule. CEQ revises paragraph (d) in response to comments to strike the second sentence, which created confusion regarding the reach of section 102(2)(E) of NEPA. Finally, CEQ proposed to add references to E.O. 11991, which amended E.O. 11514, and E.O. 13807 in paragraph (f) to codify agencies' responsibility to comply with the orders. CEQ makes both of these changes in the final rule.

3. Agency NEPA Procedures (§ 1507.3)

Agency NEPA procedures set forth the process by which agencies comply with NEPA and the CEQ regulations in the context of their particular programs and processes. In developing their procedures, agencies should strive to identify and apply efficiencies, such as use of applicable CEs, adoption of prior NEPA analyses, and incorporation by reference to prior relevant Federal, State, Tribal, and local analyses, wherever practicable. To facilitate effective and efficient procedures, CEQ

[100] In response to the economic crisis associated with the coronavirus outbreak, Executive Order 13927, titled ''Accelerating the Nation's Economic Recovery From the COVID–19 Emergency by Expediting Infrastructure Investments and Other Activities,'' was issued on June 4, 2020. 85 FR 35165. This Executive order directs agencies to identify planned or potential actions to facilitate the Nation's economic recovery, including identification of actions that may be subject to emergency treatment as alternative arrangements.

[101] *https://ceq.doe.gov/nepa-practice/alternative_arrangements.html.*

proposed to consolidate all of the requirements for agency NEPA procedures in § 1507.3, as discussed in detail below.

In the final rule, CEQ adds a new paragraph (a) to clarify the applicability of these regulations in the interim period between the effective date of the final rule and when the agencies complete updates to their agency NEPA procedures for consistency with these regulations. Consistent with § 1506.13, ''Effective date,'' which makes the regulations applicable to NEPA reviews begun after the effective date of the final rule, paragraph (a) of § 1507.3 requires agencies to apply these regulations to new reviews unless there is a clear and fundamental conflict with an applicable statute. For NEPA reviews in process that agencies began before the final rule's effective date, agencies may choose whether to apply the revised regulations or proceed under the 1978 regulations and their existing agency NEPA procedures. Agencies should clearly indicate to interested and affected parties which procedures it is applying for each proposed action. The final rule does not require agencies to withdraw their existing agency NEPA procedures upon the effective date, but agencies should conduct a consistency review of their procedures in order to proceed appropriately on new proposed actions.

Paragraph (a) also provides that agencies' existing CEs are consistent with the subchapter. CEQ adds this language to ensure CEs remain available for agencies' use to ensure a smooth transition period while they work to update their existing agency procedures, including their CEs, as necessary. This change allows agencies to continue to use their existing CEs for ongoing activities as well as proposed actions that begin after the effective date of the CEQ final rule, and clarifies that revisions to existing CEs are not required within 12 months of the publication date of the final rule. Agencies must still consider whether extraordinary circumstances are present and should rely upon any extraordinary circumstances listed in their agency NEPA procedures as an integral part of an agency's process for applying CEs.

In paragraph (b) (proposed paragraph (a)), CEQ proposed to provide agencies the later of one year after publication of the final rule or nine months after the establishment of an agency to develop or revise proposed agency NEPA procedures, as necessary, to implement the CEQ regulations and eliminate any inconsistencies with the revised regulations. CEQ includes this sentence in the final rule with a correction to the deadline—the deadline is calculated from the effective date, not the publication date. CEQ notes that this provision references ''proposed procedures,'' and agencies need not finalize them by this date. The final rule strikes a balance between minimizing the disruption to ongoing environmental reviews while also requiring agencies to revise their procedures in a timely manner to ensure future reviews are consistent with the final rule. Agencies have the flexibility to address the requirements of the CEQ regulations as they relate to their programs and need not state them verbatim in their procedures. In addition, CEQ proposed to clarify that, except as otherwise provided by law or for agency efficiency, agency NEPA procedures shall not impose additional procedures or requirements beyond those set forth in the CEQ regulations. CEQ includes this language in the final rule, changing the order of the phrases, changing ''provided by law'' to ''required by law'' to enhance clarity, and adding a cross-reference to paragraph (c), which references efficiencies. This change is consistent with the direction of the President to Federal agencies in E.O. 11514 to comply with the CEQ regulations issued except where such compliance would be inconsistent with statutory requirements. E.O. 11514, as amended by E.O. 11991, sec. 2(g). Finally, the final rule eliminates the sentence from 40 CFR 1507.3(a) prohibiting agencies from paraphrasing the CEQ regulations because it is unnecessarily limiting on agencies. Agencies have the flexibility to address the requirements of the CEQ regulations as they relate to their programs and need not state them verbatim in their procedures.

Consistent with its proposal, the final rule requires agencies to develop or revise, as necessary, proposed procedures to implement these regulations. In the NPRM, CEQ proposed to subdivide 40 CFR 1507.3(a) into subordinate paragraphs (a)(1) and (2) for additional clarity because each of these paragraphs have an independent requirement. CEQ finalizes this change as paragraphs (b)(1) and (2) in the final rule. Paragraph (b)(1) addresses the requirement for agencies to consult with CEQ when developing or revising proposed procedures. Paragraph (b)(2) requires agencies to publish proposed agency NEPA procedures for public review and comment. After agencies address these comments, CEQ must determine that the agency NEPA procedures conform to and are consistent with NEPA and the CEQ regulations. CEQ proposed to eliminate the recommendation to agencies to issue explanatory guidance and the requirement to review their policies and procedures. CEQ makes this change in the final rule because it is redundant to the proposed language in paragraph (b) requiring agencies to update their procedures to implement the final rule.

The NPRM proposed to move the provisions in § 1505.1, ''Agency decision making procedures,'' to proposed § 1507.3(b). The final rule moves these provisions to paragraph (c). As stated in the NPRM, consistent with the proposed edits to § 1500.1, CEQ proposed to revise this paragraph to clarify that agencies should ensure decisions are made in accordance with the Act's procedural requirements and policy of integrating NEPA with other environmental reviews to promote efficient and timely decision making. CEQ includes these edits in the final rule, along with an additional edit to change passive to active voice. CEQ does not include proposed paragraph (b)(1) (40 CFR 1505.1(a)) in the final rule because the phrase ''[i]mplementing procedures under section 102(2) of NEPA to achieve the requirements of section 101 and 102(1)'' could be read to suggest that agencies could interpret NEPA in a manner that would impose more burdens than the requirements of the final rule. Including this provision in the final rule would be inconsistent with the language in paragraph (b) that limits agency NEPA procedures to the requirements in these regulations unless otherwise required by law or for agency efficiency. Finally, CEQ corrects the reference in paragraph (c)(4) to EIS, changing it to ''environmental documents'' consistent with the rest of the paragraph.

CEQ proposed a new paragraph (b)(6) to direct agencies to set forth in their NEPA procedures requirements to combine their NEPA documents with other agency documents, especially where the same or similar analyses are required for compliance with other requirements. As stated in the NPRM, many agencies implement statutes that call for consideration of alternatives to the agency proposal, including the no action alternative, the effects of the agencies' proposal and alternatives, and public involvement. Agencies can use their NEPA procedures to align compliance with NEPA and these other statutory authorities to integrate NEPA's goals for informed decision making with agencies' specific statutory requirements. This approach is consistent with some agency practice. *See, e.g.,* 36 CFR part 220; Forest Service Handbook 1909.15 (U.S.

Department of Agriculture Forest Service NEPA procedures). More agencies could use it to achieve greater efficiency and reduce unnecessary duplication. Additionally the NPRM proposed to allow agencies to designate analyses or processes that serve as the functional equivalent of NEPA compliance.

CEQ includes this provision in the final rule at paragraph (c)(5) with revisions to clarify that agencies may designate and rely on one or more procedures or documents under other statutes or Executive orders as satisfying some or all of the requirements in the CEQ regulations. While courts have held that agencies do not need to conduct NEPA analyses under a number of statutes that are ''functionally equivalent,'' including the Clean Air Act, the Ocean Dumping Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act,[102] the final rule recognizes that agencies may substitute processes or documentation prepared pursuant to other statutes or Executive orders to satisfy one or more requirements in the CEQ regulations to reduce duplication. Agencies must identify the respective requirements in this subchapter that are satisfied by other statutes or Executive orders.

Furthermore, CEQ proposed to add a new paragraph to allow agencies to identify activities or decisions that are not subject to NEPA, consistent with § 1501.1, in their agency NEPA procedures. CEQ adds this provision to paragraph (d) in the final rule. The final rule uses ''should'' instead of ''may'' to encourage agencies to make these identifications in their agency NEPA procedures. The final rule also replaces ''actions'' with ''activities or decisions'' to avoid confusion with the definition of ''action'' in § 1508.1(q). CEQ includes this list in the final rule consistent with the changes in § 1501.1 as discussed in section II.C.1, with minor revisions to improve readability and a reordering of the provisions consistent with the reordering of the provisions in § 1501.1.

Paragraph (e) (proposed paragraph (d)) maintains much of the language from 40 CFR 1507.3(b). CEQ proposed to add parenthetical descriptions of the cross-references in proposed paragraph (d)(1), and CEQ includes these in the final rule at paragraph (e)(1). CEQ proposed to revise paragraph (d)(2)(ii), which requires agencies to identify CEs in their agency NEPA procedures, move the requirement for extraordinary circumstances from the definition of CEs in 40 CFR 1508.4, and require agencies to identify in their procedures when documentation of a CE determination is required. CEQ also proposed to add language to proposed paragraph (e) to codify existing agency practice to publish notices when an agency pauses an EIS or withdraws an NOI. CEQ includes this provision with the proposed revisions in the final rule at paragraph (f)(3). Finally, CEQ proposed to move from 40 CFR 1502.9(c)(3) to proposed paragraph (d)(3) the requirement to include procedures for introducing a supplement into its formal administrative record and clarify that this includes EAs and EISs. CEQ includes this provision in the final rule at paragraph (e)(3).

Paragraphs (f)(1) through (3) (proposed paragraphs (e)(1) through (3)) maintain much of the language from 40 CFR 1507.3(c) through (e). In proposed paragraph (e)(1), CEQ proposed to revise the language to active voice and encourage, rather than just allow, agencies to organize environmental documents in such a way as to make unclassified portions of environmental documents available to the public. CEQ makes these revisions in the final rule in paragraph (f)(1). CEQ also modifies paragraph (f)(2) to add a reference to the requirements of lead and cooperating agencies. CEQ adds this example consistent with the addition to § 1506.11(b) referencing statutory provisions for combining a final EIS and ROD. This is also consistent with CEQ's goal of improving coordination between lead and cooperating agencies and providing efficient processes to allow for integration of the NEPA review with reviews conducted under other statutes. This allows for altering time periods to facilitate issuance of a combined FEIS and ROD. Additionally, CEQ proposed to move the language allowing agencies to adopt procedures to combine their EA process with their scoping process from 40 CFR 1501.7(b)(3) to paragraph (e)(4). CEQ makes this change in the final rule at paragraph (f)(4).

Finally, CEQ proposed in paragraph (e)(5) to allow agencies to establish a process in their agency NEPA procedures to apply the CEs of other agencies. CEQ also invited comment on whether to set forth this process in these regulations. In the final rule, CEQ includes the provision to allow agencies to establish a process in paragraph (f)(5) with some changes. CEQ includes clarifying language to address the confusion commenters had as to differences between this section and adoption of a CE determination under § 1506.3. An agency's process must provide for consultation with the agency that listed the CE in its NEPA procedures to ensure that the planned use of the CE is consistent with the originating agency's intent and practice.[103] The process should ensure documentation of the consultation and identify to the public those CEs the agency may use for its proposed actions. Consistent with § 1507.4, agencies could post such information on their websites. Then, an agency may apply the CE to its proposed actions, including proposed projects or activities or groups of proposed projects or activities.

4. Agency NEPA Program Information (§ 1507.4)

CEQ proposed to add a new § 1507.4, ''Agency NEPA program information,'' to provide the means of publishing information on ongoing NEPA reviews and agency records relating to NEPA reviews. CEQ is finalizing this provision as proposed with no changes. As stated in the NPRM, this provision requires agencies in their NEPA procedures to provide for a website or other means of publishing certain information on ongoing NEPA reviews and maintaining and permitting public access to agency records relating to NEPA reviews.

Section 1507.4 promotes transparency and efficiency in the NEPA process, and improves interagency coordination by

[102] *See Portland Cement Ass'n,* 486 F.2d at 387 (finding an exemption from NEPA for Clean Air Act section 111); *see also Envtl. Def. Fund, Inc,* 489 F.2d at 1254–56 (concluding that the standards of FIFRA provide the functional equivalent of NEPA); *Cellular Phone Taskforce,* 205 F.3d at 94–95 (concluding that the procedures followed by the Federal Communications Commission were functionally compliant with NEPA's EA and FONSI requirements); *W. Neb. Res. Council,* 943 F.2d at 871–72 (concluding that EPA's procedures and analysis under the Safe Drinking Water Act were functionally equivalent to NEPA); *Wyo.* v. *Hathaway,* 525 F.2d 66, 71–72 (10th Cir. 1975) (concluding that EPA need not prepare an EIS before cancelling or suspending registrations of three chemical toxins used to control coyotes under FIFRA); *State of Ala. ex rel. Siegelman* v. *U.S. EPA,* 911 F.2d 499, 504–05 (11th Cir. 1990) (holding that EPA did not need to comply with NEPA when issuing a final operating permit under the Resource Conservation and Recovery Act); *Envtl. Def. Fund, Inc.* v. *Blum,* 458 F. Supp. 650, 661–62 (D.D.C. 1978) (EPA need not prepare an EIS before granting an emergency exemption to a state to use an unregistered pesticide); *State of Md.* v. *Train,* 415 F. Supp. 116, 121–22 (D. Md. 1976) (Ocean Dumping Act functional equivalent of NEPA). For further discussion, see section J.3 of the Final Rule Response to Comments.

[103] The use of another agency's CE under a process in the agency's NEPA procedures is an option separate from the adoption, under § 1506.3(f), of another agency's determination that its CE applies to a particular action that is substantially the same as the adopting agency's proposed action. An agency may adopt another agency's CE determination for a particular action regardless of whether its procedures provide a process for application of other agencies' CEs.

ensuring that information is more readily available to other agencies and the public. As discussed in the NPRM, opportunities exist for agencies to combine existing geospatial data, including remotely sensed images, and analyses to streamline environmental review and better coordinate development of environmental documents for multi-agency projects, consistent with the OFD policy. One option involves creating a single NEPA application that facilitates consolidation of existing datasets and can run several relevant geographic information system (GIS) analyses to help standardize the production of robust analytical results. This application could have a public-facing component modeled along the lines of EPA's NEPAssist,[104] which would aid prospective project sponsors with site selection and project design and increase public transparency. The application could link to the Permitting Dashboard to help facilitate project tracking and flexibilities under §§ 1506.5 and 1506.6. CEQ invited comment on this proposal, including comment on whether additional regulatory changes could help facilitate streamlined GIS analysis to help agencies comply with NEPA. While some commenters supported the development of a single NEPA application, others identified challenges to ensuring databases are useful, as well as privacy and security concerns. CEQ did not receive sufficient comment to lead CEQ to make additional regulatory changes to facilitate streamlined GIS analysis to help agencies comply with NEPA, and the final rule does not contain any changes from the proposal.

J. Revisions to Definitions (Part 1508)

NEPA does not itself include a set of definitions provided by Congress. CEQ, in the 1978 regulations, established a set of definitions for NEPA and the CEQ regulations. In this final rule, CEQ has clarified or supplemented the definitions as discussed below and further described in the Final Rule Response to Comments at section K. As noted above, *see Public Citizen,* 541 U.S. at 757; *Methow Valley,* 490 U.S. at 355 (citing *Andrus,* 442 U.S. at 358); *Brand X,* 545 U.S. at 980–86; and *Mead Corp.,* 533 U.S. at 227–30, CEQ has the authority to interpret NEPA. *See, e.g., Barnhart* v. *Walton,* 535 U.S. 212, 218 (2002) (''[S]ilence, after all, normally creates ambiguity. It does not resolve it.''). Existing NEPA case law inevitably rests directly on interpretive choices made in the 1978 regulations or on cases that themselves through some chain of prior cases also trace to the 1978 regulations. Yet consistent with *Chevron,* CEQ's NEPA regulations are subject to change. *See also Brand X,* 545 U.S. 967.

CEQ's intention to make use of its interpretive authority under *Chevron* is particularly applicable as to part 1508 where CEQ defines or revises key terms in the NEPA statute and the CEQ regulations. As a result, this confers on CEQ an even greater degree of latitude to elucidate the meaning of the statute's terms in these regulations—the same basic authority exercised by CEQ back in 1978 in the original form of the NEPA regulations. *See, e.g., Demski* v. *U.S. Dep't of Labor,* 419 F.3d 488, 491 (6th Cir. 2005) (''In the absence of a congressional definition or an explicit delegation of congressional authority to the agency, we determine how the agency responsible for implementing the statute . . . understands the term, and, under *Chevron* . . . we determine whether such an understanding is a 'reasonable interpretation' of the statute.'' (citing *Chevron,* 467 U.S. at 844)); *London* v. *Polishook,* 189 F.3d 196, 200 (2d Cir. 1999) (''[J]udicial deference does apply to the guidelines that [the] Department's Office of Labor–Management Standards Enforcement has developed and set out in its LMRDA Interpretive Manual § 030.425—guidelines to which [the D.C. Circuit in *Martoche*] deferred in the absence of a clear definition of 'political subdivision' in the Act or in its legislative history.''); *Hawaii Gov't Employees Ass'n, Am. Fed'n of State, Cty. & Mun. Employees, Local 152* v. *Martoche,* 915 F.2d 718, 721 (D.C. Cir. 1990) (''With some imprecision in the statutory text [as to an undefined term] and a nearly total lack of elucidation in the legislative history, the situation is squarely one in which Congress implicitly left a gap for the agency to fill.'') (internal citation and quotation marks omitted). *See also Perez* v. *Commissioner,* 144 T.C. 51, 59 (2015); *Saha Thai Steel Pipe (Pub.) Co.* v. *United States,* 33 C.I.T. 1541, 1547 (Ct. of Int'l Trade 2009).[105] In promulgating new or revised definitions and other changes to the NEPA regulations, CEQ has considered the ordinary meaning of the terms used by Congress in the statute.

As discussed in the NPRM, CEQ proposed significant revisions to part 1508. CEQ proposed to move the operative language, which is regulatory language that provides instruction or guidance, included throughout the regulations in this section to the relevant substantive sections of the regulations. Consistent with this change, CEQ proposed to retitle part 1508 from ''Terminology and Index'' to ''Definitions.''[106] CEQ also proposed to clarify the definitions of a number of key NEPA terms in order to reduce ambiguity, both through modification of existing definitions and the addition of new definitions. CEQ proposed to eliminate individual section numbers for each term in favor of a single section of defined terms in the revised § 1508.1. Finally, CEQ proposed to remove citations to the specific definition sections throughout the rule. CEQ makes these changes in the final rule.

1. Clarifying the Meaning of ''Act''

CEQ proposed in paragraph (a) to add ''NEPA'' as a defined term with the same meaning as ''Act.'' CEQ makes this change in the final rule.

2. Definition of ''Affecting''

CEQ did not propose to make any change to the defined term ''affecting'' in paragraph (b). CEQ does not make any changes to this definition in the final rule.

3. New Definition of ''Authorization''

CEQ proposed to define the term ''authorization'' in paragraph (c) to refer to the types of activities that might be required for permitting a proposed action, in particular infrastructure projects. This definition is consistent with the definition included in FAST–41 and E.O. 13807. CEQ proposed to replace the word ''entitlement'' with ''authorization'' throughout the rule. CEQ adds this definition and makes these changes in the final rule.

4. Clarifying the Meaning of ''Categorical Exclusion''

CEQ proposed to revise the definition of ''categorical exclusion'' in paragraph (d) by inserting ''normally'' to clarify that there may be situations where an action may have significant effects on account of extraordinary circumstances.

[104] *https://nepassisttool.epa.gov/nepassist/nepamap.aspx. See also* the Marine Cadastre, which provides consolidated GIS information for offshore actions, *https://marinecadastre.gov/.*

[105] ''Although NEPA's statutory text specifies *when* an agency must comply with NEPA's procedural mandate; it is the Council on Environmental Quality Regulations ('CEQ') regulations which dictate the *how,* providing the framework by which all [F]ederal agencies comply with NEPA.'' *Dine' Citizens Against Ruining Our Environment* v. *Klein,* 747 F. Supp. 2d 1234, 1248 (D. Colo. 2010) (emphasis in original).

[106] CEQ has maintained an index in the Code of Federal Regulations, but this is not a part of the regulations. CEQ does not intend to continue to maintain such an index because it is no longer necessary given that the regulations are typically accessed electronically and the regulations' organization has been significantly improved.

CEQ also proposed to strike ''individually or cumulatively'' for consistency with the proposed revisions to the definition of ''effects'' as discussed in this section. CEQ proposed conforming edits in §§ 1500.4(a) and 1500.5(a). As noted in section II.I.3, CEQ proposed to move the requirement to provide for extraordinary circumstances in agency procedures to § 1507.3(d)(2)(ii) (§ 1507.3(e)(2)(ii) in the final rule). CEQ makes these changes in the final rule. CEQ notes that the definition of ''categorical exclusion'' only applies to those CEs created by an agency in its agency NEPA procedures and does not apply to ''legislative'' CEs created by Congress, which are governed by the terms of the specific statute and statutory interpretation of the agency charged with the implementation of the statute.

5. Clarifying the Meaning of ''Cooperating Agency''

CEQ proposed to amend the definition of ''cooperating agency'' in paragraph (e) to make clear that a State, Tribal, or local agency may be a cooperating agency when the lead agency agrees, and to move the corresponding operative language allowing a State, Tribal, or local agency to become a cooperating agency with the lead agency's agreement to paragraph (a) of § 1501.8, ''Cooperating agencies.'' CEQ also proposed to remove the sentence cross-referencing the cooperating agency section in part 1501 and stating that the selection and responsibilities of a cooperating agency are described there because it is unnecessary and does not define the term. CEQ makes these changes in the final rule.

6. Definition of ''Council''

CEQ did not propose any changes to the definition of ''Council'' in paragraph (f). CEQ also invited comment on whether to update references to ''Council'' in the regulations to ''CEQ'' throughout the rule. CEQ did not receive sufficient comments on this proposal; therefore, CEQ does not make this change in the final rule.

7. Definition of ''Cumulative Impact'' and Clarifying the Meaning of ''Effects''

CEQ proposed to remove the definition of ''cumulative impact'' and revise the definition of ''effects'' in paragraph (g). As noted in the NPRM, many commenters to the ANPRM urged CEQ to refine the definition based on concerns that it creates confusion, and that the terms ''indirect'' and ''cumulative'' have been interpreted expansively resulting in excessive documentation about speculative effects and leading to frequent litigation. Commenters also raised concerns that this has expanded the scope of NEPA analysis without serving NEPA's purpose of informed decision making. Commenters stressed that the focus of the effects analysis should be on those effects that are reasonably foreseeable, related to the proposed action under consideration, and subject to the agency's jurisdiction and control. Commenters also noted that NEPA practitioners often struggle with describing cumulative impacts despite a number of publications that address the topic.

While NEPA refers to environmental impacts and environmental effects, it does not subdivide the terms into direct, indirect, or cumulative. Nor are the terms ''direct,'' ''indirect,'' or ''cumulative'' included in the text of the statute. CEQ created those concepts and included them in the 1978 regulations.

To address commenters' concerns and reduce confusion and unnecessary litigation, CEQ proposed to simplify the definition of effects by striking the specific references to direct, indirect, and cumulative effects and providing clarity on the bounds of effects consistent with the Supreme Court's holding in *Public Citizen,* 541 U.S. at 767–68. Under the proposed definition, effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives; a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. This close causal relationship is analogous to proximate cause in tort law. *Id.* at 767; *see also Metro. Edison Co.,* 460 U.S. at 774 (interpreting section 102 of NEPA to require ''a reasonably close causal relationship between a change in the physical environment and the effect at issue'' and stating ''[t]his requirement is like the familiar doctrine of proximate cause from tort law.''). CEQ sought comment on whether to include in the definition of effects the concept that the close causal relationship is ''analogous to proximate cause in tort law,'' and if so, how CEQ could provide additional clarity regarding the meaning of this phrase.

In the final rule, CEQ revises the definition of effects consistent with the proposal, with some additional edits. First, to eliminate the circularity in the definition, CEQ changes the beginning of the definition from ''means effects of'' to ''means changes to the human environment from'' the proposed action or alternatives. This change also associates the definition of effects with the definition of human environment, which continues to cross-reference to the definition of effects in the final rule. It also makes clear that, when the regulations use the term ''effects,'' it means effects on the human environment. This responds to comments suggesting CEQ add ''on the human environment'' after ''effects'' in various sections of the rule.

The final rule also consolidates the first two sentences of the definition to clarify that, for purposes of this definition, ''effects that occur'' at the ''same time and place as the proposed action or alternatives,'' or that ''are later in time or farther removed in distance'' must nevertheless be reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives. As a separate sentence that only referenced reasonable foreseeability, there was ambiguity as to whether a reasonably close causal relationship was required. Additionally, the final rule adds a clause to clarify that the consideration of time and place or distance are relative to the proposed action or alternatives.

CEQ proposed to strike the definition of ''cumulative impact'' and the terms ''direct'' and ''indirect'' in order to focus agency time and resources on considering whether the proposed action causes an effect rather than on categorizing the type of effect. As stated in the NPRM, CEQ intends the revisions to simplify the definition to focus agencies on consideration of effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. In practice, agencies have devoted substantial resources to categorizing effects as direct, indirect, or cumulative, which, as noted above, are not terms referenced in the NEPA statute. CEQ eliminates these references in the final rule.

To further assist agencies in their assessment of significant effects, CEQ also proposed to clarify that agencies should not consider effects significant if they are remote in time, geographically remote, or the result of a lengthy causal chain. *See, e.g., Pub. Citizen,* 541 U.S. at 767–68 (''In particular, 'courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.' '' (quoting *Metro. Edison Co.,* 460 U.S. at 774 n.7)); *Metro. Edison Co.,* 460 U.S. at 774 (noting effects may not fall within section 102 of NEPA because ''the causal chain is too attenuated''). CEQ revises this sentence in the final rule to add ''generally'' to reflect the fact that there may occasionally be a

circumstance where an effect that is remote in time, geographically remote, or the product of a lengthy causal chain is reasonably foreseeable and has a reasonably close causal relationship to the proposed action.

Further, CEQ proposed to codify a key holding of *Public Citizen* relating to the definition of effects to make clear that effects do not include effects that the agency has no authority to prevent or that would happen even without the agency action, because they would not have a sufficiently close causal connection to the proposed action. For example, this would include effects that would constitute an intervening and superseding cause under familiar principles of tort law. *See, e.g., Sierra Club* v. *FERC,* 827 F.3d 36, 47–48 (D.C. Cir. 2016) (NEPA case incorporating these principles) (''[C]ritical to triggering that chain of events is the intervening action of the Department of Energy in granting an export license. The Department's independent decision to allow exports—a decision over which the Commission has no regulatory authority—breaks the NEPA causal chain and absolves the Commission of responsibility to include in its NEPA analysis considerations that it 'could not act on' and for which it cannot be 'the legally relevant cause.''' (quoting *Pub. Citizen,* 541 U.S. at 769)). As discussed in the NPRM, this clarification will help agencies better understand what effects they need to analyze and discuss, helping to reduce delays and paperwork with unnecessary analyses. CEQ includes this language in the final rule as proposed.

In addition, CEQ proposed a change in position to state that analysis of cumulative effects, as defined in the 1978 regulations, is not required under NEPA. Categorizing and determining the geographic and temporal scope of such effects has been difficult and can divert agencies from focusing their time and resources on the most significant effects. Past CEQ guidance has not been successful in dispelling ambiguity. Excessively lengthy documentation that does not focus on the most meaningful issues for the decision maker's consideration can lead to encyclopedic documents that include information that is irrelevant or inconsequential to the decision-making process. Instead, agencies should focus their efforts on analyzing effects that are most likely to be potentially significant and effects that would occur as a result of the agency's decision, rather than effects that would be the result of intervening and superseding causes. Agencies are not expected to conduct exhaustive research on identifying and categorizing actions beyond the agency's control.

CEQ intended the proposed elimination of the definition of cumulative impact to focus agencies on analysis of effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. Cumulative effects analysis has been interpreted so expansively as to undermine informed decision making, and led agencies to conduct analyses to include effects that are not reasonably foreseeable or do not have a reasonably close causal relationship to the proposed action or alternatives. CEQ also invited comment on whether to include an affirmative statement that consideration of indirect effects is not required; the final rule does not include additional direction to agencies specific to indirect effects.

CEQ received many comments on cumulative effects. In the final rule, to provide further clarification, CEQ includes a new provision at paragraph (g)(3) that states that the analysis of effects shall be consistent with the definition of effects, and that cumulative impact, defined in 40 CFR 1508.7 (1978), is repealed. This language explains how agencies should apply the definition of effects with respect to environmental documents and other provisions in the final rule. Specifically, analyses are bound by the definition of effects as set forth in § 1508.1(g)(1) and (2) and should not go beyond the definition of effects set forth in those two paragraphs. The final rule provides considerable flexibility to agencies to structure the analysis of effects based on the circumstances of their programs.

In response to the NPRM, commenters stated that agencies would no longer consider the impacts of a proposed action on climate change. The rule does not preclude consideration of the impacts of a proposed action on any particular aspect of the human environment. The analysis of the impacts on climate change will depend on the specific circumstances of the proposed action. As discussed above, under the final rule, agencies will consider predictable trends in the area in the baseline analysis of the affected environment.

8. Clarifying the Meaning of ''Environmental Assessment''

CEQ proposed to revise the definition of ''environmental assessment'' in paragraph (h), describing the purpose for the document and moving all of the operative language setting forth the requirements for an EA from the definition to proposed § 1501.5. CEQ makes this change in the final rule.

9. Clarifying the Meaning of ''Environmental Document''

CEQ proposed to remove the cross-references from the definition of ''environmental document'' in paragraph (i). CEQ makes this change in the final rule.

10. Clarifying the Meaning of ''Environmental Impact Statement''

CEQ proposed to change ''the Act'' to ''NEPA'' in the definition of ''environmental impact statement'' in paragraph (j). CEQ makes this change in the final rule.

11. Clarifying the Meaning of ''Federal Agency''

CEQ proposed to amend the definition of ''Federal agency'' in paragraph (k) to broaden it to include States, Tribes, and units of local government to the extent that they have assumed NEPA responsibilities from a Federal agency pursuant to statute. As stated in the NPRM, since the issuance of the CEQ regulations, Congress has authorized assumption of NEPA responsibilities in other contexts besides the Housing and Community Development Act of 1974, Public Law 93–383, sec. 104(h), 88 Stat. 633, 640, 42 U.S.C. 5304. *See, e.g.,* Surface Transportation Project Delivery Program, 23 U.S.C. 327. This change acknowledges these programs and helps clarify roles and responsibilities. CEQ makes this change and minor clarifying edits in the final rule.

12. Clarifying the Meaning of ''Finding of No Significant Impact''

CEQ proposed to revise the definition of ''finding of no significant impact'' in paragraph (l) to insert the word ''categorically'' into the phrase ''not otherwise excluded,'' change the cross-reference to the new section addressing CEs at § 1501.4, and move the operative language requiring a FONSI to include an EA or a summary of it and allowing incorporation by reference of the EA to § 1501.6, which addresses the requirements of a FONSI. CEQ makes these revisions in the final rule.

13. Clarifying the Meaning of ''Human Environment''

CEQ proposed to change ''people'' to ''present and future generations of Americans'' consistent with section 101(a) of NEPA to the definition of human environment in paragraph (m). CEQ also proposed to move the operative language stating that economic or social effects by themselves

do not require preparation of an EIS to § 1502.16(b), which is the section of the regulations that addresses when agencies should consider economic or social effects in an EIS. CEQ makes these changes in the final rule to assist agencies in understanding and implementing the statute and regulations.

14. Definition of ''Jurisdiction by Law''

The NPRM did not propose any changes to the definition of jurisdiction by law in paragraph (n). CEQ did not revise this definition in the final rule.

15. Clarifying the Meaning of ''Lead Agency''

CEQ proposed to amend the definition of lead agency in paragraph (o) to clarify that this term includes joint lead agencies, which are an acceptable practice. CEQ makes this change in the final rule.

16. Clarifying the Meaning of ''Legislation''

CEQ proposed to move the operative language regarding the test for significant cooperation and the principle that only the agency with primary responsibility will prepare a legislative EIS to § 1506.8. CEQ also proposed to strike the example of treaties, because the President is not a Federal agency, and therefore a request for ratification of a treaty would not be subject to NEPA. CEQ makes these changes in the final rule, striking the references to ''significant cooperation and support,'' in paragraph (p) to narrow the definition to comport with the NEPA statute, as discussed in section II.H.8.

17. Clarifying the Meaning of ''Major Federal Action''

CEQ received many comments on the ANPRM requesting clarification of the definition of major Federal action. For example, CEQ received comments proposing that non-Federal projects should not be considered major Federal actions based on a very minor Federal role. Commenters also recommended that CEQ clarify the definition to exclude decisions where agencies do not have discretion to consider and potentially modify their actions based on the environmental review.

CEQ proposed to amend the first sentence of the definition in paragraph (q) to clarify that an action meets the definition if it is subject to Federal control and responsibility, and it has effects that may be significant. CEQ proposed to replace ''major'' effects with ''significant'' in this sentence to align with the NEPA statute. In the final rule, CEQ revises the definition to remove reference to significance. CEQ also revises the definition to remove the circularity in the definition, changing ''means an action'' to ''means an activity or decision'' that is subject to Federal control and responsibility.

i. Independent Meaning of ''Major''

CEQ proposed to strike the second sentence of the definition, which provides ''Major reinforces but does not have a meaning independent of significantly.'' CEQ makes this change in the final rule. This is a change in position as compared to CEQ's earlier interpretation of NEPA and, in finalizing this change, CEQ intends to correct this longstanding misconstruction of the NEPA statute. The statutory aim of NEPA is to focus on ''major Federal actions significantly affecting the quality of the human environment,'' 42 U.S.C. 4332(2)(C), rather than on non-major Federal actions that simply have some degree of Federal involvement. Under the 1978 regulations, however, the word ''major'' was rendered virtually meaningless.

CEQ makes this change because all words of a statute must be given meaning consistent with longstanding principles of statutory interpretation. *See, e.g., Bennett,* 520 U.S. at 173 (''It is the cardinal principle of statutory construction . . . that it is our duty to give effect, if possible, to every clause and word of a statute . . . rather than to emasculate an entire section.'') (internal quotations and citations omitted) (quoting *United States* v. *Menasche,* 348 U.S. 528, 538 (1955)). Although the 1978 regulations treated the terms ''major'' and ''significantly'' as interchangeable, there is an important distinction between the two terms and how they apply in the NEPA process. ''Major'' refers to the type of action, including the role of the Federal agency and its control over any environmental impacts. ''Significant'' relates to the effects stemming from the action, including consideration of the affected area, resources, and the degree of the effects. In the statute, ''major'' occurs twice, and in both instances is a modifier of ''Federal action''—in section 102(2)(C) in the phrase ''other major Federal actions significantly affecting the quality of the human environment,'' and section 102(2)(D) in the phrase, ''any major Federal action funded under a program of grants to States.'' NEPA also uses ''significant'' or ''significantly'' twice as a modifier of the similar words ''affecting'' in section 102(2)(C) and ''impacts'' in section 102(2)(D)(iv).

The legislative history of NEPA also reflects that Congress used the term ''major'' independent of ''significantly,'' and provided that, for major actions, agencies should make a determination as to whether the proposal would have a significant environmental impact. Specifically, the Senate Report for the National Environmental Policy Act of 1969 (Senate Report) states, ''*Each agency which proposes any major actions,* such as project proposals, proposals for new legislation, regulations, policy statements, or expansion or revision of ongoing programs, *shall make a determination as to whether the proposal would have a significant effect upon the quality of the human environment.*'' S. Rep. No. 91–296, at 20 (1969) (emphasis added).[107] Further, the Senate Report shows that OMB's predecessor, the Bureau of the Budget, submitted comments on the legislation to provide the views of the Executive Office of the President and recommended that Congress revise the text of the bill to include two separate modifiers: ''major'' before Federal actions and ''significantly'' before affecting the quality of the human environment. *See id.* at 30 (Bureau of the Budget's markup returned to the Senate on July 7, 1969). The enacted legislation included these revisions. While CEQ followed the Eight Circuit's approach in *Minnesota Public Interest Research Group* v. *Butz,* 498 F.2d 1314, 1321–22 (8th Cir. 1974), in the 1978 regulations, other courts had interpreted ''major'' and ''significantly'' as having independent meaning before CEQ issued its 1978 regulations. *See NAACP* v. *Med. Ctr., Inc.,* 584 F.2d 619, 629 (3d Cir. 1978) (analyzing the Secretary's ministerial approval of a capital expenditure under a framework that first considered whether there had been agency action, and then whether that action was ''major''); *Hanly* v. *Mitchell,* 460 F.2d 640, 644–45 (2d Cir. 1972) (''There is no doubt that the Act contemplates some agency action that does not require an impact statement because the action is minor and has so little effect on the environment as to be insignificant.'' (internal citations omitted)); *Scherr* v. *Volpe,* 466 F.2d 1027, 1033 (7th Cir. 1972) (finding that a highway project qualifies as major before turning to the second step of whether the project would have a significant effect); *Julius* v. *City of Cedar Rapids,* 349 F. Supp. 88, 90 (N.D. Iowa 1972) (finding that a lane widening project was not a major Federal action); *Goose Hollow Foothills League* v. *Romney,* 334 F. Supp. 877, 879 (D. Or. 1971) (discussing whether a proposed

[107] *https://ceq.doe.gov/docs/laws-regulations/Senate-Report-on-NEPA.pdf.*

building project was ''major''); *SW Neighborhood Assembly* v. *Eckard,* 445 F. Supp. 1195, 1199 (D.D.C. 1978) (''The phrase 'major Federal action' has been construed by the Courts to require an inquiry into such questions as the amount of federal funds expended by the action, the number of people affected, the length of time consumed, and the extent of government planning involved.'' (citing *Hanly,* 460 F.2d at 644)); *Nat. Res. Def. Council* v. *Grant,* 341 F. Supp. 356, 366 (E.D.N.C. 1972) (''Certainly, an administrative agency [such] as the Soil Conservation Service may make a decision that a particular project is not major, or that it does not significantly affect the quality of the human environment, and, that, therefore, the agency is not required to file an impact statement.''). Moreover, as discussed further below, over the past four decades, in a number of cases, courts have determined that NEPA does not apply to actions with minimal Federal involvement or funding. Under the revised definition, these would be non-major Federal actions.

In the final rule, CEQ reorganizes the remainder of the definition of major Federal action into subordinate paragraphs. Paragraph (q)(1) provides a list of activities or decisions that are not included within the definition.

ii. Extraterritoriality

In the NPRM, CEQ requested comment on whether to clarify that major Federal action does not include extraterritorial actions because NEPA does not apply extraterritorially, consistent with *Kiobel* v. *Royal Dutch Petroleum Co.,* 569 U.S. 108, 115–16 (2013), in light of the ordinary presumption against extraterritorial application when a statute does not clearly indicate that extraterritorial application is intended by Congress. In the final rule, CEQ revises the definition of ''Major Federal action'' in a new paragraph (q)(1)(i) to exclude extraterritorial activities or decisions, which mean activities or decisions with effects located entirely outside the jurisdiction of the United States.[108]

The Supreme Court has stated that ''[i]t is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' '' *EEOC* v. *Arabian Am. Oil Co. (Aramco),* 499 U.S. 244, 248 (1991) (quoting *Foley Bros.* v. *Filardo, Inc.,* 336 U.S. 281, 285 (1949)). During the past decade, the Supreme Court has considered the application of the presumption to a variety of Federal statutes.[109] As the Supreme Court has stated, the presumption ''rests on the perception that Congress ordinarily legislates with respect to domestic, not foreign matters.'' *Morrison,* 561 U.S. at 255 (citing *Smith* v. *United States,* 507 U.S. 197, 204 n.5 (1993)). ''Thus, 'unless there is the affirmative intention of the Congress clearly expressed' to give a statute extraterritorial effect, 'we must presume it is primarily concerned with domestic conditions.' '' *Morrison,* 561 U.S. at 255 (citing *Aramco,* 499 U.S. at 248). The Supreme Court has held, including in more recent decisions, that the presumption applies regardless of whether there is a risk of conflict between the U.S. statute and a foreign law. *Morrison,* 561 U.S. at 255 (citing *Sale* v. *Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 173–74 (1993)); *RJR Nabisco,* 136 S. Ct. at 2100; *see also Smith,* 507 U.S. at 204 n.5.

The Supreme Court has established a two-step framework for analyzing whether the presumption against extraterritoriality applies to a Federal statute.[110] Under this framework, the first step is to ask whether the presumption against extraterritoriality has been rebutted because ''the statute gives a clear, affirmative indication that it applies extraterritorially.'' *RJR Nabisco,* 136 S. Ct. at 2101. If the presumption has not been rebutted, the second step is to determine whether the case involves a domestic application of the statute, and courts have done this by looking to the statute's ''focus.'' [111]

Under the two-step framework, CEQ has determined that because the legislative history and statutory text of section 102(2)(C) gives no clear indication that it applies extraterritorially, the presumption against extraterritoriality has not been rebutted. The plain language of section 102(2)(C) does not require it to be applied to actions occurring outside the jurisdiction of the United States.[112] The only reference in the Act to international considerations is in section 102(2)(F), which refers to ''international cooperation'' and the ''worldwide and long-range character of environmental problems,'' and directs agencies to ''where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation'' to protect the environment. 42 U.S.C. 4332(2)(F). International cooperation is inherently voluntary and not part of the mandatory analysis required under the statute, and this provision does not indicate in any way that the requirements of section 102(2)(C) to prepare detailed statements applies outside of U.S. territorial jurisdiction. The limited legislative history of section 102(2)(C) similarly does not include discussion of application of the requirements of section 102(2)(C) to extraterritorial actions.[113]

Under the two-step framework, CEQ has also considered the purpose of section 102(2)(C), which is to ensure that a Federal agency, as part of its decision making process, considers the potential environmental impacts of proposed actions. The focus of congressional concern is the proposed action and its potential environmental effects. The effects of a proposed action may occur both within U.S. territorial jurisdiction as well as outside that jurisdiction. To the extent effects of a proposed action occur entirely outside the territorial jurisdiction of the United States, the application of section 102(2)(C) would not be permissible, consistent with the Supreme Court's holding that where the conduct relevant to the statute's focus occurred in the United States, then ''the case involves a

[108] The Restatement of Foreign Relations Law provides that the areas within the territorial jurisdiction of the United States include ''its land, internal waters, territorial sea, the adjacent airspace, and other places over which the United States has sovereignty or some measure of legislative control.'' Restatement (Fourth) of Foreign Relations Law sec. 404 (2018).

[109] *See RJR Nabisco, Inc.* v. *European Cmty.,* 136 S. Ct. 2090 (2016) (Racketeer Influenced and Corrupt Organizations Act); *Kiobel,* 569 U.S. at 115–16 (Alien Tort Statute); *Morrison* v. *Nat'l Austl. Bank Ltd.,* 561 U.S. 247, 255 (2010) (Securities and Exchange Act of 1934); *WesternGeco LLC* v. *ION Geophysical Corp.,* 138 S. Ct. 2129 (2018) (Patent Act).

[110] *See RJR Nabisco,* 136 S. Ct. at 2101 (citing *Morrison,* 561 U.S. at 267 n.9; *Kiobel,* 569 U.S. 108); *see also WesternGeco LLC,* 138 S. Ct. 2129.

[111] *Id.* (''If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.''). This two-step framework for analyzing extraterritoriality issues is also reflected in the Restatement of Foreign Relations Law. *See* Restatement (Fourth) of Foreign Relations Law sec. 404 (2018).

[112] Section 102(2)(C) directs Federal agencies to provide a detailed statement for major Federal actions significantly affecting the quality of the human environment, and requires the responsible official to consult with and obtain the comments of Federal agencies with jurisdiction or special expertise, as well as to make copies of the statement and comments and views of Federal, state and local agencies available to the President, CEQ and the public. 42 U.S.C. 4332(2)(C). Nothing in the text states that this section was intended to require the preparation of detailed statements for actions located outside the United States.

[113] *See also Nat. Res. Def. Council* v. *Nuclear Regulatory Comm'n,* 647 F. 2d 1345, 1367 (D.C. Cir. 1981) (''NEPA's legislative history illuminates nothing in regard to extraterritorial application.'').

permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.'' *RJR Nabisco,* 136 S. Ct. at 2101. Therefore, CEQ provides in paragraph (q)(1)(i) of the final rule that NEPA does not apply to ''agency activities or decisions with effects located entirely outside of the jurisdiction of the United States.''

iii. Non-Discretionary Activities or Decisions

In the NPRM, CEQ proposed to clarify that the definition does not include non-discretionary activities or decisions made in accordance with the agency's statutory authority. The Supreme Court has held that analysis of a proposed action's effects under NEPA is not required where an agency has limited statutory authority and ''simply lacks the power to act on whatever information might be contained in the EIS.'' *Pub. Citizen,* 541 U.S. at 768; *see also South Dakota,* 614 F.2d at 1193 (holding that the Department of the Interior's issuance of a mineral patent that was a ministerial act did not come within NEPA); *Milo Cmty. Hosp.* v. *Weinberger,* 525 F.2d 144, 148 (1st Cir. 1975) (NEPA analysis of impacts not required when agency was under a statutory duty to take the proposed action of terminating a hospital). CEQ includes this clarification in paragraph (q)(1)(ii).

iv. Final Agency Action and Failure To Act

CEQ proposed to strike the statement that major Federal action includes a failure to act and instead clarify that the definition excludes activities or decisions that do not result in final agency action under the APA. The basis for including only final agency actions is the statutory text of the APA, which provides a right to judicial review of all ''final agency action[s] for which there is no other adequate remedy in a court.'' 5 U.S.C. 704. CEQ includes this clarification in paragraph (q)(1)(iii) of the final rule and includes ''or other statute that also includes a finality requirement'' because CEQ recognizes that other statutes may also contain finality requirements beyond those of the APA. As the NPRM noted, NEPA applies when agencies are considering a proposal for decision. In the case of a ''failure to act,'' there is no proposed action and therefore there are no alternatives that the agency may consider. *S. Utah Wilderness All.,* 542 U.S. at 70–73. Judicial review is available only when an agency fails to take a discrete action it is required to take. *Id.* In omitting the reference to a failure to act from the definition of ''major Federal action,'' CEQ does not contradict the definition of ''agency action'' under the APA at 5 U.S.C. 551(13), and recognizes that the APA may compel agency action that is required but has been unreasonably withheld. If an agency is compelled to take such agency action, it should prepare a NEPA analysis at that time, as appropriate.

v. Enforcement Actions

In the final rule, CEQ moves the exclusion of judicial or administrative civil or criminal enforcement actions from 40 CFR 1508.18(a) to paragraph (q)(1)(iv) of § 1508.1. CEQ did not propose changes to this language in the NPRM. In the final rule, CEQ moves this language and revises it consistent with the format of the list in paragraph (q)(1).

vi. General Revenue Sharing Funds

CEQ proposed to strike the specific reference to the State and Local Fiscal Assistance Act of 1972 from 40 CFR 1508.18(a) and clarify that general revenue sharing funds do not meet the definition of major Federal action because the agency has no discretion. CEQ includes this change in paragraph (q)(1)(v) in the final rule.

vii. Minimal Federal Funding or Involvement

CEQ proposed to clarify that non-Federal projects with minimal Federal funding or minimal Federal involvement such that the agency cannot control the outcome of the project are not major Federal actions. The language in paragraph (q)(1)(vi) of the final rule is consistent with the holdings of relevant circuit court cases that have addressed this issue. *See Rattlesnake Coal.* v. *U.S. EPA,* 509 F.3d 1095, 1101 (9th Cir. 2007) (Federal funding comprising six percent of the estimated implementation budget not enough to federalize implementation of entire project); *New Jersey Dep't of Envtl. Prot. & Energy* v. *Long Island Power Auth.,* 30 F.3d 403, 417 (3d Cir. 1994) (''Federal approval of a private party's project, where that approval is not required for the project to go forward, does not constitute a major Federal action.''); *United States* v. *S. Fla. Water Mgmt. Dist.,* 28 F.3d 1563, 1572 (11th Cir. 1994) (''The touchstone of major [F]ederal activity constitutes a [F]ederal agency's authority to influence nonfederal activity. 'The [F]ederal agency must possess actual power to control the nonfederal activity.' '' (quoting *Sierra Club* v. *Hodel,* 848 F.2d 1068, 1089 (10th Cir. 1988), *overruled on other grounds by Vill. of Los Ranchos de Albuquerque* v. *Marsh,* 956 F.2d 970 (10th Cir. 1992)); *Sugarloaf Citizens Ass'n* v. *FERC,* 959 F.2d 508, 512 (4th Cir. 1992); *Save Barton Creek Ass'n* v. *Fed. Highway Admin.,* 950 F.2d 1129, 1134–35 (5th Cir. 1992); *Macht* v. *Skinner,* 916 F.2d 13, 20 (D.C. Cir. 1990) (funding for planning and studies not enough to federalize a project); *Vill. of Los Ranchos de Albuquerque* v. *Barnhart,* 906 F.2d 1477, 1482 (10th Cir. 1990); *Sierra Club* v. *Penfold,* 857 F.2d 1307, 1314 (9th Cir. 1998) (finding that the Bureau of Land Management's review of Notice mines, which do not require agency approval before commencement of mining, is ''only a marginal [F]ederal action rather than a major action''); *Winnebago Tribe of Neb.* v. *Ray,* 621 F. 2d 269, 272 (8th Cir. 1980) (''Factual or veto control, however, must be distinguished from legal control or 'enablement''' (citing *Med. Ctr., Inc.,* 584 F.2d 619)); *Atlanta Coal. on the Transp. Crisis* v. *Atlanta Reg'l Comm'n,* 599 F.2d 1333, 1347 (5th Cir. 1979); *Ctr. for Biological Diversity* v. *HUD,* 541 F. Supp. 2d 1091, 1099 (D. Ariz. 2008), *aff'd, Ctr. for Biological Diversity* v. *HUD,* No. 09–16400, 359 Fed. Appx. 781, 2009 WL 4912592 (9th Cir. Nov. 25, 2009) (unreported); *see also Touret* v. *NASA,* 485 F. Supp. 2d 38 (D.R.I. 2007).

As discussed in the NPRM, in these circumstances, there is no practical reason for an agency to conduct a NEPA analysis because the agency could not influence the outcome of its action to address the effects of the project. For example, this might include a very small percentage of Federal funding provided only to help design an infrastructure project that is otherwise funded through private or local funds. This change would help to reduce costs and delays by more clearly defining the kinds of actions that are appropriately within the scope of NEPA. The final rule includes these criteria in paragraph (q)(1)(vi) to make clear that these projects are ones where the agency does not exercise sufficient control and responsibility over the outcome of the project.

CEQ expects that agencies will further define these non-major actions, for which the agency does not exercise sufficient control and responsibility over the outcome of the project, in their agency NEPA procedures pursuant to § 1507.3(d)(4). For example, agencies that exercise trust responsibilities over activities or decisions that occur on or involve land held in trust by the United

States for the benefit of an Indian Tribe, or are held in fee subject to a restriction against alienation, may define those activities or decisions that involve minimal Federal funding or involvement. In such circumstances, the Federal Government does not exercise sufficient control and responsibility over the effects of actions on Indian lands, and a ''but for'' causal relationship of requiring Federal approval for such actions is insufficient to make an agency responsible for any particular effects from such actions.

In the NPRM, CEQ also invited comment on whether there should be a threshold (percentage or dollar figure) for ''minimal Federal funding,'' and if so, what would be an appropriate threshold and the basis for such a threshold. CEQ did not receive sufficient information to establish such a threshold in the final rule.

viii. Loans and Loan Guarantees

CEQ also proposed to exclude loans, loan guarantees, and other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effects of the action. CEQ includes this in the final rule in paragraph (q)(1)(vii), changing ''action'' to ''such assistance'' to remove the ambiguity with the use of the defined term in the definition. CEQ proposed to also exclude the farm ownership and operating loan guarantees provided by the Farm Service Agency (FSA) of the U.S. Department of Agriculture pursuant to 7 U.S.C. 1925 and 1941 through 1949, and the business loan guarantee programs of the Small Business Administration (SBA), 15 U.S.C. 636(a), 636(m), and 695 through 697f. CEQ includes these as examples of loan guarantees in paragraph (q)(1)(vii) and makes one correction to the citation to SBA's business loan guarantee programs, changing the final section cited from 697f to 697g.

By guaranteeing loans, FSA is not lending Federal funds; a ''guaranteed loan'' under FSA regulations is defined in 7 CFR 761.2(b) as a ''loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee.'' The FSA loan guarantees are limited statutorily to an amount not to exceed $1.75 million (with allowance for inflation). *See* 7 U.S.C. 1925 and 1943. For fiscal year 2019, the average loan amount for a guaranteed operating loan is $289,393; and the average for a guaranteed farm ownership loan is $516,859.[114] The relatively modest amounts of these loan guarantees suggest that these are not ''major'' within the meaning of the NEPA statute and for that reason CEQ makes this result clear in a specific application of its definition of ''major Federal action.'' In determining whether Federal funding federalizes a non-Federal action, courts have considered whether the proportion of Federal funds in relation to funds from other sources is ''significant.'' *See, e.g., Ka Makani 'O Kohala Ohana Inc.* v. *Dep't of Water Supply,* 295 F.3d 955, 960 (9th Cir. 2002) (''While significant [F]ederal funding can turn what would otherwise be a [S]tate or local project into a major Federal action, consideration must be given to a great disparity in the expenditures forecast for the [S]tate [and county] and [F]ederal portions of the entire program. . . . In the present case, the sum total of all of the [F]ederal funding that was ever offered . . . is less than two percent of the estimated total project cost.'' (alteration in original) (internal quotation marks and citation omitted)); *Friends of the Earth, Inc.* v. *Coleman,* 518 F.2d 323, 329 (9th Cir. 1975) (holding Federal funding amounting to 10 percent of the total project cost not adequate to federalize project under NEPA); *Sancho* v. *Dep't of Energy,* 578 F. Supp. 2d 1258, 1266–68 (D. Haw. 2008) (Federal provision of less than 10 percent of project costs not sufficient to federalize project); *Landmark West!* v. *U.S. Postal Serv.,* 840 F. Supp. 994, 1009 (S.D.N.Y. 1993), *aff'd,* 41 F.3d 1500 (2d Cir. 1994) (holding U.S. Postal Service's role in private development of new skyscraper was not sufficient to federalize the project).

Furthermore, FSA loan guarantee programs do not provide any Federal funding to the participating borrower. Rather, FSA's role is limited to providing a guaranty to the private lender; no Federal funds are expended unless the borrower defaults on the private third-party loan, and the lender is unable to recover its debt through foreclosure of its collateral. In the event of default, the guarantee is paid to the lender, not to lender's borrower. FSA rarely makes guaranteed loan loss claim payments because delinquency rates are very low, ranging from between 0.98 and 1.87 percent from 2005 to 2019, and 1.62 percent in 2019.[115] The FSA guaranteed loan loss rates have ranged between 0.2 and 0.6 percent during the same time period.[116]

For purposes of triggering NEPA, ''[t]he mere possibility of [F]ederal funding in the future is too tenuous to convert a local project into [F]ederal action.'' *Pres. Pittsburgh* v. *Conturo,* 2011 U.S. Dist. LEXIS 101756, at *13 (W.D. Pa. 2011). Indeed, in *Sancho,* the court observed that ''analysis of the 'major Federal action' requirement in NEPA must focus upon [F]ederal funds that have already been distributed. Federal funds that have only been budgeted or allocated toward a project cannot be considered because they are not an 'irreversible and irretrievable commitment of resources.' '' *Sancho,* 578 F. Supp. 2d at 1267 (internal citation omitted). The court further stated that ''[t]he expectation of receiving future funds will not transform a local or state project into a federal project. . . . Regardless of the percentage, consideration of the budgeted future federal funds is not ripe for consideration in the 'major Federal action' analysis.'' *Id.* Other district courts have also found that, to federalize a project, the Federal funding must be more than ''the passive deferral of a payment'' and must be provided ''primarily to directly further a policy goal of the funding agency.'' *Hamrick* v. *GSA,* 107 F. Supp. 3d 910, 926 (C.D. Ill. 2015) (citing *Landmark West!,* 840 F. Supp. at 1007).

FSA's role is to protect the financial interests of the United States, and its relationship is with the lender not the borrower. 7 CFR 762.103(a). FSA's involvement is primarily to ensure the financial stability of the loan and ensure proper loan servicing by the lender. Therefore, the context of these FSA regulations does not involve NEPA and is not compliance-driven but only meant to ensure that, in the event of a default, the loan proceeds are disbursed by the lender, used properly, and that the project is completed and operating so as to produce income necessary for the loan to be repaid.

If a lender violates one of FSA's regulations, FSA's only remedy is not to pay the loss claim in the event of a liquidation. FSA does not possess control or actual decision-making authority over the lender's issuance of the loan, the funded facility, or operations of the borrower. Courts have

[114] *See* Executive Summary for Farm Loan Programs in Fiscal Year 2019, *https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/program-data/FY2019_Executive_Summary.pdf. See generally https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/program-data/index.*

[115] *See* Guaranteed Loan Executive Summary, as of FY 2019, *https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/program-data/FLP_Guaranteed_Loan_Servicing_Executive_Summary.pdf.*

[116] *Id.*

recognized Federal agencies do not have sufficient control over loan guarantees to trigger NEPA. *See, e.g., Ctr. for Biological Diversity,* 541 F. Supp. 2d 1091, *aff'd, Ctr. for Biological Diversity,* No. 08–16400, 359 F. Appx. 781 (''The agencies guarantee loans issued by private lenders to qualified borrowers, but do not approve or undertake any of the development projects at issue. The agencies' loan guarantees have such a remote and indirect relationship to the watershed problems allegedly stemming from the urban development that they cannot be held to be a legal cause of any effects on the protected species for purposes of either the ESA or the NEPA.'' *Ctr. for Biological Diversity,* No. 08–16400, 359 F. Appx. at 783). ''The [F]ederal agency must possess actual power to control the nonfederal activity.'' *Hodel*, 848 F.2d at 1089, *overruled on other grounds by Vill. of Los Ranchos de Albuquerque* v. *Marsh,* 956 F.2d 970.

SBA's business loan programs include general business loan programs (7(a) Program), authorized by section 7(a) of the Small Business Act, 15 U.S.C. 636(a); the microloan demonstration loan program (Microloan Program), authorized by section 7(m) of the Small Business Act, 15 U.S.C. 636(m); and the development company program (504 Program), which is a jobs-creation program, authorized by Title V of the Small Business Investment Act of 1958, 15 U.S.C. 695–697g. Under all of these programs, SBA does not recruit or work with the borrower, or service the loan unless, following a default in payment, the lender has collected all that it can under the loan.

Under the 7(a) Program, SBA guarantees a percentage of the loan amount extended by a commercial lender to encourage such lenders to make loans to eligible small businesses. The lender seeks and receives the guaranty, not the applicant small business. In over 80 percent of loans stemming from the 7(a) Program, the lender approves the loan without SBA's prior review and approval through the 7(a) Program's Preferred Lender Program (''PLP program'').[117] Further, SBA does not expend Federal funds unless there is a default by the borrower in paying the loan; in such cases, SBA reimburses the lender in accordance with SBA's guarantee percentage. The maximum amount for a standard loan under the 7(a) program is $5 million, while various 7(a) loans have lesser maximum amounts of $500,000 or less.[118]

Under the Microloan Program, recipient entities can obtain loans, up to $50,000, for certain, limited purposes. SBA provides funds to designated intermediary lenders, which are non-profit, community-based organizations. Each of the lenders has its own lending and credit requirements, and the lenders extend the microloan financing. Recipients only may use the funds for working capital, inventory or supplies, furniture or fixtures, or machinery or equipment. They cannot purchase real estate or pay existing debt.

Under the 504 Program, small businesses can obtain long-term, fixed-rate financing to acquire or improve capital assets. Certified Development Companies (CDCs), which are private, mostly non-profit, corporations certified by SBA to promote local and community economic development, implement the program. Typically, a 504 Program project is funded by three sources: (1) A loan, secured with a senior lien, from a private-sector lender for 50 percent of the project costs; (2) an equity contribution from the borrower of at least 10 percent of the project costs; and (3) a loan covering up to 40 percent of the total costs, which is funded by proceeds from the sale to investors of an SBA-guaranteed debenture issued by a CDC.[119] The 504's Premier Certified Lender Program (''PCLP program'') provides for only limited SBA review of eligibility, and SBA delegates the responsibility to CDCs to issue an SBA guarantee of debenture for eligible loans without prior approval by SBA. 15 U.S.C. 697e.[120] Under the 504 program, the maximum loan amount is $5 million, although small manufacturers or certain energy projects, including energy efficiency or renewable generation projects, may qualify for a $5.5 million debenture.[121] SBA does not expend Federal funds unless there is a default by the borrower in paying the debenture-funded loan, in which case SBA pays the outstanding balance owed on the debenture to the investors. SBA expends Federal funds on its loan guarantee programs only when expected losses from defaults exceed expected fee collections. Section 7(a) and 504 loan program delinquency rates are 0.8 percent and 0.7 percent as of July 2019 respectively.[122]

CEQ has determined that FSA and SBA do not have sufficient control and responsibility over the underlying activities to meet the definition of major Federal action. The issuance of loan guarantees to a non-Federal lender to back a percentage of a loan that the lender decides to make to a private, third-party borrower is insufficient control or authority over the underlying project. *See Rattlesnake Coal.,* 509 F.3d at 1102 (''The United States must maintain decision making authority over the local plan in order for it to become a major [F]ederal action.''); *Ka Makani,* 295 F.3d at 961 (''Because the final decision-making power remained at all times with [the State agency], we conclude that the [Federal agency] involvement was not sufficient to constitute 'major [F]ederal action.' '' (quoting *Barnhart,* 906 F.2d at 1482)); *S. Fla. Water Mgmt. Dist.,* 28 F.3d at 1572 (''The [F]ederal agency must possess actual power to control the nonfederal activity.'' (citation omitted)).

CEQ also invited comment on whether any other types of financial instruments should be considered non-major Federal actions and the basis for such exclusion. CEQ did not receive sufficient comments to make any additional changes to the definition of major Federal action with respect to other financial instruments.

ix. Other Changes to Major Federal Action

In the final rule, paragraphs (q)(2) and (3) include the examples of activities and decisions that are in 40 CFR 1508.18(a) and (b). CEQ invited comment on whether it should change ''partly'' to ''predominantly'' in paragraph (q)(2) for consistency with the edits to the introductory text regarding ''minimal Federal funding.'' CEQ does not make this change in the final rule. CEQ notes that ''continuing'' activities in paragraph (q)(2) refers to situations where a major Federal action remains to occur, consistent with § 1502.9(d) and *Norton* v. *Southern Utah Wilderness Alliance.* 542 U.S. at 73.

[117] Pursuant to the Small Business Act, under the PLP program, SBA delegates responsibility to experienced and qualified lenders to issue an SBA guarantee on a loan without prior approval by SBA. The PLP program is defined as a ''program established by the Administrator . . . under which a written agreement between the lender and the Administration delegates to the lender . . . complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration . . . .'' 15 U.S.C. 636(a)(2)(C)(iii). Thus, PLP program lenders have delegated authority to make SBA-guaranteed loans without any approval from SBA.

[118] 15 U.S.C. 636(a).

[119] In the 504 program, SBA guarantees payments of debentures, which are bonds sold to investors. The proceeds from the sale of the debentures are used to fund the underlying loans to borrowers.

[120] Congress has mandated that guaranteed loans made by PCLPs shall not include SBA ''review of decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.'' 15 U.S.C. 697e(e)(2).

[121] 15 U.S.C. 696(2)(A).

[122] *See* SBA Fiscal Year 2019 Agency Financial Report at 22, *available at https://www.sba.gov/document/report--agency-financial-report.*

CEQ proposed to insert ''implementation of'' before ''treaties'' in proposed paragraph (q)(2)(i) to clarify that the major Federal action is not the treaty itself, but rather an agency's action to implement that treaty. CEQ makes this change in § 1508.1(q)(3)(i) of the final rule and clarifies that this includes an agency's action to implement a treaty pursuant to statute or regulation. CEQ also changes ''pursuant to'' to ''under'' the APA and adds a reference to ''other statutes'' after the APA. While agencies conduct the rulemaking process pursuant to the APA, they also may do so under the authority of the specific statutes.

CEQ proposed to strike ''guide'' from proposed paragraph (q)(2)(ii) because guidance is non-binding. CEQ makes this change in the final rule in § 1508.1(q)(3)(ii).

Finally, CEQ invited comment in the NPRM on whether CEQ should further revise the definition of ''major Federal action'' to exclude other *per se* categories of activities or to further address what NEPA analysts have called ''the small handle problem.'' [123] CEQ did not receive sufficient information to make any additional changes.

18. Definition of ''Matter''

The NPRM did not propose any changes to the definition of matter in paragraph (r). CEQ did not revise this definition in the final rule.

19. Clarifying the Meaning of ''Mitigation''

CEQ proposed to amend the definition of ''mitigation'' to define the term and clarify that NEPA does not require adoption of any particular mitigation measure, consistent with *Methow Valley,* 490 U.S. at 352–53. In *Methow Valley,* the Supreme Court held that NEPA and the CEQ regulations require ''that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated,'' but do not establish ''a substantive requirement that a complete mitigation plan be actually formulated and adopted'' before the agency can make its decision. *Id.* at 352.

CEQ also proposed to amend the definition of ''mitigation'' to make clear that mitigation must have a nexus to the effects of the proposed action, is limited to those actions that have an effect on the environment, and does not include actions that do not have an effect on the environment. This change will make the NEPA process more effective by clarifying that mitigation measures must actually be designed to mitigate the effects of the proposed action. This amended definition is consistent with CEQ's Mitigation Guidance, *supra* note 29.

Under that guidance, if an agency believes that the proposed action will provide net environmental benefits through use of compensatory mitigation, the agency should incorporate by reference the documents that demonstrate that the proposed mitigation will be new or in addition to actions that would occur under the no-action alternative, and the financial, legal, and management commitments for the mitigation. Use of well-established mitigation banks and similar compensatory mitigation legal structures should provide the necessary substantiation for the agency's findings on the effectiveness (nexus to effects of the action, proportionality, and durability) of the mitigation. Other actions may be effectively mitigated through use of environmental management systems that provide a structure of procedures and policies to systematically identify, evaluate, and manage environmental impacts of an action during its implementation.[124]

CEQ makes the proposed changes in the final rule with minor edits to improve clarity. Specifically, CEQ replaces ''reasonably foreseeable impacts to the human environment'' with ''effects'' to more precisely refer to the defined term ''effects.'' In response to comments, CEQ also adds ''or alternatives'' after ''proposed action'' to clarify that mitigation measures mean measures to avoid, minimize, or compensate for effects caused by a proposed action or its alternatives. CEQ also replaces ''the effects of a proposed action'' with ''those effects'' to reduce wordiness and provide additional clarity.

20. Definition of ''NEPA Process''

The NPRM did not propose any changes to the definition of NEPA process in paragraph (t). CEQ did not revise this definition in the final rule.

21. Clarifying the Meaning of ''Notice of Intent''

CEQ proposed to revise the definition of ''notice of intent'' in paragraph (u) to move the operative requirements for what agencies must include in the notices to § 1501.9(d) and add the word ''public'' to clarify that the NOI is a public notice. CEQ makes these changes in the final rule.

22. New Definition of ''Page''

CEQ proposed a new definition of ''page'' in paragraph (v) to provide a word count (500 words) for a more standard functional definition of ''page'' for page count and other NEPA purposes. CEQ adds this definition as proposed to the final rule. As discussed in the NPRM, this change updates NEPA for modern electronic publishing and internet formatting, in which the number of words per page can vary widely depending on format. It also ensures some uniformity in document length while allowing unrestricted use of the graphic display of quantitative information, tables, photos, maps, and other geographic information that can provide a much more effective means of conveying information about environmental effects. This change supports the original CEQ page limits as a means of ensuring that environmental documents are readable and useful to decision makers.

23. New Definition of ''Participating Agency''

CEQ proposed to add the concept of a participating agency to the CEQ regulations in paragraph (w). CEQ proposed to define participating agency consistent with the definition in FAST–41 and 23 U.S.C. 139. CEQ proposed to add participating agencies to § 1501.7(i) regarding the schedule and replace the term ''commenting'' agencies with ''participating'' agencies throughout. CEQ adds this definition as proposed to the final rule.

24. Clarifying the Meaning of ''Proposal''

CEQ proposed clarifying edits to the definition of proposal in paragraph (x) and to strike the operative language regarding timing of an EIS because it is already addressed in § 1502.5. CEQ makes these changes in the final rule.

25. New Definition of ''Publish and Publication''

CEQ proposed to define publish and publication in paragraph (y) to provide agencies with the flexibility to make environmental reviews and information available to the public by electronic means. The 1978 regulations predate personal computers and a wide range of technologies now used by agencies such as the modern internet and GIS mapping tools. To ensure that agencies do not exclude the affected public from the NEPA process due to a lack of resources (often referred to as the ''digital

[123] *See* Daniel R. Mandelker et al., NEPA Law and Litigation, sec. 8:20 (2d ed. 2019) (''This problem is sometimes called the 'small handle' problem because [F]ederal action may be only be a 'small handle' on a non[-F]ederal project.'').

[124] *See* Council on Environmental Quality, Aligning National Environmental Policy Act Processes with Environmental Management Systems (Apr. 2007), *https://ceq.doe.gov/docs/ceq-publications/NEPA_EMS_Guide_final_Apr2007.pdf.*

divide''), the definition retains a provision for printed environmental documents where necessary for effective public participation. CEQ adds this definition as proposed in the final rule.

26. New Definition of ''Reasonable Alternatives''

Several ANPRM commenters asked CEQ to include a new definition of ''reasonable alternatives'' in the regulations with emphasis on how technical and economic feasibility should be evaluated. CEQ proposed a new definition of ''reasonable alternatives'' in paragraph (z) to provide that reasonable alternatives must be technically and economically feasible and meet the purpose and need of the proposed action. *See, e.g., Vt. Yankee,* 435 U.S. at 551 (''alternatives must be bounded by some notion of feasibility''). CEQ also proposed to define reasonable alternatives as ''a reasonable range of alternatives'' to codify Questions 1a and 1b in the Forty Questions, *supra* note 2. Agencies are not required to give detailed consideration to alternatives that are unlikely to be implemented because they are infeasible, ineffective, or inconsistent with the purpose and need for agency action.

Finally, CEQ proposed to clarify that a reasonable alternative must also consider the goals of the applicant when the agency's action involves a non-Federal entity. These changes will help reduce paperwork and delays by helping to clarify the range of alternatives that agencies must consider. Where the agency action is in response to an application for permit or other authorization, the agency should consider the applicant's goals based on the agency's statutory authorization to act, as well as other congressional directives, in defining the proposed action's purpose and need. CEQ adds this definition as proposed in the final rule.

27. New Definition of ''Reasonably Foreseeable''

CEQ received comments on the ANPRM requesting that the regulations provide a definition of ''reasonably foreseeable.'' CEQ proposed to define ''reasonably foreseeable'' in paragraph (aa) consistent with the ordinary person standard—that is what a person of ordinary prudence in the position of the agency decision maker would consider in reaching a decision. *Sierra Club* v. *Marsh,* 976 F.2d 763, 767 (1st Cir. 1992). CEQ adds this definition as proposed in the final rule.

28. Definition of ''Referring Agency''

CEQ proposed a grammatical edit to the definition of referring agency in paragraph (bb). CEQ makes this change in the final rule.

29. Definition of ''Scope''

CEQ proposed to move the operative language from paragraph (cc), which tells agencies how to determine the scope of an EIS, to § 1501.9(e). CEQ makes this change in the final rule.

30. New Definition of ''Senior Agency Official''

CEQ proposed to define the new term ''senior agency official'' in paragraph (dd) to provide for agency officials that are responsible for the agency's NEPA compliance. As reflected in comments, implementation of NEPA can require significant agency resources. Without senior agency official leadership and effective management of NEPA reviews, the process can be lengthy, costly, and subject to uncertainty and delays. CEQ seeks to advance efficiencies to ensure that agencies use their limited resources to effectively consider environmental impacts and support timely and informed decision making by the Federal Government. CEQ adds this definition with some changes in the final rule. Specifically, CEQ does not include the phrase ''and representing agency analysis of the effects of agency actions on the human environmental in agency decision-making processes'' because the duties and responsibilities of the ''senior agency official,'' including representing the agency, are discussed in various provisions of the subchapter. *See* §§ 1501.5(f), 1501.7(d), 1501.8(b)(6) and (c), 1501.10, 1502.7, 1507.2.

31. Definition of ''Special Expertise''

The NPRM did not propose any changes to the definition of special expertise in paragraph (ee). CEQ did not revise this definition in the final rule.

32. Striking the Definition of ''Significantly''

Because 40 CFR 1508.27 did not define ''significantly,'' but rather set out factors for agencies to consider in assessing whether a particular effect is significant, CEQ proposed to strike this definition and discuss significance in § 1501.3(b), as described in section II.C.3. CEQ makes this change in the final rule.

33. Clarifying the Meaning of ''Tiering''

CEQ proposed to amend the definition of ''tiering'' in paragraph (ff) to make clear that agencies may use EAs at the programmatic stage as well as the subsequent stages. This clarifies that agencies have flexibility in structuring programmatic NEPA reviews and associated tiering. CEQ proposed to move the operative language describing how any agency determines when and how to tier from 40 CFR 1508.28 to § 1501.11(b). CEQ makes these changes in the final rule.

K. CEQ Guidance Documents

In the proposed rule, CEQ stated that if the proposal was adopted as a final rule, it would supersede any previous CEQ NEPA guidance and handbooks. With this final rule, CEQ clarifies that it will provide notice in the **Federal Register** listing withdrawn guidance. CEQ will issue updated or new guidance consistent with Presidential directives. CEQ also intends to update the Citizen's Guide to NEPA.[125]

III. Rulemaking Analyses and Notices

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

E.O. 12866 [126] directs agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity. E.O. 13563 [127] reaffirms E.O. 12866, and directs agencies to use a process that provides for public participation in developing rules; promotes coordination, simplification, and harmonization; and reduces burdens and maintains flexibility.

Section 3(f) of E.O. 12866 sets forth the four categories of regulatory action that meet the definition of a significant regulatory action. The first category includes rules that have an annual effect on the economy of $100 million or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities. Some commenters stated that this rulemaking would have such an effect, and therefore CEQ should have prepared a regulatory impact statement. Commenters noted, for example, proposed changes to the definition of effects, alternatives analysis, and overall effect on the number of Federal actions subject to NEPA as examples of impacts

[125] *Supra* note 29.

[126] 58 FR 51735 (Oct. 4, 1993).

[127] 76 FR 3821 (Jan. 21, 2011).

contributing to an impact of over $100 million on the public.

CEQ agrees that this an economically significant action. However, many of the changes made in this rule codify long-standing practices and case law that have developed since CEQ issued the 1978 regulations. Under OMB Circular A–4, ''Regulatory Analysis'' (Sept. 17, 2003),[128] the ''no action'' baseline is ''what the world will be like if the proposed rule is not adopted.'' Changes to the regulations based on long-standing guidance and Supreme Court case law would be included in the baseline for the rule; therefore, their codification would generate marginal cost savings. Similarly, changes that clarify or otherwise improve the ability to interpret and implement the regulations would have little to no quantifiable impact. The appendix to the Regulatory Impact Analysis for the Final Rule, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act[129] (''RIA Appendix'') provides a summary of the anticipated economic and environmental impacts associated with the changes in the final rule. In evaluating economic and environmental impacts, CEQ has considered the statute and Supreme Court case law, and the 1978 regulations. As discussed throughout Section II and the Final Rule Response to Comments, CEQ has made revisions to better align the regulations with the statute, codify Supreme Court case law and current agency practice, improve the timeliness and efficiency of the NEPA process, and make other changes to improve the clarity and readability of the regulations.

The revisions to CEQ's regulations are anticipated to significantly lower administrative costs as a result of changes to reduce unnecessary paperwork. Government-wide, the average number of pages for a final EIS is approximately 661 pages. The final rule includes numerous changes to reduce the duplication of paperwork and establishes presumptive page limits for EAs of 75 pages, and for EISs of 150 pages (or 300 pages for proposals of unusual scope or complexity).[130] However, agencies may request longer page limits with approval from a senior agency official and include additional material as appendices. The final rule also makes numerous changes to improve the efficiency of the NEPA process and establishes presumptive time limits for EAs of one year and for EISs of two years, which may be extended with approval of a senior agency official. CEQ expects the final rule to reduce the length of EAs and EISs, and the time for completing and these analyses, and to lower administrative costs government-wide.

A total of 1,276 EISs were completed from 2010 through 2018, and the median EIS completion time was 3.5 years with only 257 EISs completed in 2 years or less.[131] Based on the efficiencies and presumptive time limit for EISs in the final rule, the length of time to complete the 1019 EISs that took longer than 2 years could be reduced by 58 percent, assuming a 2-year completion time for all of those actions. Applying this potential time savings to the total administrative cost to prepare those EISs taking in excess of 2 years could result in roughly $744 million in savings over the 9-year time period for an annualized savings of roughly $83 million (2016 adjusted dollars).[132] The amount of time required to prepare an EIS does not necessarily correlate with the total cost. However, for those EISs taking over two years to prepare, comparing the anticipated time savings with the respective administrative costs provides insight into the potential cost savings that an agency may generate under the final rule. Additionally, CEQ notes that there may be cost savings related to the preparation of EAs and application of CEs. While the cost of these actions is significantly lower, agencies conduct such reviews in much larger numbers than EISs.

Agencies have not routinely tracked costs of completing NEPA analyses.[133] With implementation of this final rule, in particular § 1502.11(g), agencies will be required to provide the estimated total cost of preparing an EIS. CEQ expects this will begin to address the data gap that currently exists relating to the administrative costs of NEPA compliance.

CEQ expects these and other changes in the final rule to catalyze economic benefits by expediting some reviews, including through improved coordination and management and less focus on non-significant impacts. Commenters from industry on both the ANPRM and proposed rule frequently discussed that delays under the 1978 regulations resulted in higher costs; however, these costs are difficult to quantify. One estimate in 2015 found that the cost of a 6-year delay in infrastructure projects across the electricity transmission, power generation, inland waterways, roads and bridges, rail, and water (both drinking and wastewater) sectors is $3.7 trillion,[134] which was subsequently updated to $3.9 trillion in 2018.[135] There may be underlying permits and consultations (*e.g.,* the Endangered Species Act) and other issues that contribute to a delay and therefore allocating a portion of the cost to the NEPA process would be challenging.

NEPA is a procedural statute requiring agencies to disclose and consider potential environmental effects in their decision-making processes. The final rule does not alter any substantive environmental law or regulation such as the Clean Air Act, the Clean Water Act, and the Endangered Species Act. Under the final rule, agencies will continue to consider all significant impacts to the environment. Although some may view the changes in the final rule as reducing the number or scope of analyses, CEQ has determined that, using a baseline of the statutory requirements of NEPA and Supreme Court case law, there are no adverse environmental impacts (see RIA Appendix).

OMB has determined that this final rule is an economically significant regulatory action because it may have an annual effect on the economy of $100 million or more associated with lower administrative costs and reduced paperwork and delays in the environmental review process. This rule sets forth the government-wide process for implementing NEPA in a consistent and coordinated manner. The rule will also require agencies to update their existing NEPA procedures for

[128] 68 FR 58366 (Oct. 10, 2003).

[129] The Regulatory Impact Analysis for the Final Rule, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act is available under ''Supporting Documents'' in the docket on *regulations.gov* under docket ID CEQ–2019–0003.

[130] The 1978 regulations recommended the same page limits for EISs but did not include provisions requiring agencies to meet those page limits. 40 CFR 1502.7.

[131] *See* Council on Environmental Quality, *EIS Timeline Data Excel Workbook,* (June 12, 2020), *https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Data_2020-6-12.xlsx.*

[132] This calculation uses the mid-point ($1.125 million) of the $250,000 to $2 million cost range found in the NEPA Task Force report and assumes a 58 percent reduction in costs for those EISs taking longer than 2 years. NEPA Task Force Report, *supra,* note 28. This number is similar to the cost data from the Department of Energy, which found a median EIS cost of $1.4 million. GAO NEPA Report, *supra,* note 91.

[133] As noted above, a 2014 U.S. Government Accountability Office report found that Federal agencies do not routinely track data on the cost of completing NEPA analyses, and that the cost can vary considerably, depending on the complexity and scope of the project. GAO NEPA Report, *supra* note 91.

[134] Two Years, Not Ten, *supra* note 4.

[135] Press Release, Common Good, Common Good Updates the Cost of US Infrastructure Delays Costs Have Risen $200 Billion Over Five Years to Nearly $3.9 Trillion (May 2018), *https://www.commongood.org/wp-content/uploads/2018/05/Two-Years-Update.pdf.*

consistency with the changes set forth in this final rule.

B. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Under E.O. 13771,[136] agencies must identify for elimination two prior regulations for every one regulation issued, and promulgate regulations consistent with a regulatory budget. This rule is a deregulatory action under E.O. 13771 and OMB's guidance implementing E.O. 13771, titled ''Reducing Regulation and Controlling Regulatory Costs'' (April 5, 2017).[137] CEQ anticipates that the changes made in this rule will reduce unnecessary paperwork and expedite some reviews through improved coordination and management.

C. Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act, as amended, (RFA), 5 U.S.C. 601 *et seq.,* and E.O. 13272 [138] require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare a regulatory flexibility analysis at the proposed and final rule stages unless it determines and certifies that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). An agency need not perform an analysis of small entity impacts when a rule does not directly regulate small entities. *See Mid-Tex Electric Coop., Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985). This rule does not directly regulate small entities. Rather, it applies to Federal agencies and sets forth the process for their compliance with NEPA. As noted above, NEPA is a procedural statute requiring agencies to disclose and consider potential environmental effects in their decision-making processes, and does not alter any substantive environmental law or regulation. Under the final rule, agencies will continue to consider all significant impacts to the environment.

A few commenters asserted that the rule would impact small entities, including small businesses that provide services relating to the preparation of NEPA documents, outdoor recreation businesses, and other related small businesses. To the extent that the rule may affect small entities, this rulemaking will make the NEPA process more efficient and consistent and clarify the procedural requirements, which CEQ expects to directly benefit Federal agencies and indirectly benefit all other entities engaged in the process, including applicants seeking a Federal permit and those engaged in NEPA compliance activities. In addition, CEQ expects that small businesses and farmers seeking SBA or FSA guaranteed loans will indirectly benefit from the clarifying revisions in the final rule to the definition of major Federal action. Accordingly, CEQ hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities.

D. Congressional Review Act

Before a rule can take effect, the Congressional Review Act (CRA) requires agencies to submit to the House of Representatives, Senate, and Comptroller General a report containing a copy of the rule and a statement identifying whether it is a ''major rule.'' 5 U.S.C. 801. OMB determines if a final rule constitutes a major rule. The CRA defines a major rule as any rule that the Administrator of OMB's Office of Information and Regulatory Affairs finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. 804(2).

OMB has determined that this final rule is a major rule for purposes of the Congressional Review Act. CEQ will submit a report, including the final rule, to both houses of Congress and the Government Accountability Office for review.

E. National Environmental Policy Act

Under the CEQ regulations, major Federal actions may include regulations. When CEQ issued regulations in 1978, it prepared a ''special environmental assessment'' for illustrative purposes pursuant to E.O. 11991. 43 FR at 25232. The NPRM for the 1978 regulations stated ''the impacts of procedural regulations of this kind are not susceptible to detailed analysis beyond that set out in the assessment.'' *Id.* Similarly, in 1986, while CEQ stated in the final rule that there were ''substantial legal questions as to whether entities within the Executive Office of the President are required to prepare environmental assessments,'' it also prepared a special environmental assessment. 51 FR at 15619. The special environmental assessment issued in 1986 made a finding of no significant environmental impact, and there was no finding made for the assessment of the 1978 regulations.

Some commenters expressed the view that CEQ failed to comply with NEPA when publishing the proposed rule that precedes this final rule, and CEQ should have prepared an EA or EIS. The commenters stated that section 102(2)(C) of NEPA requires environmental review of major Federal actions. By not conducting an environmental review under NEPA, commenters stated that CEQ violated its own regulations and past practices in prior regulations. Other commenters stated that NEPA review was required if the proposed rule ''created the possibility'' of significant impacts on the environment. They asserted that the proposed rule was a ''sweeping re-write'' of the 1978 regulations that would alter Federal agencies' consideration of environmental effects of proposed projects. Aspects of the proposed rule that were referenced in this regard include expanded use of CEs, narrow definitions of significance and effects, weakened alternatives analysis, and reduced public participation and agency accountability. Commenters asserted that the consequence of these changes is truncated analysis, a less informed public, and less mitigation.

CEQ disagrees with commenters. CEQ prepared a special assessment on its prior rules for illustrative purposes. Those long-prior voluntary decisions do not forever establish that CEQ has an obligation to apply the CEQ's regulations to changes to those regulations. As noted above, CEQ has the authority to promulgate and revise its regulations consistent with *Chevron* and other applicable case law.

This rule would not authorize any activity or commit resources to a project that may affect the environment. Similar to the 1978 regulations, these regulations do not concern any particular environmental media, nor are the regulations tied to a specific environmental setting. Rather, these regulations apply generally to Federal actions affecting the environment. No action under the regulations or specific issue or problem is singled out for special consideration. *See* Council on Environmental Quality, Special

[136] 82 FR 9339 (Feb. 3, 2017).

[137] *Available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf.*

[138] 67 FR 53461 (Aug. 16, 2002).

Environmental Assessment of Regulations Proposed Under E.O. 11991 to Implement the Procedural Provisions of the National Environmental Policy Act, p. 6 (1978). Further, as stated by CEQ when it proposed the regulations in 1978, procedural rules of this kind are not susceptible to detailed analysis. 43 FR at 25232.

Even if CEQ were required to prepare an EA, it likely would result in a FONSI. CEQ has reviewed the changes made in this final rule and determined that they would not result in environmental impacts. *See* RIA Appendix. For reasons explained in the respective areas of this preamble and further summarized in the RIA Appendix, CEQ disagrees that the clarifications and changes to the processes that Federal agencies follow when relying on CEs, analyzing alternatives, and engaging the public will themselves result in any environmental impacts, let alone potentially significant impacts. This thorough review, in combination with the aforementioned circumstances of the special environmental assessments prepared for the 1978 and 1986 regulations, and the procedural nature of these regulations, reinforces CEQ's view that an EA is neither required nor necessary.

Moreover, preparing an EA for the final rule would not meaningfully inform CEQ or the public. The clarifications and changes in the final rule are entirely procedural and will help to inform the processes used by Federal agencies to evaluate the environmental effects of their proposed actions in the future.

For reasons explained in the respective areas of this preamble and further summarized in the RIA Appendix, CEQ disagrees that changes relating to CEs, analysis of alternatives, public participation, and agency responsibilities will have environmental impacts, let alone potentially significant ones.

In addition, commenters referenced several court opinions in support of their view that an agency's interpretation of a statute can be subject to NEPA review when that interpretation can lead to subsequent, significant effects on the environment, including *Citizens for Better Forestry* v. *U.S. Dep't of Agric.,* 481 F. Supp. 2d 1059 (N.D. Cal. 2007) and *Sierra Club* v. *Bosworth,* 510 F. 3d 1016 (9th Cir. 2007). Commenters stated that CEQ was required to request comment on the appropriate scope of the environmental review of the proposed rule and then prepare, and notice for public comment, an EIS before or in tandem with its publication.

The circumstances in this rule are distinctly different from the case law referenced by commenters. *Citizens for Better Forestry* pertains to the misapplication of an existing CE, where the court found that the agency improperly expanded the scope of an existing CE when applying it to a National Forest Management Act rulemaking. 481 F. Supp. at 1086. In *Sierra Club* v. *Bosworth,* the court agreed with previous cases finding that the promulgation of agency NEPA procedures, including the establishment of new CEs, did not itself require preparation of an EA or EIS, but that agencies need only comply with CEQ regulations setting forth procedural requirements, including consultation with CEQ, and **Federal Register** publication for public comment (40 CFR 1507.3). 510 F.3d at 1022. The court, however, found that the record relied on by the U.S. Forest Service to develop and justify a CE was deficient. *Id.* at 1026–30. Neither of the circumstances in those cases is comparable to the circumstances of this rule. Further, in another relevant case, *Heartwood* v. *U.S. Forest Service,* the court found that neither NEPA nor the CEQ regulations required the agency to conduct an EA or an EIS prior to the promulgation of its procedures creating a CE. 230 F.3d 947, 954–55 (7th Cir. 2000).

This rule serves as the primary regulation from which agencies develop procedures to implement the statute. To prepare an EIS, as some commenters had requested, would necessitate that CEQ apply the 1978 regulations to a rule that revises those same regulations. There is no indication that the statute contemplated such circumstances, and CEQ is not aware of other examples in law where the revisions to procedural rules were subject to the requirements of the rule that those same rules replaced. Further, the 1978 regulations do not require agencies to prepare a NEPA analysis before establishing or updating agency procedures for implementing NEPA. Since this rule would not authorize any activity or commit resources to a project that may affect the environment, preparation of an environmental review is not required.

F. Endangered Species Act

Under the ESA, the promulgation of regulations can be a discretionary agency action subject to section 7 of the ESA. CEQ has determined that updating its regulations implementing the procedural provisions of NEPA has ''no effect'' on listed species and critical habitat. Therefore, ESA section 7 consultation is not required.

Commenters stated that consultation with the Fish and Wildlife Service and the National Marine Fisheries Service is required because the rule may affect or may adversely affect species listed under the ESA. In support of this point, commenters referenced proposed changes to the definition of ''effects'' and ''significantly,'' development of alternatives, and obligations for agencies to obtain information. Commenters noted that a programmatic consultation may be appropriate where an agency promulgates regulations that may affect endangered species. Other commenters believe that the rule is contrary to section 7(a)(1) of ESA, which imposes a specific obligation upon all federal agencies to carry out programs to conserve endangered and threatened species. Commenters stated that the proposed changes eliminate or otherwise weaken requirements pertaining to the assessment of impacts and, in doing so, CEQ fails to satisfy responsibilities under section 7(a)(1).

CEQ disagrees that the aforementioned regulatory changes ''may affect'' listed species or critical habitat. Initially, it is important to note that commenters are conflating ESA and NEPA. As courts have stated numerous times, these are two different statutes with different standards and definitions and, in fact, different underlying policies. As discussed in section II.B.1, the Supreme Court has stated that NEPA is a procedural statute. In contrast, the ESA is principally focused on imposing substantive duties on Federal agencies and the public. Regardless of how definitions or other procedures under NEPA are changed under this regulation or any other regulatory process, it will not change the requirements for Federal agencies under the ESA or its implementing regulations.

This rulemaking is procedural in nature, and therefore does not make any final determination regarding the level of NEPA analysis required for particular actions. CEQ's approach is consistent with the approach taken by other Federal agencies that similarly make determinations of no effect on listed species and critical habitat when establishing or updating agency NEPA procedures. CEQ also notes that neither the 1978 regulations nor the 1986 amendments indicate that CEQ consulted under ESA section 7(a)(2). Setting aside the procedural nature of this rule, CEQ reviewed it to determine if it ''may affect'' listed species or their designated critical habitat. CEQ has closely reviewed the impacts of all the changes made to the 1978 regulations, as summarized in the RIA Appendix and described in greater detail in the

respective responses to comments. None of the changes to the 1978 regulations are anticipated to have environmental impacts, including potential effects to listed species and critical habitat. For example, under § 1501.3 of the final rule, agencies should continue to consider listed species and designated habitat when making a determination of significance with respect to the level of NEPA review.

Contrary to several comments, the final rule does not ignore cumulative effects on listed species. Rather, the final rule includes a definition of effects that comports with Supreme Court case law to encompass all effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives. In general, the changes improve the timeliness and efficiency of the NEPA process while retaining requirements to analyze all activities and environmental impacts covered within the scope of the statute. To the extent the rule modifies the 1978 regulations, the changes do not diminish the quality and depth of environmental review relative to the baseline, which is defined as how NEPA is conducted under applicable Supreme Court case law.

Neither the ESA regulations nor the ESA Section 7 Consultation Handbook (1998) require the action agency to request concurrence from the Fish and Wildlife Service and National Marine Fisheries Service for determinations that an action will have no effect on listed species or their critical habitat. The final rule does not change the obligations of Federal agencies under the ESA; as noted above, importantly, all of the requirements under section 7 and associated implementing regulations and policies continue to apply regardless of whether NEPA analysis is triggered or the form of the NEPA documentation. For the aforementioned reasons, CEQ has determined that the final rule will have no effect on ESA listed species and designated critical habitat.

To the extent commenters imply that, under the authority of ESA section 7(a)(1), CEQ can regulate Federal action agencies with regard to the ESA, this is not accurate. For example, CEQ does not have the authority, under the guise of NEPA, to dictate to Federal action agencies that they may only choose an alternative that has the most conservation value for listed species or designated critical habitat.

All Federal agencies continue to be subject to the ESA and its requirements. Further, as described in detail in the RIA Appendix and in Final Rule Response to Comments on specific changes, none of the changes to the 1978 regulations are anticipated to have environmental impacts, including potential effects to listed species and critical habitat. In general, the changes improve the timeliness and efficiency of the NEPA process while retaining requirements to analyze all environmental impacts covered within the ambit of the statute. CEQ notes that the rulemaking is procedural in nature, and therefore does not make any final determination regarding the level of NEPA analysis required for particular actions.

G. Executive Order 13132, Federalism

E.O. 13132 requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.[139] Policies that have federalism implications include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not have federalism implications because it applies to Federal agencies, not States. However, CEQ notes that States may elect to assume NEPA responsibilities under Federal statutes. CEQ received comments in response to the NPRM from a number of States, including those that have assumed NEPA responsibilities, and considered these comments in development of the final rule.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications.[140] Such policies include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. While the rule is not a regulatory policy that has Tribal implications, the rule does, in part, respond to Tribal government comments concerning Tribal sovereign rights, interests, and the expertise of Tribes in the NEPA process and the CEQ regulations implementing NEPA.

Several commenters stated that it is inaccurate for CEQ to conclude that the rule ''is not a regulatory policy that has Tribal implications,'' under E.O. 13175. Commenters noted that NEPA uniquely and substantially impacts Tribes, and Tribal lands are ordinarily held in Federal trust. Commenters also stated that through NEPA and its implementing regulations, Tribes often engage with the Federal agency on projects located within the Tribes' ancestral lands, including on projects that may affect cultural resources, sacred sites, and other resources. Commenters noted Tribal nations routinely participate in the NEPA process as participating, cooperating, or sometimes lead agencies. Further, the proposed regulations specifically contain provisions that explicitly reference Tribal nations.

Commenters stated that consultation is required by the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation dated November 5, 2009,[141] which supplements E.O. 13175 and requested formal consultation and additional meetings in their region with CEQ on the proposed rule. Commenters stated that the Tribal meetings CEQ held were insufficient in number or capacity for meaningful consultation. Other commenters stated that consultation should start at the outset of the process, and some reference comments provided on the need for consultation during the ANPRM process. Some commenters stated that CEQ should withdraw the proposed rule, and others asked that CEQ postpone or extend the comment period for the rulemaking in order to engage in consultation with Tribal governments in order to make the regulatory framework more responsive to Tribal needs.

The final rule does not meet the criteria in E.O. 13175 that require government-to-government consultation. This rule does not impose substantial direct compliance costs on Tribal governments (section 5(b)) and does not preempt Tribal law (section 5(c)). However, CEQ solicited and received numerous Tribal governmental and organizational public comments during the rulemaking process. The comments received through the ANPRM informed the development of CEQ's proposed rule. For the proposed rule, CEQ provided for a 60-day public comment period, which is consistent with the length of the comment period provided by CEQ for the original 1978 proposed regulations, as well as the APA and E.O. 12866. CEQ notified all

[139] *Supra* note 75.

[140] *Supra* note 69.

[141] 74 FR 57881 (Nov. 9, 2009).

Tribal leaders of federally recognized Tribes by email or mail of the proposed rule and invited comments. CEQ conducted additional Tribal outreach to solicit comments from Tribal leaders and members through three listening sessions held in Denver, Colorado, Anchorage, Alaska, and Washington, DC. CEQ made information to aid the Tribes and the public's review available on its websites at *www.whitehouse.gov/ceq* and *www.nepa.gov,* including a redline version of the proposed changes, a presentation on the proposed rule, and other background information.

One commenter argued that CEQ made a ''substantive'' decision to forego Tribal consultation that it must support with substantial evidence in the administrative record under the APA. While compliance with E.O. 13175 is not subject to judicial review, the final rule explains how CEQ received meaningful and timely input from Tribal leaders and members.

In its ANPRM, CEQ included a specific question regarding the representation of Tribal governments in the NEPA process. *See* ANPRM Question 18 (''Are there ways in which the role of [T]ribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?''). More generally, CEQ's ANPRM sought the views of Tribal governments and others on regulatory revisions that CEQ could propose to improve Tribal participation in Federal NEPA processes. *See* ANPRM Question 2 (''Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, Tribal or local environmental reviews or authorization decisions, and if so, how?''). As discussed in section II.A, CEQ is amending its regulations in the final rule to further support coordination with Tribal governments and agencies and analysis of a proposed action's potential effects on Tribal lands, resources, or areas of historic significance as an important part of Federal agency decision making.

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

E.O. 12898 requires agencies to make achieving environmental justice part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.[142] CEQ has analyzed this final rule and determined that it would not cause disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. This rule would set forth implementing regulations for NEPA; it is in the agency implementation of NEPA when conducting reviews of proposed agency actions where agencies can consider, as needed, environmental justice issues.

Several commenters disagreed with CEQ's determination that the proposed rule would not cause disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. Commenters stated NEPA's mandate to consider environmental effects, E.O. 12898, agency guidance, and case law establish that agencies cannot ignore the impacts of their actions on low-income and minority communities, and that CEQ is relinquishing its responsibility to oversee compliance with E.O. 12898 and NEPA. Further, commenters contended that CEQ's failure to analyze how the proposed rule and its implementation would affect E.O. 12898's mandates would render the regulations arbitrary and capricious, and exceed the agency's statutory authority.

Commenters stated that CEQ provided no explanation or analysis of how the development and implementation of this rule would affect implementation of E.O. 12898 and, consequently, environmental justice communities. Commenters noted the fundamental proposed changes to nearly every step of the NEPA review process will disproportionately impact environmental justice communities and will reduce or limit opportunities for such communities to understand the effects of proposed projects and to participate in the NEPA review process.

NEPA is a procedural statute that does not presuppose any particular substantive outcomes. In addition, CEQ has reviewed the changes in this final rule and has determined that they would not result in environmental impacts. *See* RIA Appendix. CEQ disagrees that the final rule will have disproportionately high and adverse human health or environmental effects on minority populations and low-income population. Rather, the final rule modernizes and clarifies the procedures that NEPA contemplates. Among other things, this will give agencies greater flexibility to design and customize public involvement to best address the specific circumstances of their proposed actions. The final rule expands the already wide range of tools agencies may use when providing notice to potentially affected communities and inviting public involvement. CEQ has made further changes to § 1506.6 in the final rule to clarify that agencies should consider the public's access to electronic media when selecting appropriate methods for providing public notice and involvement. The final rule also better informs the public by extending the scoping period so that it may occur prior to publication of the NOI, where appropriate, and increasing the specificity of the NOI.

Commenters also raised concerns that CEQ did not follow the E.O. 12898 directive to ensure that environmental justice communities can meaningfully participate in public processes and Federal agency decision making, including making public information and hearings ''readily accessible.'' Commenters stated that CEQ failed to follow this directive in designing its rulemaking process, and in fact, excluded environmental justice communities from the process. Further, commenters stated that, over 20 years ago, CEQ acknowledged that traditional notice and comment procedures may be insufficient to engage environmental justice communities. These barriers may range from agency failure to provide translation of documents to the scheduling of meetings at times and in places that are not convenient to working families. Commenters stated that CEQ failed to mention environmental justice communities in its opening statement during the Washington, DC hearing.

Commenters also stated that CEQ failed to take note of the thousands of comments submitted in response to the ANPRM raising concerns about the health and environment of environmental justice communities that could come from limiting opportunities to gain access to information about projects and to comment. Commenters stated that if CEQ's rulemaking process was more inclusive and expansive it would enable some valuable clarifications in the regulations of how environmental justice impacts should be taken more definitively into account in NEPA reviews. Commenters also stated that the proposed rule changes show no particular interest in better clarifying this important aspect of environmental review, and show no evidence of interest in bettering environmental justice impact assessment.

In response to the ANPRM, CEQ received over 12,500 comments, including from those representing

[142] 59 FR 7629 (Feb. 16, 1994).

environmental justice organizations. The diverse range of public comments informed CEQ's development of the proposed rule to improve interagency coordination in the environmental review process, promote earlier public involvement, increase transparency, and enhance the participation of States, Tribes, and localities.

In issuing the NPRM, CEQ took a number of further actions to hear from the public and to encourage all interested stakeholders to submit comments. These actions included notifying and inviting comment from all federally recognized Tribes and over 400 interested groups, including States, localities, environmental organizations, trade associations, NEPA practitioners, and other interested members of the public, representing a broad range of diverse views. Additionally, CEQ made information to aid the public's review available on its websites at *www.whitehouse.gov/ceq* and *www.nepa.gov,* including a redline version of the proposed changes to the regulations, along with a presentation on the proposed rule and other background information.

CEQ engaged in extensive public outreach with the benefit of modern technologies and rulemaking procedures. CEQ held two public hearings each with morning, afternoon, and evening sessions, in Denver, Colorado on February 11, 2020, and in Washington, DC on February 25, 2020. Both hearings had diverse representation from stakeholders, including many speaking on behalf of environmental justice communities or about their concerns. CEQ also attended the National Environmental Justice Advisory Committee (NEJAC) meeting in Jacksonville, Florida to brief NEJAC members and the public on the proposed rule and to answer questions. CEQ also conducted additional public outreach to solicit comments and receive input, including Tribal engagement in Denver, Colorado, Anchorage, Alaska and Washington, DC.

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

Agencies must prepare a Statement of Energy Effects for significant energy actions under E.O. 13211.[143] This final rule 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.

K. Executive Order 12988, Civil Justice Reform

Under section 3(a) E.O. 12988,[144] agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to conduct the reviews required by section 3(a). CEQ has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

L. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of $100 million, adjusted annually for inflation, in any one year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This final rule applies to Federal agencies and would not result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–38.

M. Paperwork Reduction Act

This final rule does not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508

Administrative practice and procedure, Environmental impact statements, Environmental protection, Natural resources.

40 CFR Part 1515

Freedom of information.

40 CFR Part 1516

Privacy.

40 CFR Part 1517

Sunshine Act.

40 CFR Part 1518

Accounting, Administrative practice and procedure, Environmental impact statements.

Mary B. Neumayr,

Chairman.

For the reasons stated in the preamble, and under the authority of 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369, the Council on Environmental Quality amends chapter V in title 40 of the Code of Federal Regulations as follows:

PARTS 1500 THROUGH 1508 [DESIGNATED AS SUBCHAPTER A]

■ 1. Designate parts 1500 through 1508 as subchapter A and add a heading for newly designated subchapter A to read as follows:

Subchapter A—National Environmental Policy Act Implementing Regulations

■ 2. Revise part 1500 to read as follows:

PART 1500—PURPOSE AND POLICY

Sec.

1500.1 Purpose and policy.
1500.2 [Reserved].
1500.3 NEPA compliance.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1500.1 Purpose and policy.

(a) The National Environmental Policy Act (NEPA) is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. Section 101 of NEPA establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. Section 102(2) of NEPA establishes the procedural requirements to carry out the policy stated in section 101 of NEPA. In

[143] 66 FR 28355 (May 22, 2001).

[144] 61 FR 4729 (Feb. 7, 1996).

particular, it requires Federal agencies to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment. The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process. NEPA does not mandate particular results or substantive outcomes. NEPA's purpose is not to generate paperwork or litigation, but to provide for informed decision making and foster excellent action.

(b) The regulations in this subchapter implement section 102(2) of NEPA. They provide direction to Federal agencies to determine what actions are subject to NEPA's procedural requirements and the level of NEPA review where applicable. The regulations in this subchapter are intended to ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making by Federal agencies. The regulations in this subchapter are also intended to ensure that Federal agencies conduct environmental reviews in a coordinated, consistent, predictable and timely manner, and to reduce unnecessary burdens and delays. Finally, the regulations in this subchapter promote concurrent environmental reviews to ensure timely and efficient decision making.

§ 1500.2 [Reserved]

§ 1500.3 NEPA compliance.

(a) *Mandate.* This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act), except where compliance would be inconsistent with other statutory requirements. The regulations in this subchapter are issued pursuant to NEPA; the Environmental Quality Improvement Act of 1970, as amended (Pub. L. 91–224, 42 U.S.C. 4371 *et seq.*); section 309 of the Clean Air Act, as amended (42 U.S.C. 7609); Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970), as amended by Executive Order 11991, Relating to the Protection and Enhancement of Environmental Quality (May 24, 1977); and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (August 15, 2017). The regulations in this subchapter apply to the whole of section 102(2) of NEPA. The provisions of the Act and the regulations in this subchapter must be read together as a whole to comply with the law.

(b) *Exhaustion.* (1) To ensure informed decision making and reduce delays, agencies shall include a request for comments on potential alternatives and impacts, and identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment in the notice of intent to prepare an environmental impact statement (§ 1501.9(d)(7) of this chapter).

(2) The draft and final environmental impact statements shall include a summary of all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the draft and final environmental impact statements (§ 1502.17 of this chapter).

(3) For consideration by the lead and cooperating agencies, State, Tribal, and local governments and other public commenters must submit comments within the comment periods provided, and comments shall be as specific as possible (§§ 1503.1 and 1503.3 of this chapter). Comments or objections of any kind not submitted, including those based on submitted alternatives, information, and analyses, shall be forfeited as unexhausted.

(4) Informed by the submitted alternatives, information, and analyses, including the summary in the final environmental impact statement (§ 1502.17 of this chapter) and the agency's response to comments in the final environmental impact statement (§ 1503.4 of this chapter), together with any other material in the record that he or she determines relevant, the decision maker shall certify in the record of decision that the agency considered all of the alternatives, information, and analyses, and objections submitted by States, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement (§ 1505.2(b) of this chapter).

(c) *Review of NEPA compliance.* It is the Council's intention that judicial review of agency compliance with the regulations in this subchapter not occur before an agency has issued the record of decision or taken other final agency action. It is the Council's intention that any allegation of noncompliance with NEPA and the regulations in this subchapter should be resolved as expeditiously as possible. Consistent with their organic statutes, and as part of implementing the exhaustion provisions in paragraph (b) of this section, agencies may structure their procedures to include an appropriate bond or other security requirement.

(d) *Remedies.* Harm from the failure to comply with NEPA can be remedied by compliance with NEPA's procedural requirements as interpreted in the regulations in this subchapter. It is the Council's intention that the regulations in this subchapter create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm. The regulations in this subchapter do not create a cause of action or right of action for violation of NEPA, which contains no such cause of action or right of action. It is the Council's intention that any actions to review, enjoin, stay, vacate, or otherwise alter an agency decision on the basis of an alleged NEPA violation be raised as soon as practicable after final agency action to avoid or minimize any costs to agencies, applicants, or any affected third parties. It is also the Council's intention that minor, non-substantive errors that have no effect on agency decision making shall be considered harmless and shall not invalidate an agency action.

(e) *Severability.* The sections of this subchapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Council's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Using categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an environmental impact statement (§ 1501.4 of this chapter).

(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and therefore does not require preparation of an environmental impact statement (§ 1501.6 of this chapter).

(c) Reducing the length of environmental documents by means such as meeting appropriate page limits (§§ 1501.5(f) and 1502.7 of this chapter).

(d) Preparing analytic and concise environmental impact statements (§ 1502.2 of this chapter).

(e) Discussing only briefly issues other than significant ones (§ 1502.2(b) of this chapter).

(f) Writing environmental impact statements in plain language (§ 1502.8 of this chapter).

(g) Following a clear format for environmental impact statements (§ 1502.10 of this chapter).

(h) Emphasizing the portions of the environmental impact statement that are useful to decision makers and the public (*e.g.,* §§ 1502.14 and 1502.15 of this chapter) and reducing emphasis on background material (§ 1502.1 of this chapter).

(i) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.9 of this chapter).

(j) Summarizing the environmental impact statement (§ 1502.12 of this chapter).

(k) Using programmatic, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1501.11 and 1502.4 of this chapter).

(l) Incorporating by reference (§ 1501.12 of this chapter).

(m) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this chapter).

(n) Requiring comments to be as specific as possible (§ 1503.3 of this chapter).

(o) Attaching and publishing only changes to the draft environmental impact statement, rather than rewriting and publishing the entire statement when changes are minor (§ 1503.4(c) of this chapter).

(p) Eliminating duplication with State, Tribal, and local procedures, by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this chapter), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this chapter).

(q) Combining environmental documents with other documents (§ 1506.4 of this chapter).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Using categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment (§ 1501.4 of this chapter) and therefore do not require preparation of an environmental impact statement.

(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1501.6 of this chapter) and therefore does not require preparation of an environmental impact statement.

(c) Integrating the NEPA process into early planning (§ 1501.2 of this chapter).

(d) Engaging in interagency cooperation before or as the environmental assessment or environmental impact statement is prepared, rather than awaiting submission of comments on a completed document (§§ 1501.7 and 1501.8 of this chapter).

(e) Ensuring the swift and fair resolution of lead agency disputes (§ 1501.7 of this chapter).

(f) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.9 of this chapter).

(g) Meeting appropriate time limits for the environmental assessment and environmental impact statement processes (§ 1501.10 of this chapter).

(h) Preparing environmental impact statements early in the process (§ 1502.5 of this chapter).

(i) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this chapter).

(j) Eliminating duplication with State, Tribal, and local procedures by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this chapter) and with other Federal procedures by providing that agencies may jointly prepare or adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this chapter).

(k) Combining environmental documents with other documents (§ 1506.4 of this chapter).

(l) Using accelerated procedures for proposals for legislation (§ 1506.8 of this chapter).

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view policies and missions in the light of the Act's national environmental objectives, to the extent consistent with its existing authority. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to ensure full compliance with the purposes and provisions of the Act as interpreted by the regulations in this subchapter. The phrase ''to the fullest extent possible'' in section 102 of NEPA means that each agency of the Federal Government shall comply with that section, consistent with § 1501.1 of this chapter. Nothing contained in the regulations in this subchapter is intended or should be construed to limit an agency's other authorities or legal responsibilities.

■ 3. Revise part 1501 to read as follows:

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 NEPA thresholds.
1501.2 Apply NEPA early in the process.
1501.3 Determine the appropriate level of NEPA review.
1501.4 Categorical exclusions.
1501.5 Environmental assessments.
1501.6 Findings of no significant impact.
1501.7 Lead agencies.
1501.8 Cooperating agencies.
1501.9 Scoping.
1501.10 Time limits.
1501.11 Tiering.
1501.12 Incorporation by reference.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1501.1 NEPA thresholds.

(a) In assessing whether NEPA applies or is otherwise fulfilled, Federal agencies should determine:

(1) Whether the proposed activity or decision is expressly exempt from NEPA under another statute;

(2) Whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute;

(3) Whether compliance with NEPA would be inconsistent with Congressional intent expressed in another statute;

(4) Whether the proposed activity or decision is a major Federal action;

(5) Whether the proposed activity or decision, in whole or in part, is a non-discretionary action for which the agency lacks authority to consider environmental effects as part of its decision-making process; and

(6) Whether the proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act.

(b) Federal agencies may make determinations under this section in their agency NEPA procedures (§ 1507.3(d) of this chapter) or on an individual basis, as appropriate.

(1) Federal agencies may seek the Council's assistance in making an individual determination under this section.

(2) An agency shall consult with other Federal agencies concerning their concurrence in statutory determinations made under this section where more than one Federal agency administers the statute.

§ 1501.2 Apply NEPA early in the process.

(a) Agencies should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental impacts in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts.

(b) Each agency shall:

(1) Comply with the mandate of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment, as specified by § 1507.2(a) of this chapter.

(2) Identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses. Whenever practicable, agencies shall review and publish environmental documents and appropriate analyses at the same time as other planning documents.

(3) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of NEPA.

(4) Provide for actions subject to NEPA that are planned by private applicants or other non-Federal entities before Federal involvement so that:

(i) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(ii) The Federal agency consults early with appropriate State, Tribal, and local governments and with interested private persons and organizations when their involvement is reasonably foreseeable.

(iii) The Federal agency commences its NEPA process at the earliest reasonable time (§§ 1501.5(d) and 1502.5(b) of this chapter).

§ 1501.3 Determine the appropriate level of NEPA review.

(a) In assessing the appropriate level of NEPA review, Federal agencies should determine whether the proposed action:

(1) Normally does not have significant effects and is categorically excluded (§ 1501.4);

(2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ 1501.5); or

(3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this chapter).

(b) In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with § 1501.9(e)(1).

(1) In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area.

(2) In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:

(i) Both short- and long-term effects.

(ii) Both beneficial and adverse effects.

(iii) Effects on public health and safety.

(iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment.

§ 1501.4 Categorical exclusions.

(a) For efficiency, agencies shall identify in their agency NEPA procedures (§ 1507.3(e)(2)(ii) of this chapter) categories of actions that normally do not have a significant effect on the human environment, and therefore do not require preparation of an environmental assessment or environmental impact statement.

(b) If an agency determines that a categorical exclusion identified in its agency NEPA procedures covers a proposed action, the agency shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect.

(1) If an extraordinary circumstance is present, the agency nevertheless may categorically exclude the proposed action if the agency determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects.

(2) If the agency cannot categorically exclude the proposed action, the agency shall prepare an environmental assessment or environmental impact statement, as appropriate.

§ 1501.5 Environmental assessments.

(a) An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

(b) An agency may prepare an environmental assessment on any action in order to assist agency planning and decision making.

(c) An environmental assessment shall:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; and

(2) Briefly discuss the purpose and need for the proposed action, alternatives as required by section 102(2)(E) of NEPA, and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.

(d) For applications to the agency requiring an environmental assessment, the agency shall commence the environmental assessment as soon as practicable after receiving the application.

(e) Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments.

(f) The text of an environmental assessment shall be no more than 75 pages, not including appendices, unless a senior agency official approves in writing an assessment to exceed 75 pages and establishes a new page limit.

(g) Agencies may apply the following provisions to environmental assessments:

(1) Section 1502.21 of this chapter—Incomplete or unavailable information;

(2) Section 1502.23 of this chapter—Methodology and scientific accuracy; and

(3) Section 1502.24 of this chapter—Environmental review and consultation requirements.

§ 1501.6 Findings of no significant impact.

(a) An agency shall prepare a finding of no significant impact if the agency

determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action will not have significant effects.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6(b) of this chapter.

(2) In the following circumstances, the agency shall make the finding of no significant impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin:

(i) The proposed action is or is closely similar to one that normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3 of this chapter; or

(ii) The nature of the proposed action is one without precedent.

(b) The finding of no significant impact shall include the environmental assessment or incorporate it by reference and shall note any other environmental documents related to it (§ 1501.9(f)(3)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

(c) The finding of no significant impact shall state the authority for any mitigation that the agency has adopted and any applicable monitoring or enforcement provisions. If the agency finds no significant impacts based on mitigation, the mitigated finding of no significant impact shall state any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts.

§ 1501.7 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement or a complex environmental assessment if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, Tribal, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement or environmental assessment (§ 1506.2 of this chapter).

(c) If an action falls within the provisions of paragraph (a) of this section, the potential lead agencies shall determine, by letter or memorandum, which agency will be the lead agency and which will be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval or disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State, Tribal, or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the senior agency officials of the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted in a lead agency designation within 45 days, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action; and

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) Any potential lead agency may file a response within 20 days after a request is filed with the Council. As soon as possible, but not later than 20 days after receiving the request and all responses to it, the Council shall determine which Federal agency will be the lead agency and which other Federal agencies will be cooperating agencies.

(g) To the extent practicable, if a proposal will require action by more than one Federal agency and the lead agency determines that it requires preparation of an environmental impact statement, the lead and cooperating agencies shall evaluate the proposal in a single environmental impact statement and issue a joint record of decision. To the extent practicable, if a proposal will require action by more than one Federal agency and the lead agency determines that it requires preparation of an environmental assessment, the lead and cooperating agencies should evaluate the proposal in a single environmental assessment and, where appropriate, issue a joint finding of no significant impact.

(h) With respect to cooperating agencies, the lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest practicable time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent practicable.

(3) Meet with a cooperating agency at the latter's request.

(4) Determine the purpose and need, and alternatives in consultation with any cooperating agency.

(i) The lead agency shall develop a schedule, setting milestones for all environmental reviews and authorizations required for implementation of the action, in consultation with any applicant and all joint lead, cooperating, and participating agencies, as soon as practicable.

(j) If the lead agency anticipates that a milestone will be missed, it shall notify appropriate officials at the responsible agencies. As soon as practicable, the responsible agencies shall elevate the issue to the appropriate officials of the responsible agencies for timely resolution.

§ 1501.8 Cooperating agencies.

(a) The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any Federal agency with jurisdiction by law shall be a cooperating agency. In addition, upon request of the lead agency, any other Federal agency with special expertise with respect to any environmental issue may be a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating agency by agreement with the lead agency. An agency may request that the lead agency designate it a cooperating agency, and a Federal agency may appeal a denial of its request to the Council, in accordance with § 1501.7(e).

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest practicable time.

(2) Participate in the scoping process (described in § 1501.9).

(3) On request of the lead agency, assume responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement or environmental assessment concerning which the cooperating agency has special expertise.

(4) On request of the lead agency, make available staff support to enhance

the lead agency's interdisciplinary capability.

(5) Normally use its own funds. To the extent available funds permit, the lead agency shall fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(6) Consult with the lead agency in developing the schedule (§ 1501.7(i)), meet the schedule, and elevate, as soon as practicable, to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or other issues that may affect any agencies' ability to meet the schedule.

(7) Meet the lead agency's schedule for providing comments and limit its comments to those matters for which it has jurisdiction by law or special expertise with respect to any environmental issue consistent with § 1503.2 of this chapter.

(8) To the maximum extent practicable, jointly issue environmental documents with the lead agency.

(c) In response to a lead agency's request for assistance in preparing the environmental documents (described in paragraph (b)(3), (4), or (5) of this section), a cooperating agency may reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement or environmental assessment. The cooperating agency shall submit a copy of this reply to the Council and the senior agency official of the lead agency.

§ 1501.9 Scoping.

(a) *Generally.* Agencies shall use an early and open process to determine the scope of issues for analysis in an environmental impact statement, including identifying the significant issues and eliminating from further study non-significant issues. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent.

(b) *Invite cooperating and participating agencies.* As part of the scoping process, the lead agency shall invite the participation of likely affected Federal, State, Tribal, and local agencies and governments, the proponent of the action, and other likely affected or interested persons (including those who might not be in accord with the action), unless there is a limited exception under § 1507.3(f)(1) of this chapter.

(c) *Scoping outreach.* As part of the scoping process the lead agency may hold a scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the agency may integrate with any other early planning meeting. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(d) *Notice of intent.* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the lead agency shall publish a notice of intent to prepare an environmental impact statement in the **Federal Register**, except as provided in § 1507.3(f)(3) of this chapter. An agency also may publish notice in accordance with § 1506.6 of this chapter. The notice shall include, as appropriate:

(1) The purpose and need for the proposed action;

(2) A preliminary description of the proposed action and alternatives the environmental impact statement will consider;

(3) A brief summary of expected impacts;

(4) Anticipated permits and other authorizations;

(5) A schedule for the decision-making process;

(6) A description of the public scoping process, including any scoping meeting(s);

(7) A request for identification of potential alternatives, information, and analyses relevant to the proposed action (*see* § 1502.17 of this chapter); and

(8) Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement.

(e) *Determination of scope.* As part of the scoping process, the lead agency shall determine the scope and the significant issues to be analyzed in depth in the environmental impact statement. To determine the scope of environmental impact statements, agencies shall consider:

(1) Actions (other than unconnected single actions) that may be connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions that may require environmental impact statements;

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; or

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Alternatives, which include the no action alternative; other reasonable courses of action; and mitigation measures (not in the proposed action).

(3) Impacts.

(f) *Additional scoping responsibilities.* As part of the scoping process, the lead agency shall:

(1) Identify and eliminate from detailed study the issues that are not significant or have been covered by prior environmental review(s) (§ 1506.3 of this chapter), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(2) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(3) Indicate any public environmental assessments and other environmental impact statements that are being or will be prepared and are related to but are not part of the scope of the impact statement under consideration.

(4) Identify other environmental review, authorization, and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently and integrated with the environmental impact statement, as provided in § 1502.24 of this chapter.

(5) Indicate the relationship between the timing of the preparation of environmental analyses and the agencies' tentative planning and decision-making schedule.

(g) *Revisions.* An agency shall revise the determinations made under paragraphs (b), (c), (e), and (f) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.10 Time limits.

(a) To ensure that agencies conduct NEPA reviews as efficiently and expeditiously as practicable, Federal agencies should set time limits appropriate to individual actions or types of actions (consistent with the time intervals required by § 1506.11 of this chapter).

(b) To ensure timely decision making, agencies shall complete:

(1) Environmental assessments within 1 year unless a senior agency official of the lead agency approves a longer

period in writing and establishes a new time limit. One year is measured from the date of agency decision to prepare an environmental assessment to the publication of an environmental assessment or a finding of no significant impact.

(2) Environmental impact statements within 2 years unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. Two years is measured from the date of the issuance of the notice of intent to the date a record of decision is signed.

(c) The senior agency official may consider the following factors in determining time limits:

(1) Potential for environmental harm.

(2) Size of the proposed action.

(3) State of the art of analytic techniques.

(4) Degree of public need for the proposed action, including the consequences of delay.

(5) Number of persons and agencies affected.

(6) Availability of relevant information.

(7) Other time limits imposed on the agency by law, regulations, or Executive order.

(d) The senior agency official may set overall time limits or limits for each constituent part of the NEPA process, which may include:

(1) Decision on whether to prepare an environmental impact statement (if not already decided).

(2) Determination of the scope of the environmental impact statement.

(3) Preparation of the draft environmental impact statement.

(4) Review of any comments on the draft environmental impact statement from the public and agencies.

(5) Preparation of the final environmental impact statement.

(6) Review of any comments on the final environmental impact statement.

(7) Decision on the action based in part on the environmental impact statement.

(e) The agency may designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(f) State, Tribal, or local agencies or members of the public may request a Federal agency to set time limits.

§ 1501.11 Tiering.

(a) Agencies should tier their environmental impact statements and environmental assessments when it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review. Tiering may also be appropriate for different stages of actions.

(b) When an agency has prepared an environmental impact statement or environmental assessment for a program or policy and then prepares a subsequent statement or assessment on an action included within the entire program or policy (such as a project- or site-specific action), the tiered document needs only to summarize and incorporate by reference the issues discussed in the broader document. The tiered document shall concentrate on the issues specific to the subsequent action. The tiered document shall state where the earlier document is available.

(c) Tiering is appropriate when the sequence from an environmental impact statement or environmental assessment is:

(1) From a programmatic, plan, or policy environmental impact statement or environmental assessment to a program, plan, or policy statement or assessment of lesser or narrower scope or to a site-specific statement or assessment.

(2) From an environmental impact statement or environmental assessment on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or assessment at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues that are ripe for decision and exclude from consideration issues already decided or not yet ripe.

§ 1501.12 Incorporation by reference.

Agencies shall incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. Agencies shall cite the incorporated material in the document and briefly describe its content. Agencies may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment.

■ 4. Revise part 1502 to read as follows:

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

1502.1 Purpose of environmental impact statement.
1502.2 Implementation.
1502.3 Statutory requirements for statements.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
1502.5 Timing.
1502.6 Interdisciplinary preparation.
1502.7 Page limits.
1502.8 Writing.
1502.9 Draft, final, and supplemental statements.
1502.10 Recommended format.
1502.11 Cover.
1502.12 Summary.
1502.13 Purpose and need.
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1502.20 Publication of the environmental impact statement.
1502.21 Incomplete or unavailable information.
1502.22 Cost-benefit analysis.
1502.23 Methodology and scientific accuracy.
1502.24 Environmental review and consultation requirements.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1502.1 Purpose of environmental impact statement.

The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA is to ensure agencies consider the environmental impacts of their actions in decision making. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is a document that informs Federal agency decision making and the public.

§ 1502.2 Implementation.

(a) Environmental impact statements shall not be encyclopedic.

(b) Environmental impact statements shall discuss impacts in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be analytic, concise, and no longer than necessary to comply with NEPA and with the regulations in this subchapter. Length should be proportional to potential environmental effects and project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA as interpreted in the regulations in this subchapter and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the decision maker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (*see also* § 1506.1 of this chapter).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by section 102(2)(C) of NEPA, environmental impact statements are to be included in every Federal agency recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall define the proposal that is the subject of an environmental impact statement based on the statutory authorities for the proposed action. Agencies shall use the criteria for scope (§ 1501.9(e) of this chapter) to determine which proposal(s) shall be the subject of a particular statement. Agencies shall evaluate in a single environmental impact statement proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action.

(b) Environmental impact statements may be prepared for programmatic Federal actions, such as the adoption of new agency programs. When agencies prepare such statements, they should be relevant to the program decision and timed to coincide with meaningful points in agency planning and decision making.

(1) When preparing statements on programmatic actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(i) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(ii) Generically, including actions that have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(iii) By stage of technological development including Federal or federally assisted research, development or demonstration programs for new technologies that, if applied, could significantly affect the quality of the human environment. Statements on such programs should be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(2) Agencies shall as appropriate employ scoping (§ 1501.9 of this chapter), tiering (§ 1501.11 of this chapter), and other methods listed in §§ 1500.4 and 1500.5 of this chapter to relate programmatic and narrow actions and to avoid duplication and delay. Agencies may tier their environmental analyses to defer detailed analysis of environmental impacts of specific program elements until such program elements are ripe for final agency action.

§ 1502.5 Timing.

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve as an important practical contribution to the decision-making process and will not be used to rationalize or justify decisions already made (§§ 1501.2 of this chapter and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies, the agency shall prepare the environmental impact statement at the feasibility analysis (go/no-go) stage and may supplement it at a later stage, if necessary.

(b) For applications to the agency requiring an environmental impact statement, the agency shall commence the statement as soon as practicable after receiving the application. Federal agencies should work with potential applicants and applicable State, Tribal, and local agencies and governments prior to receipt of the application.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances, the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking, the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Agencies shall prepare environmental impact statements using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.9 of this chapter).

§ 1502.7 Page limits.

The text of final environmental impact statements (paragraphs (a)(4) through (6) of § 1502.10) shall be 150 pages or fewer and, for proposals of unusual scope or complexity, shall be 300 pages or fewer unless a senior agency official of the lead agency approves in writing a statement to exceed 300 pages and establishes a new page limit.

§ 1502.8 Writing.

Agencies shall write environmental impact statements in plain language and may use appropriate graphics so that decision makers and the public can readily understand such statements. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which shall be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

(a) *Generally.* Except for proposals for legislation as provided in § 1506.8 of this chapter, agencies shall prepare environmental impact statements in two stages and, where necessary,

supplement them, as provided in paragraph (d)(1) of this section.

(b) *Draft environmental impact statements.* Agencies shall prepare draft environmental impact statements in accordance with the scope decided upon in the scoping process (§ 1501.9 of this chapter). The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this chapter. To the fullest extent practicable, the draft statement must meet the requirements established for final statements in section 102(2)(C) of NEPA as interpreted in the regulations in this subchapter. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion. At appropriate points in the draft statement, the agency shall discuss all major points of view on the environmental impacts of the alternatives including the proposed action.

(c) *Final environmental impact statements.* Final environmental impact statements shall address comments as required in part 1503 of this chapter. At appropriate points in the final statement, the agency shall discuss any responsible opposing view that was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(d) *Supplemental environmental impact statements.* Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and:

(i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall prepare, publish, and file a supplement to a statement (exclusive of scoping (§ 1501.9 of this chapter)) as a draft and final statement, as is appropriate to the stage of the statement involved, unless the Council approves alternative procedures (§ 1506.12 of this chapter).

(4) May find that changes to the proposed action or new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement. The agency should document the finding consistent with its agency NEPA procedures (§ 1507.3 of this chapter), or, if necessary, in a finding of no significant impact supported by an environmental assessment.

§ 1502.10 Recommended format.

(a) Agencies shall use a format for environmental impact statements that will encourage good analysis and clear presentation of the alternatives including the proposed action. Agencies should use the following standard format for environmental impact statements unless the agency determines that there is a more effective format for communication:

(1) Cover.

(2) Summary.

(3) Table of contents.

(4) Purpose of and need for action.

(5) Alternatives including the proposed action (sections 102(2)(C)(iii) and 102(2)(E) of NEPA).

(6) Affected environment and environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA).

(7) Submitted alternatives, information, and analyses.

(8) List of preparers.

(9) Appendices (if any).

(b) If an agency uses a different format, it shall include paragraphs (a)(1) through (8) of this section, as further described in §§ 1502.11 through 1502.19, in any appropriate format.

§ 1502.11 Cover.

The cover shall not exceed one page and include:

(a) A list of the responsible agencies, including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction(s), if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one-paragraph abstract of the statement.

(f) The date by which the agency must receive comments (computed in cooperation with EPA under § 1506.11 of this chapter).

(g) For the final environmental impact statement, the estimated total cost to prepare both the draft and final environmental impact statement, including the costs of agency full-time equivalent (FTE) personnel hours, contractor costs, and other direct costs. If practicable and noted where not practicable, agencies also should include costs incurred by cooperating and participating agencies, applicants, and contractors.

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary that adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of disputed issues raised by agencies and the public, and the issues to be resolved (including the choice among alternatives). The summary normally will not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need for the proposed action. When an agency's statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency's authority.

§ 1502.14 Alternatives including the proposed action.

The alternatives section should present the environmental impacts of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (§ 1502.15) and the environmental consequences (§ 1502.16). In this section, agencies shall:

(a) Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.

(b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

(c) Include the no action alternative.

(d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(e) Include appropriate mitigation measures not already included in the proposed action or alternatives.

(f) Limit their consideration to a reasonable number of alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s). The environmental impact statement may

combine the description with evaluation of the environmental consequences (§ 1502.16), and it shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

(a) The environmental consequences section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA that are within the scope of the statement and as much of section 102(2)(C)(iii) of NEPA as is necessary to support the comparisons. This section should not duplicate discussions in § 1502.14. The discussion shall include:

(1) The environmental impacts of the proposed action and reasonable alternatives to the proposed action and the significance of those impacts. The comparison of the proposed action and reasonable alternatives shall be based on this discussion of the impacts.

(2) Any adverse environmental effects that cannot be avoided should the proposal be implemented.

(3) The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(4) Any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented.

(5) Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. (§ 1506.2(d) of this chapter)

(6) Energy requirements and conservation potential of various alternatives and mitigation measures.

(7) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(8) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(9) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(e)).

(10) Where applicable, economic and technical considerations, including the economic benefits of the proposed action.

(b) Economic or social effects by themselves do not require preparation of an environmental impact statement. However, when the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment.

§ 1502.17 Summary of submitted alternatives, information, and analyses.

(a) The draft environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters during the scoping process for consideration by the lead and cooperating agencies in developing the environmental impact statement.

(1) The agency shall append to the draft environmental impact statement or otherwise publish all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified alternatives, information, and analyses for the agency's consideration.

(2) Consistent with § 1503.1(a)(3) of this chapter, the lead agency shall invite comment on the summary identifying all submitted alternatives, information, and analyses in the draft environmental impact statement.

(b) The final environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the final environmental impact statement.

§ 1502.18 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement. Where possible, the environmental impact statement shall identify the persons who are responsible for a particular analysis, including analyses in background papers. Normally the list will not exceed two pages.

§ 1502.19 Appendix.

If an agency prepares an appendix, the agency shall publish it with the environmental impact statement, and it shall consist of:

(a) Material prepared in connection with an environmental impact statement (as distinct from material that is not so prepared and is incorporated by reference (§ 1501.12 of this chapter)).

(b) Material substantiating any analysis fundamental to the impact statement.

(c) Material relevant to the decision to be made.

(d) For draft environmental impact statements, all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified alternatives, information, and analyses for the agency's consideration.

(e) For final environmental impact statements, the comment summaries and responses consistent with § 1503.4 of this chapter.

§ 1502.20 Publication of the environmental impact statement.

Agencies shall publish the entire draft and final environmental impact statements and unchanged statements as provided in § 1503.4(c) of this chapter. The agency shall transmit the entire statement electronically (or in paper copy, if so requested due to economic or other hardship) to:

(a) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement, any person, organization, or agency that submitted substantive comments on the draft.

§ 1502.21 Incomplete or unavailable information.

(a) When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement, and there is incomplete or unavailable information, the agency shall make clear that such information is lacking.

(b) If the incomplete but available information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable, the agency shall include the information in the environmental impact statement.

(c) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are unreasonable or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable;

(2) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and

(4) The agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

(d) For the purposes of this section, ''reasonably foreseeable'' includes impacts that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

§ 1502.22 Cost-benefit analysis.

If the agency is considering a cost-benefit analysis for the proposed action relevant to the choice among alternatives with different environmental effects, the agency shall incorporate the cost-benefit analysis by reference or append it to the statement as an aid in evaluating the environmental consequences. In such cases, to assess the adequacy of compliance with section 102(2)(B) of NEPA (ensuring appropriate consideration of unquantified environmental amenities and values in decision making, along with economical and technical considerations), the statement shall discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, agencies need not display the weighing of the merits and drawbacks of the various alternatives in a monetary cost-benefit analysis and should not do so when there are important qualitative considerations. However, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, that are likely to be relevant and important to a decision.

§ 1502.23 Methodology and scientific accuracy.

Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources. Agencies may make use of any reliable data sources, such as remotely gathered information or statistical models. They shall identify any methodologies used and shall make explicit reference to the scientific and other sources relied upon for conclusions in the statement. Agencies may place discussion of methodology in an appendix. Agencies are not required to undertake new scientific and technical research to inform their analyses. Nothing in this section is intended to prohibit agencies from compliance with the requirements of other statutes pertaining to scientific and technical research.

§ 1502.24 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrent and integrated with environmental impact analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposed action, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other authorization is necessary, the draft environmental impact statement shall so indicate.

■ 5. Revise part 1503 to read as follows:

PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS

Sec.

1503.1 Inviting comments and requesting information and analyses.
1503.2 Duty to comment.
1503.3 Specificity of comments and information.
1503.4 Response to comments.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1503.1 Inviting comments and requesting information and analyses.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards;

(ii) State, Tribal, or local governments that may be affected by the proposed action;

(iii) Any agency that has requested it receive statements on actions of the kind proposed;

(iv) The applicant, if any; and

(v) The public, affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(3) Invite comment specifically on the submitted alternatives, information, and analyses and the summary thereof (§ 1502.17 of this chapter).

(b) An agency may request comments on a final environmental impact statement before the final decision and set a deadline for providing such comments. Other agencies or persons may make comments consistent with the time periods under § 1506.11 of this chapter.

(c) An agency shall provide for electronic submission of public comments, with reasonable measures to ensure the comment process is accessible to affected persons.

§ 1503.2 Duty to comment.

Cooperating agencies and agencies that are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority within the time period specified for comment in § 1506.11 of this chapter. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that the environmental impact statement adequately reflects its views, it should reply that it has no comment.

§ 1503.3 Specificity of comments and information.

(a) To promote informed decision making, comments on an environmental impact statement or on a proposed action shall be as specific as possible, may address either the adequacy of the statement or the merits of the alternatives discussed or both, and shall

provide as much detail as necessary to meaningfully participate and fully inform the agency of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and employment impacts, and other impacts affecting the quality of the human environment. Comments should reference the corresponding section or page number of the draft environmental impact statement, propose specific changes to those parts of the statement, where possible, and include or describe the data sources and methodologies supporting the proposed changes.

(b) Comments on the submitted alternatives, information, and analyses and summary thereof (§ 1502.17 of this chapter) should be as specific as possible. Comments and objections of any kind shall be raised within the comment period on the draft environmental impact statement provided by the agency, consistent with § 1506.11 of this chapter. If the agency requests comments on the final environmental impact statement before the final decision, consistent with § 1503.1(b), comments and objections of any kind shall be raised within the comment period provided by the agency. Comments and objections of any kind not provided within the comment period(s) shall be considered unexhausted and forfeited, consistent with § 1500.3(b) of this chapter.

(c) When a participating agency criticizes a lead agency's predictive methodology, the participating agency should describe the alternative methodology that it prefers and why.

(d) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or authorizations.

(e) When a cooperating agency with jurisdiction by law specifies mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences, the cooperating agency shall cite to its applicable statutory authority.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall consider substantive comments timely submitted during the public comment period. The agency may respond to individual comments or groups of comments. In the final environmental impact statement, the agency may respond by:

(1) Modifying alternatives including the proposed action.

(2) Developing and evaluating alternatives not previously given serious consideration by the agency.

(3) Supplementing, improving, or modifying its analyses.

(4) Making factual corrections.

(5) Explaining why the comments do not warrant further agency response, recognizing that agencies are not required to respond to each comment.

(b) An agency shall append or otherwise publish all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous).

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, an agency may write any changes on errata sheets and attach the responses to the statement instead of rewriting the draft statement. In such cases, only the comments, the responses, and the changes and not the final statement need be published (§ 1502.20 of this chapter). The agency shall file the entire document with a new cover sheet with the Environmental Protection Agency as the final statement (§ 1506.10 of this chapter).

■ 6. Revise part 1504 to read as follows:

PART 1504—PRE–DECISIONAL REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Section 309 of the Clean Air Act (42 U.S.C. 7609) directs the Administrator of the Environmental Protection Agency to review and comment publicly on the environmental impacts of Federal activities, including actions for which agencies prepare environmental impact statements. If, after this review, the Administrator determines that the matter is ''unsatisfactory from the standpoint of public health or welfare or environmental quality,'' section 309 directs that the matter be referred to the Council (hereafter ''environmental referrals'').

(c) Under section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)), other Federal agencies may prepare similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council, and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as practicable in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies;

(b) Severity;

(c) Geographical scope;

(d) Duration;

(e) Importance as precedents;

(f) Availability of environmentally preferable alternatives; and

(g) Economic and technical considerations, including the economic costs of delaying or impeding the decision making of the agencies involved in the action.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Notify the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached;

(2) Include such a notification whenever practicable in the referring agency's comments on the environmental assessment or draft environmental impact statement;

(3) Identify any essential information that is lacking and request that the lead agency make it available at the earliest possible time; and

(4) Send copies of the referring agency's views to the Council.

(b) The referring agency shall deliver its referral to the Council no later than 25 days after the lead agency has made the final environmental impact statement available to the Environmental Protection Agency, participating agencies, and the public, and in the case of an environmental assessment, no later than 25 days after the lead agency makes it available. Except when the lead agency grants an extension of this period, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it; and

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any disputed material facts and incorporate (by reference if appropriate) agreed upon facts;

(ii) Identify any existing environmental requirements or policies that would be violated by the matter;

(iii) Present the reasons for the referral;

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason;

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time; and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) No later than 25 days after the referral to the Council, the lead agency may deliver a response to the Council and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral;

(2) Be supported by evidence and explanations, as appropriate; and

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Applicants may provide views in writing to the Council no later than the response.

(f) No later than 25 days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the referring and lead agencies should further negotiate the issue, and the issue is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including, where appropriate, a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) The referral process is not intended to create any private rights of action or to be judicially reviewable because any voluntary resolutions by the agency parties do not represent final agency action and instead are only provisional and dependent on later consistent action by the action agencies.

■ 7. Revise part 1505 to read as follows:

PART 1505—NEPA AND AGENCY DECISION MAKING

Sec.

1505.1 [Reserved]
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1505.1 [Reserved]

§ 1505.2 Record of decision in cases requiring environmental impact statements.

(a) At the time of its decision (§ 1506.11 of this chapter) or, if appropriate, its recommendation to Congress, each agency shall prepare and timely publish a concise public record of decision or joint record of decision. The record, which each agency may integrate into any other record it prepares, shall:

(1) State the decision.

(2) Identify alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives considered environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors, including any essential considerations of national policy, that the agency balanced in making its decision and state how those considerations entered into its decision.

(3) State whether the agency has adopted all practicable means to avoid or minimize environmental harm from the alternative selected, and if not, why the agency did not. The agency shall adopt and summarize, where applicable, a monitoring and enforcement program for any enforceable mitigation requirements or commitments.

(b) Informed by the summary of the submitted alternatives, information, and analyses in the final environmental impact statement (§ 1502.17(b) of this chapter), together with any other material in the record that he or she determines to be relevant, the decision maker shall certify in the record of decision that the agency has considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement. Agency environmental impact statements certified in accordance with this section are entitled to a presumption that the agency has considered the submitted alternatives, information, and analyses, including the summary thereof, in the final environmental impact statement (§ 1502.17(b)).

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(a)(3)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits, or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or participating agencies on progress in carrying out mitigation measures that they have proposed and were adopted by the agency making the decision.

(d) Upon request, publish the results of relevant monitoring.

■ 8. Revise part 1506 to read as follows:

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State, Tribal, and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility for environmental documents.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Proposals for regulations.
1506.10 Filing requirements.
1506.11 Timing of agency action.
1506.12 Emergencies.
1506.13 Effective date.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1506.1 Limitations on actions during NEPA process.

(a) Except as provided in paragraphs (b) and (c) of this section, until an agency issues a finding of no significant impact, as provided in § 1501.6 of this chapter, or record of decision, as provided in § 1505.2 of this chapter, no action concerning the proposal may be taken that would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. An agency considering a proposed action for Federal funding may authorize such activities, including, but not limited to, acquisition of interests in land (*e.g.,* fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants.

(c) While work on a required programmatic environmental review is in progress and the action is not covered by an existing programmatic review, agencies shall not undertake in the interim any major Federal action covered by the program that may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental review; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

§ 1506.2 Elimination of duplication with State, Tribal, and local procedures.

(a) Federal agencies are authorized to cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents, including those prepared pursuant to section 102(2)(D) of NEPA.

(b) To the fullest extent practicable unless specifically prohibited by law, agencies shall cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Except for cases covered by paragraph (a) of this section, such cooperation shall include, to the fullest extent practicable:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) To the fullest extent practicable unless specifically prohibited by law, agencies shall cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and comparable State, Tribal, and local requirements. Such cooperation shall include, to the fullest extent practicable, joint environmental impact statements. In such cases, one or more Federal agencies and one or more State, Tribal, or local agencies shall be joint lead agencies. Where State or Tribal laws or local ordinances have environmental impact statement or similar requirements in addition to but not in conflict with those in NEPA, Federal agencies may cooperate in fulfilling these requirements, as well as those of Federal laws, so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State, Tribal, or local planning processes, environmental impact statements shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. While the statement should discuss any inconsistencies, NEPA does not require reconciliation.

§ 1506.3 Adoption.

(a) *Generally.* An agency may adopt a Federal draft or final environmental impact statement, environmental assessment, or portion thereof, or categorical exclusion determination provided that the statement, assessment, portion thereof, or determination meets the standards for an adequate statement, assessment, or determination under the regulations in this subchapter.

(b) *Environmental impact statements.* (1) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the adopting agency shall republish it as a final statement consistent with § 1506.10. If the actions are not substantially the same, the adopting agency shall treat the statement as a draft and republish it, consistent with § 1506.10.

(2) Notwithstanding paragraph (b)(1) of this section, a cooperating agency may adopt in its record of decision without republishing the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(c) *Environmental assessments.* If the actions covered by the original environmental assessment and the proposed action are substantially the same, the adopting agency may adopt the environmental assessment in its finding of no significant impact and provide notice consistent with § 1501.6 of this chapter.

(d) *Categorical exclusions.* An agency may adopt another agency's determination that a categorical exclusion applies to a proposed action if the action covered by the original categorical exclusion determination and the adopting agency's proposed action are substantially the same. The agency shall document the adoption.

(e) *Identification of certain circumstances.* The adopting agency

shall specify if one of the following circumstances is present:

(1) The agency is adopting an assessment or statement that is not final within the agency that prepared it.

(2) The action assessed in the assessment or statement is the subject of a referral under part 1504 of this chapter.

(3) The assessment or statement's adequacy is the subject of a judicial action that is not final.

§ 1506.4 Combining documents.

Agencies should combine, to the fullest extent practicable, any environmental document with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility for environmental documents.

(a) *Responsibility.* The agency is responsible for the accuracy, scope (§ 1501.9(e) of this chapter), and content of environmental documents prepared by the agency or by an applicant or contractor under the supervision of the agency.

(b) *Information.* An agency may require an applicant to submit environmental information for possible use by the agency in preparing an environmental document. An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency.

(1) The agency should assist the applicant by outlining the types of information required or, for the preparation of environmental documents, shall provide guidance to the applicant or contractor and participate in their preparation.

(2) The agency shall independently evaluate the information submitted or the environmental document and shall be responsible for its accuracy, scope, and contents.

(3) The agency shall include in the environmental document the names and qualifications of the persons preparing environmental documents, and conducting the independent evaluation of any information submitted or environmental documents prepared by an applicant or contractor, such as in the list of preparers for environmental impact statements (§ 1502.18 of this chapter). It is the intent of this paragraph (b)(3) that acceptable work not be redone, but that it be verified by the agency.

(4) Contractors or applicants preparing environmental assessments or environmental impact statements shall submit a disclosure statement to the lead agency that specifies any financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information.

(5) Nothing in this section is intended to prohibit any agency from requesting any person, including the applicant, to submit information to it or to prohibit any person from submitting information to any agency for use in preparing environmental documents.

§ 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (§ 1507.3 of this chapter).

(b) Provide public notice of NEPA-related hearings, public meetings, and other opportunities for public involvement, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected by their proposed actions. When selecting appropriate methods for providing public notice, agencies shall consider the ability of affected persons and agencies to access electronic media.

(1) In all cases, the agency shall notify those who have requested notice on an individual action.

(2) In the case of an action with effects of national concern, notice shall include publication in the **Federal Register**. An agency may notify organizations that have requested regular notice.

(3) In the case of an action with effects primarily of local concern, the notice may include:

(i) Notice to State, Tribal, and local agencies that may be interested or affected by the proposed action.

(ii) Notice to interested or affected State, Tribal, and local governments.

(iii) Following the affected State or Tribe's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(x) Notice through electronic media (*e.g.,* a project or agency website, email, or social media).

(c) Hold or sponsor public hearings, public meetings, or other opportunities for public involvement whenever appropriate or in accordance with statutory requirements applicable to the agency. Agencies may conduct public hearings and public meetings by means of electronic communication except where another format is required by law. When selecting appropriate methods for public involvement, agencies shall consider the ability of affected entities to access electronic media.

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 1506.7 Further guidance.

(a) The Council may provide further guidance concerning NEPA and its procedures consistent with Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (August 5, 2017), Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents (October 9, 2019), and any other applicable Executive orders.

(b) To the extent that Council guidance issued prior to September 14, 2020 is in conflict with this subchapter, the provisions of this subchapter apply.

§ 1506.8 Proposals for legislation.

(a) When developing legislation, agencies shall integrate the NEPA process for proposals for legislation significantly affecting the quality of the human environment with the legislative process of the Congress. Technical drafting assistance does not by itself constitute a legislative proposal. Only the agency that has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

(b) A legislative environmental impact statement is the detailed statement required by law to be included in an agency's recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days

later in order to allow time for completion of an accurate statement that can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(c) Preparation of a legislative environmental impact statement shall conform to the requirements of the regulations in this subchapter, except as follows:

(1) There need not be a scoping process.

(2) Agencies shall prepare the legislative statement in the same manner as a draft environmental impact statement and need not prepare a final statement unless any of the following conditions exist. In such cases, the agency shall prepare and publish the statements consistent with §§ 1503.1 of this chapter and 1506.11:

(i) A Congressional committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects that the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(d) Comments on the legislative statement shall be given to the lead agency, which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Proposals for regulations.

Where the proposed action is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive order requirements may satisfy one or more requirements of this subchapter. When a procedure or document satisfies one or more requirements of this subchapter, the agency may substitute it for the corresponding requirements in this subchapter and need not carry out duplicative procedures or documentation. Agencies shall identify which corresponding requirements in this subchapter are satisfied and consult with the Council to confirm such determinations.

§ 1506.10 Filing requirements.

(a) Agencies shall file environmental impact statements together with comments and responses with the Environmental Protection Agency (EPA), Office of Federal Activities, consistent with EPA's procedures.

(b) Agencies shall file statements with the EPA no earlier than they are also transmitted to participating agencies and made available to the public. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.11.

§ 1506.11 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the **Federal Register** each week of the environmental impact statements filed since its prior notice. The minimum time periods set forth in this section are calculated from the date of publication of this notice.

(b) Unless otherwise provided by law, including statutory provisions for combining a final environmental impact statement and record of decision, Federal agencies may not make or issue a record of decision under § 1505.2 of this chapter for the proposed action until the later of the following dates:

(1) 90 days after publication of the notice described in paragraph (a) of this section for a draft environmental impact statement.

(2) 30 days after publication of the notice described in paragraph (a) of this section for a final environmental impact statement.

(c) An agency may make an exception to the rule on timing set forth in paragraph (b) of this section for a proposed action in the following circumstances:

(1) Some agencies have a formally established appeal process after publication of the final environmental impact statement that allows other agencies or the public to take appeals on a decision and make their views known. In such cases where a real opportunity exists to alter the decision, the agency may make and record the decision at the same time it publishes the environmental impact statement. This means that the period for appeal of the decision and the 30-day period set forth in paragraph (b)(2) of this section may run concurrently. In such cases, the environmental impact statement shall explain the timing and the public's right of appeal and provide notification consistent with § 1506.10; or

(2) An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety may waive the time period in paragraph (b)(2) of this section, publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement, and provide notification consistent with § 1506.10, as described in paragraph (a) of this section.

(d) If an agency files the final environmental impact statement within 90 days of the filing of the draft environmental impact statement with the Environmental Protection Agency, the decision-making period and the 90-day period may run concurrently. However, subject to paragraph (e) of this section, agencies shall allow at least 45 days for comments on draft statements.

(e) The lead agency may extend the minimum periods in paragraph (b) of this section and provide notification consistent with § 1506.10. Upon a showing by the lead agency of compelling reasons of national policy, the Environmental Protection Agency may reduce the minimum periods and, upon a showing by any other Federal agency of compelling reasons of national policy, also may extend the minimum periods, but only after consultation with the lead agency. The lead agency may modify the minimum periods when necessary to comply with other specific statutory requirements. (§ 1507.3(f)(2) of this chapter) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§ 1506.12 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of the regulations in this subchapter, the Federal agency taking the action should consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.13 Effective date.

The regulations in this subchapter apply to any NEPA process begun after September 14, 2020. An agency may apply the regulations in this subchapter to ongoing activities and environmental

documents begun before September 14, 2020.

■ 9. Revise part 1507 to read as follows:

PART 1507—AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency NEPA procedures.
1507.4 Agency NEPA program information.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with the regulations in this subchapter.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements of NEPA and the regulations in this subchapter. Such compliance may include use of the resources of other agencies, applicants, and other participants in the NEPA process, but the agency using the resources shall itself have sufficient capability to evaluate what others do for it and account for the contributions of others. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making that may have an impact on the human environment. Agencies shall designate a senior agency official to be responsible for overall review of agency NEPA compliance, including resolving implementation issues.

(b) Identify methods and procedures required by section 102(2)(B) of NEPA to ensure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) of NEPA and cooperate on the development of statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources, consistent with section 102(2)(E) of NEPA.

(e) Comply with the requirements of section 102(2)(H) of NEPA that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of NEPA, Executive Order 11514, Protection and Enhancement of Environmental Quality, section 2, as amended by Executive Order 11991, Relating to Protection and Enhancement of Environmental Quality, and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting for Infrastructure Projects.

§ 1507.3 Agency NEPA procedures.

(a) Where existing agency NEPA procedures are inconsistent with the regulations in this subchapter, the regulations in this subchapter shall apply, consistent with § 1506.13 of this chapter, unless there is a clear and fundamental conflict with the requirements of another statute. The Council has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020 are consistent with this subchapter.

(b) No more than 12 months after September 14, 2020, or 9 months after the establishment of an agency, whichever comes later, each agency shall develop or revise, as necessary, proposed procedures to implement the regulations in this subchapter, including to eliminate any inconsistencies with the regulations in this subchapter. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to adopt their own procedures. Except for agency efficiency (see paragraph (c) of this section) or as otherwise required by law, agency NEPA procedures shall not impose additional procedures or requirements beyond those set forth in the regulations in this subchapter.

(1) Each agency shall consult with the Council while developing or revising its proposed procedures and before publishing them in the **Federal Register** for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants.

(2) Agencies shall provide an opportunity for public review and review by the Council for conformity with the Act and the regulations in this subchapter before adopting their final procedures. The Council shall complete its review within 30 days of the receipt of the proposed final procedures. Once in effect, the agency shall publish its NEPA procedures and ensure that they are readily available to the public.

(c) Agencies shall adopt, as necessary, agency NEPA procedures to improve agency efficiency and ensure that agencies make decisions in accordance with the Act's procedural requirements. Such procedures shall include:

(1) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process begins at the earliest reasonable time, consistent with § 1501.2 of this chapter, and aligns with the corresponding decision points.

(2) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(3) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that decision makers use the statement in making decisions.

(4) Requiring that the alternatives considered by the decision maker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decision maker consider the alternatives described in the environmental documents. If another decision document accompanies the relevant environmental documents to the decision maker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

(5) Requiring the combination of environmental documents with other agency documents. Agencies may designate and rely on one or more procedures or documents under other statutes or Executive orders as satisfying some or all of the requirements in this subchapter, and substitute such procedures and documentation to reduce duplication. When an agency substitutes one or more procedures or documents for the requirements in this subchapter, the agency shall identify the respective requirements that are satisfied.

(d) Agency procedures should identify those activities or decisions that are not subject to NEPA, including:

(1) Activities or decisions expressly exempt from NEPA under another statute;

(2) Activities or decisions where compliance with NEPA would clearly

and fundamentally conflict with the requirements of another statute;

(3) Activities or decisions where compliance with NEPA would be inconsistent with Congressional intent expressed in another statute;

(4) Activities or decisions that are non-major Federal actions;

(5) Activities or decisions that are non-discretionary actions, in whole or in part, for which the agency lacks authority to consider environmental effects as part of its decision-making process; and

(6) Actions where the agency has determined that another statute's requirements serve the function of agency compliance with the Act.

(e) Agency procedures shall comply with the regulations in this subchapter except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(b)(4) (assistance to applicants) and 1506.6(e) of this chapter (status information).

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment and do not have a significant effect on the human environment (categorical exclusions (§ 1501.4 of this chapter)). Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Agency NEPA procedures shall identify when documentation of a categorical exclusion determination is required.

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(3) Procedures for introducing a supplement to an environmental assessment or environmental impact statement into its formal administrative record, if such a record exists.

(f) Agency procedures may:

(1) Include specific criteria for providing limited exceptions to the provisions of the regulations in this subchapter for classified proposals. These are proposed actions that are specifically authorized under criteria established by an Executive order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order or statute. Agencies may safeguard and restrict from public dissemination environmental assessments and environmental impact statements that address classified proposals in accordance with agencies' own regulations applicable to classified information. Agencies should organize these documents so that classified portions are included as annexes, so that the agencies can make the unclassified portions available to the public.

(2) Provide for periods of time other than those presented in § 1506.11 of this chapter when necessary to comply with other specific statutory requirements, including requirements of lead or cooperating agencies.

(3) Provide that, where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the agency may publish the notice of intent required by § 1501.9(d) of this chapter at a reasonable time in advance of preparation of the draft statement. Agency procedures shall provide for publication of supplemental notices to inform the public of a pause in its preparation of an environmental impact statement and for any agency decision to withdraw its notice of intent to prepare an environmental impact statement.

(4) Adopt procedures to combine its environmental assessment process with its scoping process.

(5) Establish a process that allows the agency to use a categorical exclusion listed in another agency's NEPA procedures after consulting with that agency to ensure the use of the categorical exclusion is appropriate. The process should ensure documentation of the consultation and identify to the public those categorical exclusions the agency may use for its proposed actions. Then, the agency may apply the categorical exclusion to its proposed actions.

§ 1507.4 Agency NEPA program information.

(a) To allow agencies and the public to efficiently and effectively access information about NEPA reviews, agencies shall provide for agency websites or other means to make available environmental documents, relevant notices, and other relevant information for use by agencies, applicants, and interested persons. Such means of publication may include:

(1) Agency planning and environmental documents that guide agency management and provide for public involvement in agency planning processes;

(2) A directory of pending and final environmental documents;

(3) Agency policy documents, orders, terminology, and explanatory materials regarding agency decision-making processes;

(4) Agency planning program information, plans, and planning tools; and

(5) A database searchable by geographic information, document status, document type, and project type.

(b) Agencies shall provide for efficient and effective interagency coordination of their environmental program websites, including use of shared databases or application programming interface, in their implementation of NEPA and related authorities.

■ 10. Revise part 1508 to read as follows:

PART 1508—DEFINITIONS

Sec.

1508.1 Definitions.
1508.2 [Reserved]

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

§ 1508.1 Definitions.

The following definitions apply to the regulations in this subchapter. Federal agencies shall use these terms uniformly throughout the Federal Government.

(a) *Act* or *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*).

(b) *Affecting* means will or may have an effect on.

(c) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.

(d) *Categorical exclusion* means a category of actions that the agency has determined, in its agency NEPA procedures (§ 1507.3 of this chapter), normally do not have a significant effect on the human environment.

(e) *Cooperating agency* means any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action that may significantly affect the quality of the human environment.

(f) *Council* means the Council on Environmental Quality established by title II of the Act.

(g) *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.

(1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

(2) A ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.

(3) An agency's analysis of effects shall be consistent with this paragraph (g). Cumulative impact, defined in 40 CFR 1508.7 (1978), is repealed.

(h) *Environmental assessment* means a concise public document prepared by a Federal agency to aid an agency's compliance with the Act and support its determination of whether to prepare an environmental impact statement or a finding of no significant impact, as provided in § 1501.6 of this chapter.

(i) *Environmental document* means an environmental assessment, environmental impact statement, finding of no significant impact, or notice of intent.

(j) *Environmental impact statement* means a detailed written statement as required by section 102(2)(C) of NEPA.

(k) *Federal agency* means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For the purposes of the regulations in this subchapter, Federal agency also includes States, units of general local government, and Tribal governments assuming NEPA responsibilities from a Federal agency pursuant to statute.

(l) *Finding of no significant impact* means a document by a Federal agency briefly presenting the reasons why an action, not otherwise categorically excluded (§ 1501.4 of this chapter), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

(m) *Human environment* means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. (*See also* the definition of ''effects'' in paragraph (g) of this section.)

(n) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.

(o) *Lead agency* means the agency or agencies, in the case of joint lead agencies, preparing or having taken primary responsibility for preparing the environmental impact statement.

(p) *Legislation* means a bill or legislative proposal to Congress developed by a Federal agency, but does not include requests for appropriations or legislation recommended by the President.

(q) *Major Federal action* or *action* means an activity or decision subject to Federal control and responsibility subject to the following:

(1) Major Federal action does not include the following activities or decisions:

(i) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States;

(ii) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority;

(iii) Activities or decisions that do not result in final agency action under the Administrative Procedure Act or other statute that also includes a finality requirement;

(iv) Judicial or administrative civil or criminal enforcement actions;

(v) Funding assistance solely in the form of general revenue sharing funds with no Federal agency control over the subsequent use of such funds;

(vi) Non-Federal projects with minimal Federal funding or minimal Federal involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project; and

(vii) Loans, loan guarantees, or other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effects of such assistance (for example, action does not include farm ownership and operating loan guarantees by the Farm Service Agency pursuant to 7 U.S.C. 1925 and 1941 through 1949 and business loan guarantees by the Small Business Administration pursuant to 15 U.S.C. 636(a), 636(m), and 695 through 697g).

(2) Major Federal actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§ 1506.8 of this chapter).

(3) Major Federal actions tend to fall within one of the following categories:

(i) Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(ii) Adoption of formal plans, such as official documents prepared or approved by Federal agencies, which prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(iii) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(iv) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities.

(r) *Matter* includes for purposes of part 1504 of this chapter:

(1) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(2) With respect to all other agencies, any proposed major Federal action to which section 102(2)(C) of NEPA applies.

(s) *Mitigation* means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments.

(t) *NEPA process* means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.

(u) *Notice of intent* means a public notice that an agency will prepare and consider an environmental impact statement.

(v) *Page* means 500 words and does not include explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.

(w) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

(x) *Proposal* means a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects. A proposal may exist in fact as well as by agency declaration that one exists.

(y) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication, and adopted by agency NEPA procedures pursuant to § 1507.3 of this chapter.

(z) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

(aa) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(bb) *Referring agency* means the Federal agency that has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

(cc) *Scope* consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§ 1501.11 of this chapter).

(dd) *Senior agency official* means an official of assistant secretary rank or higher (or equivalent) that is designated for overall agency NEPA compliance, including resolving implementation issues.

(ee) *Special expertise* means statutory responsibility, agency mission, or related program experience.

(ff) *Tiering* refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

§ 1508.2 [Reserved]

PARTS 1515 THROUGH 1518 [DESIGNATED AS SUBCHAPTER B]

■ 11. Designate parts 1515 through 1518 as subchapter B and add a heading for newly designated subchapter B to read as follows:

Subchapter B—Administrative Procedures and Operations

[FR Doc. 2020–15179 Filed 7–15–20; 4:15 pm]

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FEDERAL REGISTER

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Part III

National Capital Planning Commission

Comprehensive Plan for the National Capital: Federal Transportation Element and Transportation Addendum; Submission Guidelines; Meetings; Notices

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Final Adoption and Effective Date for a Revised Federal Transportation Element and Transportation Addendum for the Federal Elements of the Comprehensive Plan for the National Capital

AGENCY: National Capital Planning Commission.

ACTION: Notice of final adoption of and effective date.

SUMMARY: The National Capital Planning Commission (NCPC) adopted the Federal Transportation Element (Element) and Transportation Addendum of the ''Comprehensive Plan for the National Capital: Federal Elements'' on July 9, 2020. The Element guides the development and maintenance of a multimodal transportation system that meets the needs of federal workers, residents, and visitors, while improving regional mobility, transportation access, and environmental quality in the National Capital Region. The National Capital Region includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities within the boundaries of these counties. The Element provides the policy framework for Commission actions on plans and projects subject to Commission review.

DATES: The revised Element will become effective September 14, 2020.

ADDRESSES: The Element is available online for review at *https://www.ncpc.gov/initiatives/transportation.*

FOR FURTHER INFORMATION CONTACT: Johanna McCrehan at (202) 482–7206 or *info@ncpc.gov*.

SUPPLEMENTARY INFORMATION: The parking ratios contained in the updated Transportation Element apply to individual projects and facility master plans in the region. Following the effective date of the updated Element, individual projects subject to prior Commission action under parking ratios enacted in 2016 may be implemented using the 2016 ratios, unless project approval has expired. Installations within the L'Enfant City which currently meet the 2016 parking ratios should, at the time of their next Master Plan update, prepare a new Transportation Management Plan (TMP) in accordance with the 2020 parking ratios. Installations outside the boundary of the L'Enfant City where the parking ratio is proposed to increase should modify their existing TMP to detail how the 2020 parking ratio goals will be met over time and submit the modified TMP to the Commission at the next master plan update.

Authority: 40 U.S.C. 8721(a).

Dated: July 9, 2020.

Debra Dickson,

Director, Office of Administration.

[FR Doc. 2020–15323 Filed 7–15–20; 8:45 am]

BILLING CODE P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Final Adoption and Effective Date for Revised Submission Guidelines

AGENCY: National Capital Planning Commission.

ACTION: Notice of final adoption of and effective date.

SUMMARY: The National Capital Planning Commission (NCPC) adopted revised Submission Guidelines related to transportation planning on July 9, 2020. Federal and non-Federal agency applicants whose development proposals and plans are subject to statutory mandated Commission plan and project review must submit their proposals to the Commission following a process laid out in the Submission Guidelines. The adopted revised Submission Guidelines support the adopted revised Transportation Element of the Comprehensive Plan for the National Capital: Federal Elements also adopted on July 9, 2020.

DATES: The revised Submission Guidelines will become effective September 14, 2020.

ADDRESSES: The revisions to the Submission Guidelines are available online at *https://www.ncpc.gov/initiatives/transportation.*

FOR FURTHER INFORMATION CONTACT: Johanna McCrehan at (202) 482–7206 or *compplan@ncpc.gov*.

Authority: 40 U.S.C. 8721(e)(2).

Dated: July 9, 2020.

Debra Dickson,

Director, Office of Administration.

[FR Doc. 2020–15324 Filed 7–15–20; 8:45 am]

BILLING CODE 7502–02–P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Public Comment Period and Public Meeting on Policies Related to Tree Replacement in the Federal Environment Element of the Comprehensive Plan for the National Capital

AGENCY: National Capital Planning Commission.

ACTION: Notice of 60-Day public comment period and public meeting.

SUMMARY: The National Capital Planning Commission (NCPC) has released a draft of the Federal Environment Element, Section G of the Comprehensive Plan for the National Capital: Federal Elements for public review. The Element establishes policies in Section G to preserve and replace trees that are impacted by development on Federal land so they contribute to the sustainability of the National Capital Region's environment. NCPC will host an information session for the public to learn more about the draft policies related to tree replacement in Section G of the Federal Environment Element of the Comprehensive Plan for the National Capital.

DATES: The public comment period closes September 14, 2020.

The meeting will be held virtually on Wednesday, July 29 at 4:30 p.m. to 5:30 p.m.

ADDRESSES: The draft is available online for review at *https://www.ncpc.gov/initiatives/treereplacement/.*

Registration information for the meeting is available online at *https://www.ncpc.gov/initiatives/treereplacement/.*

Written public comments on the draft submitted electronically are preferred but may be submitted by either method:

1. *U.S. mail, courier, or hand deliver:* Federal Environment, Section G, Public Comment, National Capital Planning Commission, 401 9th Street NW, Suite 500N, Washington, DC 20004.

2. *Electronically: https://www.ncpc.gov/initiatives/treereplacement/.*

FOR FURTHER INFORMATION CONTACT: Stephanie Free at (202) 482–7209 or *info@ncpc.gov*.

Authority: 40 U.S.C. 8721(e)(2).

Dated: July 9, 2020.

Debra Dickson,

Director, Office of Administration.

[FR Doc. 2020–15325 Filed 7–15–20; 8:45 am]

BILLING CODE P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Public Comment Period and Public Meeting on Updates to the Submission Guidelines Related to Tree Replacement on Federal Development Sites

AGENCY: National Capital Planning Commission.

ACTION: Notice of 60-Day public comment period and public meeting.

SUMMARY: The National Capital Planning Commission (NCPC) has released revisions to the Submission Guidelines to update aspects of the submission requirements related to tree replacement on federal development sites. Federal and non-Federal agency applicants whose development proposals and plans are subject to statutory mandated Commission plan and project review must submit their proposals to the Commission following a process laid out in the Submission Guidelines. The proposed revisions to the Submission Guidelines support the draft Federal Environment Element of the Comprehensive Plan for the National Capital, Section G: Federal Elements which NCPC also released for public comment. NCPC will host a public information session to learn more about the revisions to the Submission Guidelines, as well as the draft policies related to tree replacement in Section G of the Federal Environment Element of the Comprehensive Plan for the National Capital.

DATES: The public comment period closes September 14, 2020.

The meeting will be held virtually on Wednesday, July 29 at 4:30 p.m. to 5:30 p.m.

ADDRESSES: The revisions to the Submission Guidelines are available online for review at: *https://www.ncpc.gov/initiatives/treereplacement/.*

Registration information for the meeting will be available online at *https://www.ncpc.gov/initiatives/treereplacement/.*

Written public comments on the draft submitted electronically are preferred but may be submitted by either method:

1. *U.S. mail, courier, or hand deliver:* Tree Replacement, Submission Guidelines, Public Comment, National Capital Planning Commission, 401 9th Street NW, Suite 500N, Washington, DC 20004.

2. *Electronically: https://www.ncpc.gov/initiatives/treereplacement/.*

FOR FURTHER INFORMATION CONTACT: Stephanie Free at (202) 482–7209 or *info@ncpc.gov*.

Authority: 40 U.S.C. 8721(e)(2).

Dated: July 9, 2020.

Debra Dickson,

Director, Office of Administration.

[FR Doc. 2020–15326 Filed 7–15–20; 8:45 am]

BILLING CODE P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Public Comment Period and a Public Meeting on Updates to the Submission Guidelines Related to Antennas on Federal and Certain District Buildings and Land

AGENCY: National Capital Planning Commission.

ACTION: Notice of 60-Day public comment period and public meetings.

SUMMARY: The National Capital Planning Commission (NCPC) has released a revision to the Submission Guidelines updating the requirements and criteria for antennas placed on Federal and certain District buildings and lands in the National Capital Region. Federal and District agency applicants who are seeking to place antennas on their property are subject to review by the Commission following a process laid out in the Submission Guidelines. The proposed revisions to the Antenna Submission Guidelines address several deficiencies in the current guidelines, namely: Adding definitions for small cells and temporary antennas; including several new criteria to help protect viewsheds and address multiple antennas on building rooftops; and identifying the review process for temporary and small cell antennas. NCPC will host one virtual meeting for the public to learn more about the revisions in the draft Antenna Submission Guidelines.

DATES: The public comment period closes September 14, 2020.

The meeting will be on August 4, 2020 from 4:30 p.m. to 5:30 p.m.

ADDRESSES: The proposed amendments can be found at: *https://www.ncpc.gov/initiatives/antennas/.*

Registration information for the meeting is available online at *https://www.ncpc.gov/initiatives/antennas/.*

Written public comments on the draft submitted electronically are preferred but may be submitted by either method:

1. *U.S. mail, courier, or hand deliver:* Tree Replacement, Submission Guidelines, Public Comment, National Capital Planning Commission, 401 9th Street NW, Suite 500N, Washington, DC 20004.

2. *https://www.ncpc.gov/initiatives/antennas/.*

FOR FURTHER INFORMATION CONTACT: Carlton Hart at (202) 482–7252 or *info@ncpc.gov*.

Authority: 40 U.S.C. 8721(e)(2).

Dated: July 9, 2020.

Debra Dickson,

Director, Office of Administration.

[FR Doc. 2020–15327 Filed 7–15–20; 8:45 am]

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Alaska LNG Project in Prudhoe Bay, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA210]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Alaska LNG Project in Prudhoe Bay, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Alaska Gasline Development Corporation (AGDC) for authorization to take marine mammals incidental to construction of the Alaska LNG Project in Prudhoe Bay, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 17, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be sent to *ITP.Davis@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. Accordingly, NMFS plans to adopt the Federal Energy Regulatory Commission's (FERC) EIS, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA. NMFS is a cooperating agency on FERC's EIS.

The FERC's EIS was made available for public comment from June 28, 2019 to October 3, 2019. The FERC's Final EIS is available at *https://www.ferc.gov/industries/gas/enviro/eis/2020/03-06-20-FEIS.asp.*

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On March 28, 2019, NMFS received a request from AGDC for an IHA to take marine mammals incidental to construction activities in Prudhoe Bay, Alaska. AGDC submitted revised applications on May 29, 2019; September 16, 2019; October 31, 2019, February 7, 2020; and February 25, 2020. The application was deemed adequate and complete on May 21, 2020. AGDC's request is for take of a small number of six species of marine mammals by harassment. Neither AGDC nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would authorize incidental take during one year of the larger AK LNG project for which AGDC has also requested a five-year Letter of Authorization (LOA) (84 FR 30991, June 28, 2019) for incidental take associated with project activities in Cook Inlet, Alaska. The larger project involves a pipeline that will span approximately 807 miles (mi) (1,290 kilometers [km]) from a gas treatment facility on Alaska's North Slope, which holds 35 trillion cubic feet (ft^3) of proven gas reserves, to a liquefaction and export facility in southcentral Alaska.

Description of Proposed Activity

Overview

AGDC plans to construct an integrated liquefied natural gas (LNG) project with interdependent facilities to liquefy supplies of natural gas from Alaska, in particular from the Point Thomson Unit (PTU) and Prudhoe Bay Unit (PBU)

production fields on the Alaska North Slope (North Slope), for export in foreign commerce and for in-state deliveries of natural gas. AGDC plans to construct an Alaska LNG Gas Treatment Plant (GTP), which they would construct with large, pre-fabricated modules that that can only be transported to the North Slope with barges (sealifts).

AGDC is proposing to modify the existing West Dock causeway and associated dock heads in Prudhoe Bay, Alaska in order to facilitate offloading modular construction components and transporting them to the GTP construction site. Vibratory and impact pile driving associated with the work at West Dock would introduce underwater sound that may result in take by Level A and Level B harassment of marine mammals in Prudhoe Bay, Alaska. AGDC proposes to conduct pile driving up to 24 hours per day on approximately 123 days from July through October during the open water (*i.e.,* ice-free) season.

Dates and Duration

The proposed IHA would be effective from July 1, 2022 to June 30, 2023. Work that may result in the take of marine mammals is expected to take place during the open water season, between July and October, and would be conducted up to 24 hours per day, six days per week.

Several communities on the North Slope of Alaska engage in subsistence hunting activities at varying times and in varying locations. These subsistence hunts are further described below in the Effects of Specified Activities on Subsistence Uses of Marine Mammals section. The proposed construction activities would occur closest to the marine subsistence use area used by the Native Village of Nuiqsut, which typically occurs August 25th to September 15th, or earlier if whaling is complete. AGDC will cease pile driving during the Nuiqsut whaling season.

AGDC conservatively calculated that in-water construction would last 164 days. However, they expect that different pile types would be installed on the same day, which was not accounted for in the 164-day estimate. Therefore, given the information AGDC has provided NMFS, we expect that construction will require approximately 123 days of in-water work considering the open water period, and the break in construction during the whaling season. If AGDC is not able to complete the work during the open water season construction period as planned, they will complete the work during a contingency period from late February to April 2023.

Specific Geographic Region

The AK LNG construction activities at issue in this IHA will occur at West Dock in Prudhoe Bay, Alaska, on Alaska's North Slope. West Dock is a multipurpose facility, commonly used to offload marine cargo to support Prudhoe Bay oilfield development. West Dock extends out from the shoreline 2.7 miles (mi) (4.3 kilometers [km]) and is within shallow waters less than 14.2 feet (ft.) (4.3 meters [m]) deep. Please see Figure 1 in AGDC's application for a map of the West Dock area.

Detailed Description of Specific Activity

Below, we discuss the proposed activities in Prudhoe Bay, a portion of the larger AK LNG project (which extends from the North Slope to Cook Inlet). For information on other AK LNG project components, please refer to Volume I, Chapter 2 of the Alaska LNG Final EIS.

AGDC is proposing to further develop the West Dock facility in Prudhoe Bay, AK. West Dock is a multipurpose facility, commonly used to offload marine cargo to support Prudhoe Bay oilfield development. The West Dock causeway, which extends approximately 2.5 mi (4 km) into Prudhoe Bay from the shoreline, is a solid-fill gravel causeway structure. There are two existing loading docks along the causeway, referred to as Dock Head 2 (DH2) and Dock Head 3 (DH3), and a seawater treatment plant (STP) at the seaward terminus of the structure. A 650-ft (198-m) breach with a single lane bridge was installed in the causeway between DH2 and DH3 during 1995 and 1996 due to concerns that the solid causeway was affecting coastal circulation and marine resources.

Development of the dock facility would require constructing a new dock head referred to as Dock Head 4 (DH4), widening the gravel causeway between the proposed DH4 site and the onshore road system, and installation of a temporary barge bridge parallel to the existing bridge over the aforementioned breach to accommodate transport of the modules over the breach. The following describes these activities in detail.

Causeway Widening—AGDC will build a parallel causeway approximately 100–125 ft (30.5–38.1 m) wide and 5,000 ft. long (1,524 m) on the east side of the existing causeway from DH3 to DH4. AGDC will upgrade the other two existing segments of West Dock causeway to a width of approximately 100–125 ft (30.5–38.1 m) from the current width of 40–80 ft. (12.2–24.4 m). AGDC will conduct the widening on the east side of the causeway because there is a pipeline along the west side. The widening would occur along approximately 4,500 ft. (1,372 m) from DH3 to DH2, and 3,800 ft. (1,158 m) from DH2 to land. This causeway widening work would be conducted during the summer (July–August). Gravel would be hauled in by truck and deposited in place by shore-based heavy equipment. Expected gravel requirements are indicated in Table 2 of AGDC's application. NMFS does not expect gravel deposition to result in take, and therefore, we do not discuss it further in this notice.

DH4 Work Area and Bulkhead—AGDC will construct a new dock head (DH4). DH4 would be a gravity-based structure, with a combi-wall (sheet piles connected by H-piles) bulkhead or dock face back-filled with gravel. The gravel dock head would provide a working area of approximately 31 acres (0.13 km^2) and would have five cargo berths. Gravel would be hauled in by truck and deposited in place by shore-based heavy equipment. Hauling and placement of gravel for construction of DH4 would occur from June–September. Gravel requirements are quantified in Table 3 of AGDC's application.

Construction of DH4 would require the installation of over 1,080 linear ft. (329 m) of combi-wall forming a bulkhead at the dock face, and will require vibratory and impact pile driving. Other margins of the dock head would be sloped and armored with sand bags. Table 1 indicates the planned numbers and types of piles proposed for installation, and proposed installation method for DH4 work, including the work area and bulkhead.

TABLE 1—PILES PLANNED FOR INSTALLATION AT DH4

Pile type/size	Installation method	Number of piles
11.5-inch Steel H-Pile	Impact	212
48-inch Steel Pipe Pile	Impact	12

TABLE 1—PILES PLANNED FOR INSTALLATION AT DH4—Continued

Pile type/size	Installation method	Number of piles
25-inch Steel Sheet Pile	Vibratory	422
14-inch Steel H-Pile (temporary)	Vibratory	48

AGDC plans to construct DH4 from June–October (open water season). Hauling and placing of the gravel will take place first. AGDC plans to install the combi-wall mid-September–October (after the whaling season and before ice). If AGDC is not able to complete the DH4 construction during the open water season, they plan to complete construction during a contingency period from February to April 2023, working off the ice.

DH4 Mooring Dolphins—AGDC plans to install twelve mooring dolphins in the cargo berths at the proposed DH4 to hold the ballasted barges in place. Figure 5 of AGDC's application shows the locations of the proposed mooring dolphins. AGDC plans to install four temporary spuds (14-inch steel H piles) for support prior to the construction of each mooring dolphin using a vibratory hammer. AGDC would extract these piles immediately after completion of the dolphin. Table 1 lists the proposed pile types, numbers, and driving methods for DH4 work, including the mooring dolphins.

AGDC plans to install the mooring dolphins from September–October (after the Nuiqsut whaling season and before ice cover). If AGDC is not able to complete mooring dolphin construction during this time, they plan to complete construction during a contingency period from late February to April of the following year.

Berthing Basin—The proposed location of the DH4 bulkhead is approximately 1,000 ft. (305 m) beyond the end of the existing causeway at the STP. This location was selected as it provides an existing nominal water depth of −12 ft. (−3.7 m) mean lower low water (MLLW) across the length of the bulkhead, allowing for berthing of cargo barges at their intended transit draft of 10 ft. (3.05 m) without the exchange of ballast water.

AGDC plans to conduct screeding over the seafloor within the berthing area to a depth of −12 ft. (−3.7 m) MLLW. Screeding would redistribute the seabed materials to provide a flat and even surface on which the module cargo barges can be grounded. The berthing area encompasses approximately 13.7 acres (0.06 km^2). In the screeding process, a tug and/or barge pushes or drags a beam or blade across the seafloor, removing high spots and filling local depressions. The screeding operation is not intended to increase or decrease overall seabed elevation so there would be no excavated materials requiring disposal.

AGDC would conduct screeding in the summer immediately prior to arrival of each sealift and as soon as sea ice conditions allow mobilization of the screeding barge. Based on historical ice data, AGDC anticipates screeding during July for a period of up to 14 days. AGDC would conduct a multi-beam hydrographic survey to identify high and low spots in the seabed prior to each season with equipment emitting sound at frequencies above 200 kilohertz (kHz). We do not expect the survey to result in take, and we do not discuss it further in this notice. Additionally, we do not expect screeding to result in take of marine mammals, given that it is a continuous noise source comparable to other general construction activities. The Biological Opinion issued by NMFS' Alaska Regional Office conservatively requires AGDC to shut down at 215 m during screeding operations. AGDC has not requested, and NMFS does not propose to authorize take incidental to the proposed screeding.

Barge Bridge—The existing bridge over the aforementioned 650 ft. (198 m) breach in the causeway is too narrow for module transport and incapable of supporting the weight of the project modules. Therefore, AGDC plans to construct a temporary barge bridge to accommodate transport of the modules over the breach and to the onshore road system. AGDC plans to construct new sheet pile and gravel abutments along the east side of the existing bridge and plans to install four mooring dolphins. Two barges would then be placed along these mooring dolphins and between the abutments to form a temporary bridge for module transport.

Sealifts and barge bridge installation and removal (not including pile driving) would occur each of six consecutive years to accommodate the modules required for the project. AGDC would construct the approach abutments and mooring dolphins (each further described below) in the first season, and would prepare the seabed before installation of the barge bridge for the first sealift. The barge bridge would be installed annually each sealift year at the beginning of the open-water season, and would be removed each fall prior to freeze-up. This installation and removal does not include installation and removal of the mooring dolphins. AGDC expects to conduct some seabed preparation prior to installation and use of the barge bridge in each subsequent sealift year. NMFS does not expect annual placement, use, or removal of the barge bridge or the seabed preparation to result in marine mammal harassment, and therefore we do not discuss it further in this notice.

Barge Bridge Abutments—AGDC plans to construct approach abutments (gravel filled open-cell sheet pile bulkheads) along the east side of the existing causeway on both ends of the barge bridge. AGDC would place gravel bags for erosion control in locations where there is no bulkhead. The bulkheads would be approximately 420 ft. (128 m) long (along the causeway) and 120 ft. (36.6 m) across.

Much of the abutment sheet pile is for the tail walls that run from the bulkhead into the gravel fill and terminate at an anchor pile (H-pile). A large portion of this tail wall piling and many of the tail wall anchor piles would be driven into dry ground and are not included in the analysis for assessing in-water noise impacts on marine mammals. Table 2 lists the numbers and types of pilings planned for in-water installation for the barge bridge abutments.

TABLE 2—PILES PLANNED FOR IN-WATER INSTALLATION AT THE NORTH AND SOUTH BARGE BRIDGE ABUTMENT BULKHEADS

	Pile type and installation method	Number of piles
South Abutment	19.69-inch Steel Sheet Pile (Vibratory)	695
	14-inch Steel H-Pile (Impact)	4
North Abutment	19.69-inch Steel Sheet Pile (Vibratory)	609
	14-inch Steel H-Pile (Impact)	4

AGDC plans to install the sheet piles from land or barges on open water, and potentially from the ice if the contingency period is necessary.

Construction of the barge bridge abutments is scheduled for July–August with a break in pile driving during the Nuiqsut whaling season (approximately August 25–September 15) if activities overlap. If AGDC is unable to complete construction during the open water period, they plan to complete the work during the contingency period from February to April of 2023.

Barge Bridge Mooring Dolphins—AGDC plans to install four mooring dolphins at the barge bridge site to protect the current bridge from the barges and hold the ballasted barges in place. Each mooring dolphin consists of one 48-inch diameter (1.2 m), 100 ft. (30.5 m) long steel pipe pile that AGDC will drive with an impact hammer to a minimum of 65 ft. (19.8 m) into the seabed. As described above for the DH4 mooring dolphins, AGDC plans to install four temporary spuds (14.5-inch steel H-piles) with a vibratory hammer for support prior to the construction of each barge bridge mooring dolphin. AGDC would extract these temporary spuds immediately after completion of the dolphin.

AGDC plans to construct the barge bridge abutments, including the mooring dolphins, in July and August, with a break in pile driving during the Nuiqsut whaling season (approximately August 25–September 15). If AGDC is not able to complete the work during that period, they will complete the dolphin installation during the contingency period from February to April of 2023.

TABLE 3—PILES PLANNED FOR MOORING DOLPHIN INSTALLATION AT THE BARGE BRIDGE ABUTMENTS

Pile type	Installation method	Number of piles
48-inch Steel Pipe Pile	Impact	4
14-inch Steel H-Pile (Temporary)	Vibratory	[a] 16

[a] Each of these piles will be installed and later removed after installation of mooring dolphin.

TABLE 4—TOTAL NUMBER OF PILES AMONG ALL PRUDHOE BAY PROJECT COMPONENTS

Pile size and type	Hammer type	Number of piles
11.5-inch H-Pile	Impact	212
14.5-inch H-Pile	Impact	8
	Vibratory	64
48-inch Pipe Pile	Impact	16
Sheet Piles (19.69-inch and 25-inch)	Vibratory	1,726

AGDC will only operate one hammer at a time during all pile driving.

Seabed Preparation at the Barge Bridge—AGDC will construct a level and stable barge pad to support the ballasted barge at the proper horizontal and vertical location for successful transit of modules across the breach. The pad would be designed to support the fully loaded weight of the barge and the heaviest modules.

Pad construction would include an initial through-ice bathymetric survey within the breach. AGDC would conduct the through-ice survey by drilling or augering holes through the ice and measuring the bottom elevations by a survey rod tied to the local Global Positioning System—Real Time Kinematic (GPS–RTK) system to provide the needed level of accuracy of horizontal positions and vertical elevations. A grid of survey holes would be established over the 710 ft. (216 m) by 160 ft. (48.8 m) dimensions (2.6 acres; 0.01 km^2) of the breach barge pad to allow for determination of the bottom bathymetry such that a plan can be developed accordingly to prepare the barge pad surface. NMFS expects drilling and augering holes to produce continuous noise similar to other standard construction noise. We do not expect drilling or augering holes to result in take of marine mammals and drilling and auguring holes through the sea ice is not discussed further.

Seabed preparation would consist of smoothing the seabed within the pad area as necessary to level the seabed across the pad at an elevation grade of approximately −7 ft. (−2.1 m) MLLW. Some gravel fill may be required at scour holes. Rock filled marine mattresses or gabions approximately 1 ft. (0.3 m) thick would then be placed across the graded pad to provide a stable and low maintenance surface at −6 ft. (− 1.8 m) MLLW on which the barges would be grounded. These mattresses are gravel-filled containers constructed of high-strength geogrid, with the geogrid panels laced together to form mattress-shaped baskets.

AGDC would conduct the seabed preparations through the ice during winter using excavation equipment and ice excavation methods. Equipment required for the grading work includes ice trenchers, excavators, front-end

loaders, man-lifts, haul trucks, survey equipment, and other ancillary equipment necessary to support the operation. An equipment spread includes a trencher for cutting ice, an excavator for removing ice, a second excavator, and haul units. AGDC would initiate through-ice grading efforts by cutting through the ice with trenchers. Excavators would then proceed to remove the ice to expose the seafloor bottom. Once a section has been exposed to the seafloor, the bottom will be graded to −7 ft. (−2.1 m) MLLW using the excavation equipment. AGDC would then install marine mattresses on the graded pad, likely requiring use of a crane. Grounded ice conditions are expected to occur at the breach on or before February 1st of each year at the latest. AGDC expects to conduct through-ice surveying and grading work immediately after, if not sooner. AGDC expects the total construction duration will be 45 to 60 days with construction complete by the end of March and demobilization from the breach area in early April. NMFS expects these activities to produce continuous noise similar to other standard construction noise. Ringed seals could be present during this time, particularly in subnivean lairs (Frost and Burns, 1989; Kelly *et al.,* 1986; Williams *et al.,* 2001). It is likely that few, if any, spotted or bearded seals would be present during that time (Bengston *et al.,* 2005; Lowry *et al.,* 1998; Simpkins *et al.,* 2003). Additionally, we do not expect cetaceans to be present in the area during this time (Quakenbush *et al.,* 2018, Citta *et al.,* 2016). We do not expect these seabed preparation activities to result in take of marine mammals and do not discuss them further.

AGDC may conduct some screeding right before the barges are placed in summer in an effort to achieve a surface that is near flush with adjacent subsurface elevations. Any screeding at the barge bridge site would be expected to take 14 days or less. As discussed previously, NMFS does not expect screeding to result in marine mammal harassment, therefore, screeding is not discussed further in this document.

Barge Bridge Installation—The first two barges to offload materials would be used to form the temporary bridge, paralleling the existing weight-limited bridge, and spanning the breach. AGDC would move these barges into place against the mooring dolphins with tugs where they would be ballasted and fastened to the causeway abutments and each other. The two ballasted barges would be placed bow-to-bow when resting on the seafloor. The barge rakes would angle upward and touch at their adjoining point, leaving an approximately 52.5-ft (16-m) gap at the seafloor between the barges. The stern of each barge would angle sharply upward at each end of the bridge, leaving an additional 10-ft (3.1-m) gap at the seafloor at each end.

Ramps would be installed to accommodate smooth transit of the self-propelled module transporters (SPMTs) over the bridge. Modules would be transported by SPMTs down the causeway and over the temporary bridge to a staging pad at the base of West Dock. From there, they would be moved southward over approximately 6 mi (9.7 km) of new and existing roads to the GTP construction site.

AGDC expects construction of the temporary barge bridge will last 3 days. The temporary bridge would be held in place by the mooring dolphins. AGDC expects the temporary bridge to be in place for 21 to 39 days, depending on weather conditions and logistics. At the conclusion of each year's sealift, AGDC would de-ballast the barges and remove them from the breach. Upon the subsequent summer season and the next sealift, AGDC would position the barges back in the breach and re-ballast them onto the barge pad for module transport operations. NMFS does not expect placement or removal of the barge bridges to result in take of marine mammals, and we do not discuss it further.

AGDC plans to leave West Dock modifications in place after modules are offloaded, as their removal would result in greater disturbance to the surrounding environment. AGDC also plans to leave the piling and infrastructure forming the offshoot and ramp to the temporary barge bridge in place, as removing it may result in erosion or weakening of the existing causeway. AGDC would cut the mooring pilings below the sediment surface, remove them, and cover the area with surrounding sediment.

Sealifts—AGDC has proposed six sealifts, consisting of two preliminary sealifts (NEG1 and NEG2) transporting materials (smaller modules, equipment, and supplies) and four primary sealifts (Sealifts 1–4) carrying the GTP modules. AGDC identified the timing, numbers of vessels, and numbers of modules associated with each of these six sealifts in their application (See Tables 8 and 9 of AGDC's application).

The barges will transport the modules from the manufacturing site (likely in Asia) with first call being Dutch Harbor to clear customs. The barges would then proceed to a designated Marine Transit Staging Area (MTSA), with Port Clarence being the preferred location for the MTSA at this time. The tug and barge will wait in a secure anchorage there until sea ice conditions have improved to 3/10 ice cover or better. The tow spread would be accompanied by a light aircraft which would repeatedly fly along the tow route to give a detailed report on sea and ice conditions. When such conditions are favorable, the tug and barge would proceed to the Prudhoe Bay Offshore Staging Area (PBOSA) located south (shoreward) of Reindeer Island and approximately 5 mi (8 km) north of DH4 to await berthing at DH4.

The sealift barges would be moved from the PBOSA to DH4 with the shallow draft assist tugs. Offloading operations at DH4 would occur 24 hours a day during periods of favorable metocean and weather conditions. Current North Slope sealift practices limit operations to wind speed below 20 knots. The barges would be butted up against the dock face and then ballasted down until they rest on the prepared barge bearing pad. Ramps would be placed to connect the barge deck with the dock so that the SPMTs are able to roll under the modules, lift them, then roll out and transport them to the onshore module staging area.

The barges would be demobilized from the PBOSA by ocean-going tugs using standard marine shipping routes. The barges would transit individually through the Beaufort and Chukchi seas rather than in groups, as occurred during their arrival into Prudhoe Bay. They would be demobilized from Prudhoe Bay on or about mid-September. NMFS does not expect take to occur associated with ordinary vessel transit, and therefore the use of sealifts is not discussed further.

NMFS is carrying forward impact and vibratory pile driving and removal (piles indicated in Table 4) for further analysis regarding potential take of marine mammals. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/*

marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*). Additional information may be found in the Aerial Survey of Arctic Marine Mammals (ASAMM) reports, which are available online at *https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/aerial-surveys-arctic-marine-mammals.*

Table 5 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs (*e.g.,* Muto *et al.,* 2019). All values presented in Table 5 are the most recent available at the time of publication and are available in the 2018 Pacific and Alaska SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019) and draft 2019 Alaska SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 5—SPECIES FOR WHICH TAKE IS REASONABLY LIKELY TO OCCUR

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-/-; N	26,960 (0.05, 25,849, 2016)	801	139
Family Balaenidae:						
Bowhead whale	*Balaena mysticetus*	Western Arctic	E/D; Y	16,820 (0.052, 16,100, 2011)	161	53
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	*Delphinapterus leucas*	Beaufort Sea	-/-; N	39,258 (0.229, NA, 1992)	UND	139
		Eastern Chukchi Sea	-/-; N	20,752 (0.7, 12,194, 2012)	244	67
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Ringed seal	*Phoca (pusa) hispida*	Alaska	T/D; Y	see SAR (see SAR, see SAR, 2013.	5,100	863
Spotted seal	*Phoca largha*	Alaska	-/-; N	461,625 (see SAR, 423,237, 2013).	12,697	329
Bearded seal	*Erignathus barbatus*	Beringia	T/D; Y	see SAR (see SAR, see SAR, 2013.	See SAR	557

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

As indicated above, all six species (with seven managed stocks) in Table 5 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing take. While a harbor porpoise was sighted in the 2017 ASAMM survey (Clarke *et al.,* 2018), the spatial occurrence of harbor porpoise is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Harbor porpoise (*Phocoena phocoena*) are considered to be extremely rare in the Beaufort Sea, particularly in the project area (Megan Ferguson, pers. comm., November 2019).

In addition, the polar bear may be found in Prudhoe Bay. However, polar bears are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Bowhead Whale

Of the five stocks of bowhead whale, only the Western Arctic stock is found within U.S. waters. This stock is listed as endangered under the ESA and depleted under the MMPA. The stock is classified as a strategic stock and an Alaska Species of Special Concern (Muto *et al.* 2018). From 1978 to 2011, the Western Arctic stock increased at a rate of 3.7 percent (95 percent Confidence Interval [CI] = 2.9–4.6 percent), and abundance tripled from approximately 5,000 to approximately 16,820 whales (Givens *et al.* 2016).

Bowhead whales belonging to the Western Arctic stock are distributed seasonally in ice-covered waters of the Arctic and near-Arctic, generally between 60 degrees and 75 degrees North latitude in the Western Arctic Basin (Moore and Reeves 1993; Muto *et al.* 2018). The majority of the stock migrates annually from wintering areas (December to March) in the central and northwestern Bering Sea, north through the Chukchi Sea in the spring (April through May) following offshore ice leads around the coast of Alaska, and into the eastern Beaufort Sea where they spend most of the summer (June through early to mid-October). Most animals from the stock return to the Bering Sea in the fall (September through December) where they overwinter (Braham *et al.* 1980; Moore and Reeves 1993; Citta *et al.* 2015; Muto *et al.* 2018).

Critical habitat has not been designated for the bowhead whale. NMFS was petitioned in 2000 to consider designating the nearshore areas from Utqiaġvik east to the U.S.–Canada border as critical habitat for the Western Arctic stock. In 2002, NMFS determined that a critical habitat designation was not necessary as the population was increasing and approaching the pre-commercial whaling size, there were no known habitat issues slowing the population growth, and activities that occurred in the petitioned area were already being managed to minimize impacts to the population (67 FR 55767).

The annual migration of the Western Arctic stock to and from the summer feeding grounds in the Beaufort Sea has been monitored by the Bureau of Ocean Energy Management (BOEM) (and predecessor agencies), NMFS, and/or industry since 1982 (Treacy *et al.* 2006; Blackwell *et al.* 2007; Ireland *et al.* 2009; Reiser *et al.* 2011; Bisson *et al.* 2013; Clarke *et al.* 2014). Survey data indicate that the fall migration off northern Alaska occurs primarily over the continental shelf, generally 12–37 mi (19–60 km) offshore, in waters 66–197 ft (11–60 m deep (Moore *et al.* 1989; Moore and Reeves 1993; Treacy 2002; Monnett and Treacy 2005; Treacy *et al.* 2006). Waters less than 15 ft. (4.5 m) deep are considered too shallow to support these whales, and in three decades of aerial surveys by BOEM (ASAMM), no bowhead whale has been recorded in waters less than 16.4 ft (5 m) deep (Clarke and Ferguson 2010).

Monitoring surveys have been conducted annually since 2001 at the Northstar offshore oil and gas facility located just offshore of West Dock. Over 95 percent of the bowheads observed during these fall surveys occurred more than 13.9 mi (22.3 km) offshore in 2001, 14.2 mi (22.9 km) in 2002, 8.4 mi (13.5 km) in 2003, and 10.1 mi (16.3 km) in 2004 (Blackwell *et al.* 2007). West Dock extends out from the shoreline 2.7 mi (4.3 km) and is within shallow waters less than 14.2 ft (4.3 m) deep. The proposed project activities would occur primarily along the West Dock causeway in an area developed for oil and gas with existing vessel traffic. While a small number of bowhead whales have been seen or heard offshore near Prudhoe Bay in late August (LGL and Greenridge 1996; Greene *et al.* 1999; Blackwell *et al.* 2007; Goetz *et al.* 2008), bowheads are not likely to occur in the immediate vicinity of the proposed activities.

Clarke *et al.* (2015) identified nine biologically important areas (BIAs) for bowheads in the U.S. Arctic region. The spring (April–May) migratory corridor BIA for bowheads is far offshore from the behavioral disturbance zones for the project, while the fall (September–October) migratory corridor BIA (western Beaufort Sea on and north of the shelf) for bowheads is further inshore and closer to the project site. Clarke *et al.* (2015) also identified four BIAs for bowheads that are important for reproduction and encompassed areas where the majority of bowhead whales identified as calves were observed each season; none of these reproductive BIAs overlap directly with the behavioral disturbance zones for the AK LNG project. Finally, three bowhead feeding BIAs were identified. Again, there is no spatial overlap of the activity with these BIAs. In summary, we expect that bowhead whales may occur within the project area during the open water season. We would not expect bowheads to be present during AGDC's winter/spring contingency pile driving period.

Gray Whale

The Eastern North Pacific (ENP) stock of gray whales utilize U.S. waters from the southern coast of California north into Alaska. In 1994, the ENP stock was delisted from the ESA due to recovery (59 FR 31094). Punt and Wade (2012) estimated the stock was at 85 percent of carrying capacity and is, therefore, within range of its optimum sustainable population (OSP).

The majority of the ENP stock of gray whales spend the summer and fall feeding in the Chukchi, Beaufort, and northwestern Bering seas before migrating south to the warmer water lagoons of coastal Baja California and Mexico. Prior to 1997, reports of gray whales in the Beaufort Sea were very rare. A single gray whale was killed at Cross Island in 1933 (Maher 1960), and small numbers were observed in the Canadian Beaufort Sea approximately 700 coastal mi (1,100 coastal km) east of Point Barrow in 1980 (Rugh and Fraker 1981). Gray whale sightings became more common from 1998 to 2004, although still infrequent (Miller *et al.* 1999; Treacy 2000; Williams and Coltrane 2002), and, after 2005, the species has been regularly observed in the Beaufort Sea (Green and Negri 2005; Green *et al.* 2007; Jankowski *et al.* 2008; Lyons *et al.* 2009). Feeding gray whales were observed near Elson Lagoon (immediately east of Point Barrow) in 2005 (Green and Negri 2005) and in Smith Bay (approximately 62 mi [100 km] east of Point Barrow) in 2007 (Green *et al.* 2007). Few gray whales have been documented as far east as Cape Halkett (approximately 99 mi [160 km] east of Point Barrow) in the Beaufort Sea, and their occurrence within the project area is not likely.

Clarke *et al.* (2015) identified biologically important areas (BIAs) for gray whale feeding and reproduction in the U.S. Arctic region, however, both are far west of the project area in the Chukchi Sea.

In summary, we expect that gray whales could occur within the project area during the open water season, though occurrence is not likely. We would not expect gray whales to be present during AGDC's winter/spring contingency pile driving period.

Beluga Whale

Of the five stocks of beluga whales occurring in Alaska waters, two inhabit the Beaufort Sea: The Beaufort Sea stock and the Eastern Chukchi Sea stock. Beluga whales from the two stocks migrate between the Bering and Beaufort seas and are closely associated with open leads and polynyas. The Beaufort Sea stock departs the Bering Sea in early spring, migrating through the Chukchi Sea and into the Canadian Beaufort Sea where they spend the summer and most of the fall, returning to the Bering Sea in the late fall. The Eastern Chukchi stock remains in the Bering Sea slightly longer, departing in the late spring and early summer for the Chukchi Sea and western Beaufort Sea where they spend the summer before returning to the Bering Sea in the fall (Muto *et al.* 2018).

O'Corry *et al.* (2018) studied genetic marker sets in 1,647 beluga whales. The data set was from over 20 years and encompassed all of the whales' major coastal summering regions in the Pacific Ocean. The genetic marker analysis of the migrating whales revealed that while both the wintering and

summering areas of the eastern Chukchi Sea and eastern Beaufort Sea subpopulations may overlap, the timing of spring migration differs such that the whales hunted at coastal sites in Chukotka, the Bering Strait (*i.e.,* Diomede), and northwest Alaska (*i.e.,* Point Hope) in the spring and off of Alaska's Beaufort Sea coast in summer were predominantly from the eastern Beaufort Sea population. Earlier genetic investigations and recent telemetry studies show that the spring migration of eastern Beaufort whales occurs earlier and through denser sea ice than eastern Chukchi Sea belugas. The discovery that a few individual whales found at some of these spring locations had a higher likelihood of having eastern Chukchi Sea ancestry or being of mixed-ancestry, indicates that the Bering Strait region is also an area where the stock mix in spring. Citta *et al.* (2016) also observed that tagged eastern Beaufort Sea whales migrated north in the spring through the Bering Strait earlier than the eastern Chukchi belugas, so they had to pass through the latter's primary wintering area. Therefore, the eastern Chukchi stock is unlikely to be present in the action area at any time in general, particularly during summer and fall, when most beluga exposures would be anticipated for this project. However, we conservatively assume that beluga whale takes during AGDC's project could occur to either stock.

Most belugas recorded during aerial surveys conducted in the Alaskan Beaufort Sea in the last two decades were found over 40 mi (65 km) from shore (Miller *et al.* 1999; Funk *et al.* 2008; Christie *et al.* 2010; Clarke and Ferguson 2010; Brandon *et al.* 2011). ASAMM 2016 surveys reported belugas along the continental slope with few sightings nearshore in the western Beaufort Sea, and Clarke *et al.* (2017) reported that distribution was similar to that documented in previous years with light sea ice cover.

Surveys have recorded belugas close to shore and in the vicinity of the activity area. Green and Negri (2005) reported small beluga groups nearshore Cape Lonely (August 26) and in Smith Bay (September 4). Funk *et al.* (2008) reported a group just offshore of the barrier islands near Simpson Lagoon. Aerts *et al.* (2008) reported summer sightings of three groups of eight animals inside the barrier islands near Prudhoe Bay; and Lomac-MacNair (2014) recorded 15 beluga whales offshore of Prudhoe Bay between July and August. While it is possible for belugas to occur in the project area, nearshore sightings are unlikely.

Whales from both the Beaufort Sea and eastern Chukchi Sea stocks overwinter in the Bering Sea. Belugas of the eastern Chukchi may winter in offshore, although relatively shallow, waters of the western Bering Sea (Richard *et al.,* 2001), and the Beaufort Sea stock may winter in more nearshore waters of the northern Bering Sea (R. Suydam, pers. comm. 2012c).

Clarke *et al.,* (2015) identified two biologically important areas (BIAs) for beluga whales in the U.S. Arctic region. Both the spring (April–May) and fall (September–October) migratory corridor BIAs for belugas are far offshore from the behavioral disturbance zones for the project.

In summary, we expect that beluga whales from either the Beaufort Sea or Chukchi Sea stock may occur within the project area during the open water season. We would not expect belugas to be present during AGDC's winter/spring contingency pile driving period.

Ringed Seal

Ringed seals are one of the most common marine mammals in the Beaufort, Chukchi, and Bering Seas, with the Alaska stock estimated at a minimum of 249,000 animals (Allen and Angliss 2011). Ringed seals rely on the sea ice for key life history functions and remain associated with the ice most of the year. They are well adapted to inhabiting both shorefast and pack ice, and diminishing sea ice and snow resulting from climate change is the primary concern for this population. The ice provides a platform for pupping and nursing in late winter and early spring, for molting in late spring to early summer, and for resting during other times of the year. When sea ice is at its maximal extent during the winter and early spring in Alaska waters, ringed seal numbers are high in the northern Bering Sea, and throughout the Chukchi and Beaufort Seas. The species is generally not abundant south of Norton Sound, but animals have occurred as far south as Bristol Bay in years of extensive ice coverage (Muto *et al.* 2018).

Seasonal movements have not been thoroughly documented; however, most ringed seals that overwinter in the Bering and Chukchi seas are thought to migrate north as the ice retreats in the spring. During the summer, ringed seals feed in the pack ice of the northern Chukchi and Beaufort seas, and in nearshore ice remnants of the Beaufort Sea. As the ice advances with freeze-up in the fall, many seals move west and south and disperse throughout the Chukchi and Bering seas while some remain in the Beaufort Sea (Muto *et al.* 2018).

Frost *et al.* (2004) conducted aerial surveys over the Beaufort Sea coast from Utqiaġvik to Kaktovik and determined that ringed seal density was greatest in water depths between 16 and 115 ft. (5 and 35 m), and in relatively flat ice close to the fast ice edge. Aerial surveys conducted in association with construction near the Northstar facility found ringed seal densities ranged from 0.39 to 0.83 seals per km^2 (Moulton *et al.* 2005).

Historically, ringed seal occurrence in or near the activity area has been minimal, and large concentrations of seals are not expected near West Dock during project operations. However, ringed seals may occur in the project area during the open-water season or during AGDC's winter/spring contingency period.

Spotted Seal

The Alaska stock of spotted seals are found along the continental shelf of the Bering, Chukchi, and Beaufort Seas. During the late fall through spring, when seals are hauled out on sea ice, whelping, nursing, breeding, and molting occurs. After the sea ice has melted, most spotted seals haul out on land in the summer and fall (Boveng *et al.* 2009). Pupping occurs along the Bering Sea ice front during March and April, followed by mating and molting in May and June (Quakenbush 1988). During the summer, the seals follow the retreating ice north into the Chukchi and Beaufort seas, and haul out on lagoon and river delta beaches during the open water period. The migration back to the Bering Sea wintering grounds begins with sea ice advancement, usually in October (Lowry *et al.* 1998).

Spotted seals were recorded during barging activities between Prudhoe Bay and Cape Simpson from 2005–2007 (Green and Negri 2005, 2006; Green *et al.* 2007). Between 23 and 54 seals were observed annually, with the peak distributions found off the Colville and Piasuk rivers. Savarese *et al.* (2010) surveyed the central Beaufort Sea from 2006 to 2008 and recorded greater numbers of animals, with 59 to 125 spotted seals observed annually. Lomac-MacNair *et al.* (2014) observed 37 spotted seals in Prudhoe Bay (and another 39 that were either spotted or ringed seals), including several in the immediate vicinity of West Dock, while monitoring July–August seismic activity.

Sighting data indicate that spotted seals could be present in the project area during the summer months, however,

we do not expect spotted seals to occur in the project area during AGDC's contingency period.

Bearded Seal

The Alaska stock of bearded seals occur seasonally in the shallow shelf waters of the Beaufort, Chukchi, and Bering Seas (Cameron *et al.* 2010). Bearded seals are closely associated with ice and their migration coincides with the sea ice retreat and advancement. Some seals are found in the Beaufort Sea year-round; however, most prefer to winter in the Bering Sea and summer in areas with high ice coverage (70–90 percent) in the Chukchi and Beaufort seas (Simpkins *et al.* 2003; Bengston *et al.* 2005). The stock feeds primarily on benthic organisms and demersal fishes, and is therefore, closely linked to shallow waters that are less than 656 ft. (200 m) where they can reach the seafloor to forage (Muto *et al.* 2018).

Aerial surveys conducted in the Beaufort Sea indicated that bearded seals preferred water depths between 82–246 ft (25–75 m) and areas of open ice cover (Cameron *et al.* 2010). ASAMM commonly observe bearded seals offshore in the Beaufort Sea; however, no sightings have been observed in the West Dock activity area. Based on bearded seal water depth and ice coverage preferences, survey observations in the Prudhoe Bay region, and the normal level of ongoing industrial activity in the project area, only very small numbers of bearded seals are expected near the project area.

Critical habitat has not been designated for the bearded seal (Muto *et al.* 2018).

In summary, bearded seals may occur in the project area during the open water season. Bearded seals could potentially occur in the project area during AGDC's winter/spring contingency period, however, we would expect very few, if any, bearded seals to be present during this time.

Unusual Mortality Events (UME)

A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. Currently, there are ongoing UME investigations in Alaska involving gray whales and ice seals.

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. This event has been declared an Unusual Mortality Event (UME), though a cause has not yet been determined. More information is available at *https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast.*

Since June 1, 2018, elevated ice seal strandings have occurred in the Bering and Chukchi seas in Alaska. This event has been declared an Unusual Mortality Event (UME), though a cause has not yet been determined. More information is available at *https://www.fisheries.noaa.gov/national/marine-life-distress/2018-2020-ice-seal-unusual-mortality-event-alaska.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 6.

TABLE 6—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species (which include ringed, spotted, and bearded seals) have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. As noted above, six marine mammal species (three cetacean and three phocid pinniped species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 5. Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* gray whale and bowhead whale) and one is classified as a mid-frequency cetacean (*i.e.,* beluga whale).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. In-water construction activities associated with the project would include vibratory pile driving and removal and impact pile driving. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than one second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS, 2018). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

The likely or possible impacts of AGDC's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from AGDC's specified activity. Animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving and removal noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and removal noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat. NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent,

irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates; with the exception of a single study unintentionally inducing PTS in a harbor seal (*Phoca vitulina*) (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—NMFS defines TTS as a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted and ringed seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles requires vibratory and impact pile driving in this project. There would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound. Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness. Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales (*Eubalaena glacialis*). These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003); however, distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—We do not expect harassment as a result of airborne sound, as there are no haul out sites near West Dock during the open water season. If AGDC must work during their contingency period, they will begin pile driving prior to March 1 (see Proposed Mitigation), so we would not expect ringed seals to build their lairs close enough to the project site to be taken by in-air sound during the contingency period. Therefore, we do not believe that authorization of incidental take resulting from airborne sound is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

AGDC's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels, disturbing benthic habitat, and increased turbidity. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During vibratory pile driving, elevated levels of underwater noise would ensonify the area where both fish and mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; any displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Additionally, winter construction activities, including through-ice surveying and through-ice grading could potentially disturb ice habitat, as ice will be cut and removed to facilitate grading the seafloor. Work is expected to begin immediately after the ice becomes grounded, which typically occurs in the work area on or before February 1. These activities could affect available ringed seal habitat, however, ringed seal density is low in areas with water depths less than 10 feet (3 meters; Moulton et al. 2005), and the grounded ice conditions suitable for construction activities are not preferred habitat for ringed seals. Additionally, winter construction activities would begin prior to March 1, further reducing the potential for disturbance to ringed seal birth lairs.

In-Water Construction Effects on Potential Foraging Habitat

Potential prey (*i.e.,* fish) may avoid the immediate area due to the temporary loss of this foraging habitat during pile driving activities. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave large areas of fish and marine mammal foraging habitat in the nearby vicinity.

Additionally, a small amount of seafloor habitat will be disturbed as a result of pile driving, gravel deposition, screeding, and other seabed preparation. Benthic infauna abundance and diversity are very low in this area, likely due to the shallow water depth (<16 feet [5 meter]), run-off from adjacent rivers, and ice related stress (Carey et al. 1984). Freezing and thawing sea ice and river runoff during the summer melting season significantly affect the coastal water mass characteristics and decrease the salinity. River outflow and coastal erosion also transport significant amounts of suspended sediments (BPXA 2009). Sea ice pressure ridges scour and gouge the seafloor and move sediments, creating natural, seasonal disruptions of the seafloor. These factors result in a less than favorable habitat for benthic organisms in the activity area. Bottom disturbance is a natural and frequent occurrence in this nearshore region resulting in benthic communities with patchy distributions (Carey *et al.* 1984). Given the low nearshore densities of benthic prey items, we do not expect screeding, pile driving, or related construction activities to have significant impacts on marine mammal foraging habitat. Additionally, installation of the new DH4 and barge bridge abutments will cover the associated seafloor; however, the total seafloor area affected from installing the structures is a very small area compared to the vast foraging area available to marine mammals in the Beaufort Sea, particularly given the limited prey expected to be in the West Dock area.

In addition to ensonification and seafloor disturbance, a temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed and removed, and where screeding and seabed preparation will take place. The screeding process redistributes seabed materials to create a flat even seafloor surface without the need for excavation or disposal of materials. Screeding would occur each summer immediately prior to the arrival of the first cargo barge, and would likely increase turbidity in the immediate area around West Dock. Turbidity and sedimentation rates are naturally high in this region due to ice scouring and gouging of the seafloor and significant amounts of suspended sediments from river outflow and coastal erosion. Therefore, the additional turbidity resulting from screeding activities is not anticipated to have a significant impact. The sediments on the sea floor will also be disturbed during pile driving; however, like during screeding, sediment suspension will be brief and localized and is unlikely to measurably affect marine mammals or their prey in the area. In general, turbidity associated with pile installation is localized to about a 25-ft radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds are able to easily avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Impacts to potential foraging habitat are expected to be temporary and minimal based on the short duration of activities.

In-Water Construction Effects on Potential Prey

Numerous fish and invertebrate species occur in Prudhoe Bay and the Beaufort Sea, and could be affected by the construction activities that would produce continuous (*i.e.,* vibratory pile driving) and impulsive (*i.e.,* impact pile driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving activities at the project site would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but as noted above, a rapid return to normal recruitment, distribution and behavior is anticipated.

Popper and Hastings (2009) reviewed information on the effects of pile driving and concluded that there are no substantive data on whether the high sound levels from pile driving or any man-made sound would have physiological effects on invertebrates. Any such effects would presumably be limited to the area very near (3–16 ft. [1–5 m]) the sound source and would result in no population effects due to the relatively small area affected at any one time and the reproductive strategy of most zooplankton species (short generation, high fecundity, and very high natural mortality). No adverse impact on zooplankton populations would be expected to occur from these activities, due in part to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any mortalities or impacts that might occur would be expected to be negligible compared to the naturally occurring high reproductive and mortality rates.

As noted above, due to the limited presence of benthic invertebrates in the West Dock area, we do not expect screeding and seafloor preparation activities to result in a significant loss of benthic prey availability, particularly in comparison to the vast foraging area available to marine mammals in the Beaufort Sea.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish or invertebrate habitat, or populations of fish or invertebrate species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but

not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* vibratory and impact 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, primarily for phocids, due to their lack of visibility and the size of the Level A harassment zones. Auditory injury is unlikely to occur to cetaceans. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) 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 proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

AGDC's construction activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). AGDC's construction activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 7—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 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.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* vibratory pile driving and removal). The maximum (underwater) area ensonified above the

thresholds for behavioral harassment referenced above is 67.7km² (26.1mi²), and the calculated distance to the farthest behavioral isopleth is approximately 4.6km (2.9mi).

The project includes vibratory pile installation and removal and impact pile installation. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in Table 8. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 8—SOUND SOURCE LEVELS FOR PILE DRIVING

Pile size and type	Hammer type	Source level (at 10m)			Literature source
		SPL_{rms}	Peak	SEL	
11.5-inch H-Pile	Impact	183	200	170	Caltrans 2015 (12-in H-Pile).
14-inch H-Pile	Impact	187	208	177	Caltrans 2015 (14-in H-Pile).
	Vibratory	150	160	150	Caltrans 2015 (12-in H-Pile).
48-inch Pipe Pile	Impact	195	210	185	Caltrans 2015 (60-in CISS Pile).
Sheet Piles (19.69-inch and 25-inch).	Vibratory	160	175	160	Caltrans 2015 (AZ Sheet Pile).

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 * Log10 (R1/R2),

where

TL = transmission loss in dB
B = transmission loss coefficient
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Project and site-specific transmission loss data for the Prudhoe Bay portion of AGDC's AK LNG project are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

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, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 9—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

	11.5-inch H-pile	14-inch H-pile	14-inch H-pile	48-inch pipe pile	19.69-inch sheet piles	25-inch sheet piles
Spreadsheet Tab Used.	E.1) Impact pile driving.	E.1) Impact pile driving.	A.1) Vibratory pile driving.	E.1) Impact pile driving.	A.1) Vibratory pile driving.	A.1) Vibratory pile driving
Weighting Factor Adjustment (kHz).	2	2	2.5	2	2.5	2.5
Source Level	170 dB SEL	177 dB SEL	150 SPL_{rms}	185 dB SEL	160 SPL_{rms}	160 SPL_{rms}
Number of piles within 24-h period [a].	26.09 [b]	4	8	1.25	15.24 [b]	12
Duration to drive a single pile (minutes).			15		18.9	24
Number of strikes per pile.	1,000	1,000		1,000		
Propagation (xLogR).	15	15	15	15	15	15
Distance from source level measurement (meters).	10	10	10	10	10	10

[a] These estimates include contingencies for weather, equipment, work flow, and other factors that affect the number of piles per day, and are assumed to be a maximum anticipated per day. Given that AGDC plans to pile drive up to 24 hours per day, it is appropriate to assume that the number of piles installed within the 24-hour period may not be a whole number.

[b] These averages assume that AGDC will drive 11.5-inch H-piles and sheet piles at a rate of 25 feet per day.

TABLE 10—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Activity	Hammer type	Level A harassment zone (m)			Level B harassment zone (m)
		LF cetaceans	MF cetaceans	Phocids	
11.5-inch H-Pile	Impact	1,194	43	639	341
14-inch H-Pile	Impact	1,002	36	536	631
	Vibratory	2	<1	1	1,000
48-inch Pipe Pile	Impact	1,575	56	843	2,154
19.69-inch Sheet Piles	Vibratory	17	2	10	4,642
25-inch Sheet Piles	Vibratory	17	2	10	4,642

Level A harassment zones are typically smaller than Level B harassment zones. However, in rare cases such as the impact pile driving of the 11.5-inch and 14-inch H-piles in AGDC's project, the calculated Level A harassment isopleth is greater than the calculated Level B harassment isopleth. Calculation of Level A harassment isopleths include a duration component, which in the case of impact pile driving, is estimated through the total number of daily strikes and the associated pulse duration. For a stationary sound source such as impact pile driving, we assume here that an animal is exposed to all of the strikes expected within a 24-hour period. Calculation of a Level B harassment zone does not include a duration component. Depending on the duration included in the calculation, the calculated Level A harassment isopleths can be larger than the calculated Level B harassment isopleth for the same activity.

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.

Each fall and summer, NMFS and BOEM conduct an aerial survey in the Arctic, the ASAMM surveys (Clarke *et al.,* 2012, 2013a, 2014, 2015, 2017a, 2017b, 2018, 2019). The goal of these surveys is to document the distribution and relative abundance of bowhead, gray, right, fin and beluga whales and other marine mammals in areas of potential oil and natural gas exploration, development, and production activities in the Alaskan Beaufort and northeastern Chukchi Seas. Traditionally, only fall surveys were conducted but, in 2011, the first dedicated summer survey effort began in the ASAMM Beaufort Sea study area. AGDC used these ASAMM surveys as the data source to estimate seasonal densities of cetaceans (bowhead, gray and beluga whales) in the project area. The ASAMM surveys are conducted within blocks that overlay the Beaufort and Chukchi Seas oil and gas lease sale areas offshore of Alaska (Figure 16 in AGDC's application), and provide sighting data for bowhead, gray, and beluga whales during summer and fall months. During the summer and fall, NMFS observed for marine mammals on effort for 13,484 km and 12,846 km, respectively, from 2011 through 2018. Data from those surveys are used for this analysis. We note that the proposed Prudhoe Bay portion of the AK LNG project is in ASAMM survey block 1; the inshore boundary of this block terminates at the McClure Island group. It was not until 2016 that on-effort surveys began inside the McClure Island group (including Prudhoe Bay) since bowhead whales, the focus of the surveys, are not likely to enter this area, given its shallow depth. However, no bowheads and only one beluga whale have been observed in block 1a (including Prudhoe Bay). Therefore, the density estimates provided here are an overestimate because they rely on offshore surveys where marine mammals are more likely to be present.

Bowhead Whale

AGDC calculated density estimates for bowhead whale by dividing the average number of whales observed per km of transect effort in ASAMM Block 1 (whales/km in Table 11) by two times the effective strip width (ESW) to encompass both sides of the transect line (whales per km/(2 × ESW). The ESW for bowhead whales from the Aero Commander aircraft is 1.15 km (0.71 mi) (Ferguson and Clarke 2013). Therefore, the summer density estimate is 0.005 bowhead whales/km^2, and the fall density estimate is 0.017 bowhead whales/km^2. The resulting densities are expected to be overestimates for the AK LNG analysis because the data is based on sighting effort outside of the barrier islands, and bowhead whales rarely occur within the barrier islands. However, AGDC conservatively used the higher fall density to estimate potential Level B harassment takes.

As noted in the Description of Marine Mammals in the Area of Specified Activities section, we do not expect bowhead whales to be present during AGDC's winter/spring contingency pile driving period.

TABLE 11—BOWHEAD WHALE SIGHTING DATA FROM 2011 THROUGH 2018 AND RESULTING DENSITIES

Year	Summer				Fall			
	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^2 [a]	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^2 [a]
2011	1	346	0.003	0.001	24	1,130	0.021	0.009
2012	5	1,493	0.003	0.001	17	1,696	0.010	0.004
2013	21	1,582	0.013	0.006	21	1,121	0.019	0.008
2014	17	1,393	0.012	0.005	79	1,538	0.051	0.022
2015	15	1,262	0.012	0.005	17	1,663	0.010	0.004
2016	97	1,914	0.051	0.022	23	2,360	0.010	0.004
2017	8	3,003	0.003	0.001	255	1,803	0.141	0.061
2018	2	2,491	0.001	0.0004	69	1,535	0.045	0.020

TABLE 11—BOWHEAD WHALE SIGHTING DATA FROM 2011 THROUGH 2018 AND RESULTING DENSITIES—Continued

Year	Summer				Fall			
	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^{2} [a]	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^{2} [a]
Total	166	13,484	[b] 0.012	[b] 0.005	505	12,846	[b] 0.039	[b] 0.017

[a] Calculated using an effective strip width of 1.15 km.
[b] Value represents average, not total, across all years.

Gray Whale

Gray whale sightings in the Beaufort Sea have increased in recent years, however, encounters are still infrequent. AGDC calculated density estimates for gray whale by dividing the average number of whales observed per km of transect effort (whales/km in Table 12) by two times the ESW to encompass both sides of the transect line (whales per km/(2 × ESW). The ESW for gray whales from the Aero Commander aircraft is 1.20 km (0.75 mi) (Ferguson and Clarke 2013). Therefore, the summer and fall density estimates are both 0.00003 gray whales/km^{2}. The resulting densities are expected to be overestimates for the AK LNG analysis because the data is based on sighting effort outside of the barrier islands, and gray whales rarely occur within the barrier islands as evidenced by Block 1A ASAMM surveys.

As noted in the Description of Marine Mammals in the Area of Specified Activities section, we do not expect gray whales to be present during AGDC's winter/spring contingency pile driving period.

TABLE 12—GRAY WHALE SIGHTING DATA FROM 2011 THROUGH 2018 AND RESULTING DENSITIES

Year	Summer				Fall			
	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^{2} [a]	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^{2} [a]
2011	0	346	0	0	0	1,130	0	0
2012	0	1,493	0	0	0	1,696	0	0
2013	0	1,582	0	0	0	1,121	0	0
2014	0	1,393	0	0	1	1,538	0.0007	0.0003
2015	0	1,262	0	0	0	1,663	0	0
2016	1	1,914	0.003	0.001	0	2,360	0	0
2017	0	3,003	0	0	0	1,803	0	0
2018	0	2,491	0	0	0	1,535	0	0
Total	1	13,484	[b] 0.00007	[b] 0.00003	1	12,846	[b] 0.00008	[b] 0.00003

[a] Calculated using an effective strip width of 1.20 km.
[b] Value represents average, not total, across all years.

Beluga Whale

AGDC calculated beluga densities for survey block 1 (the area offshore from the McClure Island group) using ASAMM data collected from 2014–2018. Beluga sighting data was included in surveys from 2011 to 2013, however, this data is only summarized by depth zone, rather than by survey block. Therefore, the National Marine Mammal Laboratory (Megan Ferguson, pers. comm., November 18, 2019), advised NMFS and AGDC to calculate beluga whale density using the 2014–2018 ASAMM data, as it is more recent and incorporates more years. Density estimates for beluga whale were calculated by dividing the average number of whales observed per km of transect effort (whales/km in Table 13) by two times the effective strip width to encompass both sides of the transect line (whales per km/(2 × ESW). The ESW for beluga whales from the Aero Commander aircraft is 0.614 km (0.38 mi) (Ferguson and Clarke 2013). The resulting summer density estimate is 0.005 beluga whales/km^{2}, and the fall density estimate is 0.001 beluga whales/km^{2}. AGDC conservatively used the higher summer density to estimate potential Level B harassment takes.

The resulting densities are expected to be overestimates for the AK LNG analysis because the data is based on sighting effort outside of the barrier islands, and beluga whales rarely occur within the barrier islands, as evidenced by Block 1a ASAMM survey data. Block 1a encompasses the area between the shoreline and the barrier islands, including Prudhoe Bay. One beluga whale was observed in survey block 1a in 2018. However, this sighting was a ''sighting on search'' and therefore was not included in the density calculation.

As noted in the Description of Marine Mammals in the Area of Specified Activities section, we do not expect beluga whales to be present during AGDC's winter/spring contingency pile driving period.

TABLE 13—BELUGA WHALE SIGHTING DATA FROM 2011 THROUGH 2018 AND RESULTING DENSITIES

Year	Summer				Fall			
	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^{2} [a]	Number of whales sighted	Transect effort (km)	Whales/km	Whales/km^{2} [a]
2014	13	1,393	0.009	0.008	9	1,538	0.006	0.005
2015	37	1,262	0.029	0.024	3	1,663	0.002	0.001
2016	0	1,914	0	0	1	2,360	0.0004	0.0003
2017	4	3,003	0.001	0.001	0	1,803	0	0
2018	6	2,491	0.002	0.002	0	1,535	0	0
Total	60	10,063	[b] 0.006	[b] 0.005	13	8,899	[b] 0.001	[b] 0.001

[a] Calculated using an effective strip width of 0.614 km.
[b] Value represents average, not total, across all years.

Ringed Seal

Ringed seals are the most abundant species in the project area. They haul out on the ice to molt between late May and early June, and spring aerial surveys provide the most comprehensive density estimates available. Industry monitoring programs for the construction of the Northstar production facility conducted spring aerial surveys in the area surrounding West Dock from 1997 to 2002 (Frost *et al.,* 2002; Moulten *et al.,* 2002b; Moulton *et al.,* 2005; Richardson and Williams, 2003). Spring surveys are expected to provide the best ringed seal density information, as the greatest percentage of seals have abandoned their lairs and are hauled out on the ice (Kelly *et al.,* 2010). Densities were consistently very low in areas where the water depth was less than 10 ft. (3 m), and only sightings observed in water depths greater than 10 ft. (3 m) have been included in the density calculations (Moulton *et al.,* 2002a, Moulton *et al.,* 2002b, Richardson and Williams, 2003). The average observed spring ringed seal density from this monitoring effort was 0.548 seals/km^{2} (Table 14). These densities are not corrected for unobserved animals, and therefore may result in an underestimated density.

TABLE 14—RINGED SEAL DENSITIES ESTIMATED FROM SPRING AERIAL SURVEYS CONDUCTED FROM 1997 TO 2002

Year	Density (Seals/km^{2})
1997	0.43
1998	0.39
1999	0.63
2000	0.47
2001	0.54
2002	0.83
Average	0.548

In order to generate a summer density, as AGDC expects that the majority of their work will occur during the summer, we first begin with the spring density. Summer densities in the project area are expected to significantly decrease as ringed seals range considerable distances during the open water season. Summer density was estimated to be 50 percent of the spring density (0.548 seals/km^{2}), resulting in a summer density estimate of 0.274 ringed seals/km^{2}. Like summer density estimates, fall density data are limited. Ringed seals remain in the water through the fall and into the winter. Given the lack of data, fall density is assumed the same as the summer density of 0.274 ringed seals/km^{2}.

During the winter months, ringed seals create subnivean lairs and maintain breathing holes in the landfast ice. Tagging data suggest that ringed seals utilize multiple lairs and Kelly *et al.* (1986) determined that, on average, one seal used 2.85 lairs, although the authors suggested that this is likely an underestimate. Density estimates for the number of ringed seal ice structures have been calculated (Frost and Burns 1989; Kelly *et al.* 1986; Williams *et al.* 2001), and the average density of ice structures from these reports is 1.58/km^{2}.

To estimate ringed seal density in the winter, the average ice structure density (1.58/km^{2}) was divided by the average number of structures used by the seals (2.85 structures). The estimated density is 0.509 ringed seals/km^{2} in the winter; however, this is likely an overestimate as the average number of ice structures utilized is thought to be an underestimate (Kelly *et al.,* 1986).

While more recent ASAMM surveys have been conducted in the project area (2016–2018), these surveys did not identify observed pinnipeds to species (Clarke *et al.,* 2019).

TABLE 15—RINGED SEAL ICE STRUCTURE DENSITY IN THE VICINITY OF THE PROJECT AREA

Year	Ice structure density (structures per km^{2})	Source
1982	3.6	Frost and Burns 1989.
1983	0.81	Kelly *et al.,* 1986.
1999	0.71	Williams *et al.,* 2001.
2000	1.2	Williams *et al.,* 2001.
Average Density	1.58	

Given that AGDC will only pile drive during the winter if they are unable to complete the work during the summer and fall open water season, AGDC estimated ringed seal takes using summer densities, rather than winter. NMFS concurs with this approach.

Spotted Seal

The spotted seal occurs in the Beaufort Sea in small numbers during the summer open water period. At the

onset of freeze-up in the fall, spotted seals return to the Chukchi and then Bering Sea to spend the winter and spring. As such, we do not expect spotted seals to occur in the project area during AGDC's winter/spring contingency period.

Only a few of the studies referenced in calculating the ringed seal densities also include data for spotted seals. Given the limited spotted seal data, NMFS expects that relying on this data may result in an underestimate, and that it is more conservative to calculate the spotted seal density as a proportion of the ringed seal density. Therefore, summer spotted seal density was estimated as a proportion of the ringed seal summer density based on the percentage of pinniped sightings observed during monitoring projects in the region (Harris *et al.,* 2001; Aerts *et al.,* 2008; Hauser *et al.,* 2008; HDR 2012). Spotted seals comprised 20 percent of the pinniped sightings during these monitoring efforts. Therefore, summer spotted seal density was calculated as 20 percent of the ringed seal density of 0.274 seals/km^2. This results in an estimated spotted seal summer density of 0.055 seals/km^2.

Bearded Seal

The majority of bearded seals spend the winter and spring in the Chukchi and Bering seas; however, some remain in the Beaufort Sea year-round. A reliable population estimate for the bearded seal stock is not available, and occurrence in the Beaufort Sea is less known than that in the Bering Sea. Spring aerial surveys conducted as part of industry monitoring for the Northstar production facility provide limited sighting numbers from 1999–2002 (Moulton *et al.,* 2000, Moulton *et al.,* 2001, Moulton *et al.,* 2002a, Moulton *et al.,* 2003). During the 4 years of survey, an average of 11.75 bearded seals were observed during 3,997.5 km^2 of effort. Using this data, winter and spring density are estimated to be 0.003 bearded seals/km^2.

Bearded seals occur in the Beaufort Sea more frequently during the open water season, rather than other parts of the year. They prefer waters farther offshore. Only a few of the studies referenced in calculating the ringed seal densities also include data for bearded seals. Given the limited bearded seal data, NMFS expects that relying on this data may result in an underestimate, and that it is more conservative to calculate the bearded seal density as a proportion of the ringed seal density. Therefore, summer density was estimated as a proportion of the ringed seal summer density based on the percentage of pinniped sightings observed during monitoring projects in the region (Harris *et al.,* 2001; Aerts *et al.,* 2008; Hauser *et al.,* 2008; HDR 2012). Bearded seals comprised 17 percent of the pinniped sightings during these monitoring efforts. Therefore, summer bearded seal density was calculated as 17 percent of the ringed seal density of 0.274 seals/km^2. This results in an estimated bearded seal summer density of 0.047 seals/km^2. The same estimate is assumed for bearded seal fall density.

As noted in the Description of Marine Mammals in the Area of Specified Activities section and in Table 16, bearded seals could potentially occur in the project area during AGDC's winter/spring contingency period. However, we would expect very few, if any, bearded seals to be present during this time. In consideration of this species presence information, and AGDC's plan to conduct most construction during the open-water season, NMFS used the summer density in the take calculation described below.

TABLE 16—MARINE MAMMAL DENSITIES IN THE GEOGRAPHIC REGION BY SEASON

Species	Winter (Nov–Mar)	Spring (Apr–Jun) [a]	Summer (Jul–Aug)	Fall (Sept–Oct)
Bowhead Whale	0	0	0.005	0.017
Gray Whale	0	0	0.00003	0.00003
Beluga Whale	0	0	0.005	0.001
Ringed Seal	0.507	0.548	0.274	0.274
Spotted Seal	0	0	0.055	0
Bearded Seal	0.003	0.003	0.047	0.047

[a] AGDC's pile driving contingency period extends from late February to April 2023, however, very little if any pile driving is likely to occur in April.

Take Calculation and Estimation

In this section, we describe how the information provided above is brought together to produce a quantitative take estimate.

To calculate estimated Level A and Level B harassment takes, AGDC multiplied the area (km^2) estimated to be ensonified above the Level A or Level B harassment thresholds for each species, respectively, for pile driving (and removal) of each pile size and hammer type by the duration (days) of that activity in that season by the seasonal density for each species (number of animals/km^2).

AGDC expects that construction will likely be completed during the open-water construction season. AGDC calculated that the construction will require approximately 164 days of in-water work; however, this estimate does not take into account that different pile types would be installed on the same day, therefore reducing the total number of pile driving days. Therefore, NMFS expects that the take calculation using the method described above overestimates take. Taking into consideration the number of calendar days, no work occurring on days during the whaling season, construction occurring 6 days per week, there are 123 days in the months of July through October on which the work is expected to occur (75 percent of the 164 days estimated by AGDC). As such, NMFS is proposing to authorize 75 percent of the take estimate calculated by AGDC for each species (except for Level A harassment take of bowhead whales and beluga whales, and Level B harassment of gray whales as noted below).

NMFS recognizes that AGDC may work outside of this period in their February to April contingency period; however, we expect that if AGDC works during the contingency period, it would be because of construction delays (and therefore, days on which they did not work) during their planned open water work season. Additionally, we recognize that ringed seals may be present in ice lairs during the contingency period. However, AGDC must initiate pile driving prior to March 1, as described in the Proposed Mitigation section. Initiating pile driving before March 1 is expected to discourage seals from establishing birthing lairs near pile

driving. As such, we expect that this measure will eliminate the potential for physical injury to ringed seals during this period. Therefore, NMFS expects that the take estimate described herein is reasonable even if AGDC must pile drive during their contingency period.

NMFS calculated take using summer densities for all species except for bowhead whale. For bowhead whales, NMFS conservatively calculated take using the fall density.

TABLE 17—ESTIMATED LEVEL B HARASSMENT TAKES BY SPECIES, PILE SIZE AND TYPE, AND INSTALLATION/REMOVAL METHOD

Activity	Estimated duration (days)	Calculated level B harassment takes					
		Bowhead whale	Gray whale	Beluga whale	Ringed seal	Spotted seal	Bearded seal
DH4							
Sheet Pile	36	41.65	0.08	11.83	668.04	133.61	113.57
Anchor Pile (11.5-inch H-pile)	9	0.06	0	0.02	0.90	0.18	0.15
Mooring Dolphins (48-inch Pipe Pile)	10	2.49	0	0.71	39.98	8.00	6.80
Spud Piles (14-inch H-pile)	12	0.64	0	0.18	10.34	2.07	1.76
South Bridge Abutment							
Dock Face (Sheet Pile)	23	26.61	0.05	7.56	426.80	85.36	72.56
Tailwall (Sheet Pile)	23	26.61	0.05	7.56	426.80	85.36	72.56
Anchor Pile (14-inch H-pile)	1	0.02	0	0.01	0.34	0.07	0.06
North Bridge Abutment							
Dock Face (Sheet Pile)	24	27.76	0.05	7.89	445.36	89.07	75.71
Tailwall (Sheet Pile)	17	19.67	0.04	5.59	315.46	63.09	53.63
Anchor Pile (14-inch H-pile)	1	0.02	0	0.01	0.34	0.07	0.06
Barge Bridge							
Mooring Dolphins (48-inch Pipe Piles)	4	1.00	0	0.28	15.99	3.20	2.72
Spud Piles (14-inch H-piles)	4	0.21	0	0.06	3.45	0.69	0.59
Total	164	146.74	0.27	41.69	2,353.8	470.76	400.15
Level B Harassment Take Proposed for Authorization (75% of Total)	123	110	[a] 2	31	1,765	353	300

[a] 75 percent of the calculated total is 0.2 takes, however, to account for group size (Clarke *et al.,* 2017), NMFS is proposing to authorize two Level B harassment takes of gray whale.

TABLE 18—CALCULATED LEVEL A HARASSMENT TAKES BY SPECIES, PILE SIZE AND TYPE, AND INSTALLATION/REMOVAL METHOD

Activity	Estimated duration (days)	Calculated level B harassment takes					
		Bowhead whale	Gray whale	Beluga whale	Ringed seal	Spotted seal	Bearded seal
DH4							
Sheet Pile	36	0	0	0	0.01	0	0
Anchor Pile (11.5-inch H-pile)	9	0.69	0	0.20	11.05	2.21	1.88
Mooring Dolphins (48-inch Pipe Pile)	10	1.33	0	0.38	21.37	4.27	3.63
Spud Piles (14-inch H-pile)	12	0	0	0	0	0	0
South Bridge Abutment							
Dock Face (Sheet Pile)	23	0	0	0	0.01	0	0
Tailwall (Sheet Pile)	23	0	0	0	0.01	0	0
Anchor Pile (14-inch H-pile)	1	0.05	0	0.02	0.86	0.17	0.15
North Bridge Abutment							
Dock Face (Sheet Pile)	24	0	0	0	0.01	0	0
Tailwall (Sheet Pile)	17	0	0	0	0	0	0
Anchor Pile (14-inch H-pile)	1	0.5	0	0.02	0.86	0.17	0.15
Barge Bridge							
Mooring Dolphins (48-inch Pipe Piles)	4	0.53	0	0.15	8.55	1.71	1.45

TABLE 18—CALCULATED LEVEL A HARASSMENT TAKES BY SPECIES, PILE SIZE AND TYPE, AND INSTALLATION/REMOVAL METHOD—Continued

Activity	Estimated duration (days)	Calculated level B harassment takes					
		Bowhead whale	Gray whale	Beluga whale	Ringed seal	Spotted seal	Bearded seal
Spud Piles (14-inch H-piles)	4	0	0	0	0	0	0
Total	164	2.65	0	0.77	42.73	8.53	7.26
Level A Harassment Take Proposed for Authorization (75% of Total)	123	[a] 0	0	0	32	6	5

[a] 75 percent of the calculated total is 1.99 takes, however, we do not expect bowheads to occur within the Level A harassment zone, and we do not propose to authorize Level A harassment take of bowhead whale.

We do not expect bowheads to occur within the Level A harassment zones due to the shallow waters (approximately 19 ft. in depth at the isopleth). As previously noted, waters less than 15 ft. (4.5 m) deep are considered too shallow to support these whales, and in three decades of aerial surveys by BOEM (ASAMM), no bowhead whale has been recorded in waters less than 16.4 ft (5 m) deep (Clarke and Ferguson 2010). Therefore, we do not expect Level A harassment of bowhead whales to occur, and we do not propose to authorize Level A harassment take of bowheads.

Given the extremely low likelihood of gray whales occurring in the Level A harassment zone (as evidenced by the estimated values in Table 20), we do not expect Level A harassment of gray whales to occur, and do not propose to issue any Level A harassment takes of gray whale.

The largest Level A harassment zone for mid-frequency cetaceans (including the beluga whale) extends 56m from the source during impact driving of the 48-inch pipe piles (Table 10). Considering the small size of the Level A harassment zones, and the low likelihood that a beluga will occur in this area, Level A harassment take is unlikely to occur. Additionally, AGDC is planning to implement a 50m shutdown zone during this activity, which includes the <1 m peak PTS isopleth. We expect shutdown zones will eliminate the potential for Level A harassment take of beluga whale. Therefore, we are not proposing to authorize takes of beluga whale by Level A harassment.

TABLE 19—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Level A harassment take	Level B harassment take	Total take	Stock abundance	Percent of stock
Bowhead Whale	Western Arctic	0	110	110	16,820	0.65
Gray Whale	Eastern North Pacific	0	2	2	26,960	0.007
Beluga Whale [a]	Beaufort Sea	0	31	31	39,258	0.08
	Chukchi Sea				20,752	0.15
Ringed Seal	Alaska	32	1,765	1,797	N/A	N/A
Spotted Seal	Alaska	6	353	359	461,625	0.08
Bearded Seal	Alaska	5	300	305	N/A	N/A

[a] As noted in the Description of Marine Mammals in the Area of Specified Activities section, beluga whales in the project area are likely to be from the Beaufort Sea stock. However, we have conservatively attributed all takes to each stock in our analysis.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in this IHA to reduce the impacts of the activity on subsistence uses are described in the Proposed Mitigation section. Last, the information from this section and the Proposed Mitigation section is analyzed to determine whether the necessary findings may be made in the Unmitigable Adverse Impact Analysis and Determination section.

The communities of Nuiqsut, Utqiaġvik and Kaktovik engage in subsistence harvests off the North Slope of Alaska. Alaska Native communities have harvested bowhead whales for subsistence and cultural purposes with oversight and quotas regulated by the International Whaling Commission (IWC). The North Slope Borough (NSB) Department of Wildlife Management has been conducting bowhead whale subsistence harvest research since the early 1980's to collect the data needed by the IWC to set harvest quotas. Bowhead whale harvest (percent of total marine mammal harvest), harvest weight, and percent of households using bowhead whale are presented in Table 25 of AGDC's application.

Most of the Beaufort Sea population of beluga whales migrate from the Bering Sea into the Beaufort Sea in April or May. The spring migration routes through ice leads are similar to those of the bowhead whale. Fall migration through the western Beaufort Sea is in September or October. Surveys of the fall distribution strongly indicate that most belugas migrate offshore along the pack ice front beyond the reach of subsistence harvesters. Beluga whales are harvested opportunistically during the bowhead harvest and throughout ice-free months. No beluga whale harvests were reported in 2006 survey interviews conducted by SRBA in any community (SRBA 2010). Beluga harvests were also not reported in Nuiqsut and Kaktovik, although

households did report using beluga whale, likely through sharing from other communities (Brown *et al.,* 2016). We do not expect the proposed activities at the Alaska LNG project site to affect beluga whale subsistence harvests, as none are expected.

Gray whale harvests were not reported by any of the communities surveyed by Alaska Department of Fish and Game (ADF&G) in any of the survey years, and therefore are not included as an important subsistence species and are not further discussed.

The community of Utqiaġvik's subsistence activities occur outside of the area impacted by activities considered in this authorization, and are not discussed further. Please refer to AGDC's application for additional information on Utqiaġvik's subsistence activities.

Kaktovik

Kaktovik is the easternmost village in the NSB. Kaktovik is located on the north shore of Barter Island, situated between the Okpilak and Jago rivers on the Beaufort Sea coast. Kaktovik's subsistence-harvest areas are to the east of the project area and target marine mammal species migrating eastward during spring and summer occur seaward of the project area and westward in the fall.

Kaktovik bowhead whale hunters reported traveling between Camden Bay to the west and Nuvagapak Lagoon to the east (SRBA 2010). This range does not include the project area impacted by the activities analyzed for this proposed IHA, therefore, Kaktovik bowhead whale hunting is not discussed further. Please refer to AGDC's application for additional information.

Ringed, spotted and bearded seals are harvested by the community of Kaktovik. Residents hunt seals in rivers during ice-free months, primarily July–August. Ringed seals are an important subsistence resource for Native Alaskans living in communities along the Beaufort Sea coast. Kaktovik hunters travel by boat to look for ringed seals on floating ice (often while also hunting for bearded seal) or sometimes along the ice edge by snow machine before break-up, during the spring (SRBA 2010). In 2006, 7 people (18 percent of survey respondents) indicated that they had recently hunted for ringed seals in Kaktovik (SRBA 2010). Residents reported looking for ringed seal, usually while also searching for bearded seal, offshore between Prudhoe Bay to the west and Demarcation Bay to the east (SRBA 2010). Ringed seal hunting typically peaks between March and August but continues into September, as well (SRBA 2010). Although residents reported hunting ringed seals up to approximately 30 mi (48 km) from shore, the highest numbers of overlapping use areas generally occur within a few miles from shore (SRBA 2010). The total use area for ringed seal from 1995–2006 encompassed approximately 2,139 mi^2. Harvest of ringed seals by Kaktovik hunters does not typically occur to the west of Camden Bay and therefore is not expected to be affected by Alaska LNG project activities.

Kaktovik hunters harvested 126 pounds of spotted seals in 1992 (ADF&G CSIS; retrieved and analyzed August 15, 2018). Spotted seals were not reported harvested in 2006 survey interviews conducted in Nuiqsut (SRBA 2010).

Kaktovik bearded seal hunting occurs along the coast as far west as Prudhoe Bay and as far east as the United States/Canada border (SRBA 2010). Residents reported looking for bearded seal as far as approximately 30 mi (48 km) from shore, but generally hunt them closer to shore, up to 5 mi (8 km; SRBA 2010). Between 1994–2003, 29 bearded seals were taken in Kaktovik. In 2006, 7 people (18 percent of survey respondents) indicated that they had recently hunted for bearded seals in Kaktovik (SRBA 2010). Bearded seal hunting activities, like ringed seal, begin in March, peaking in July and August, and then conclude in September (SRBA 2010).

The community of Kaktovik is approximately 100 (direct) mi (160 km) from the proposed project at Prudhoe Bay; subsistence activities for these communities primarily occur outside of the project construction area and associated Level A and Level B harassment zones. The planned construction and use of improvements to West Dock would occur in Prudhoe Bay, adjacent to existing oil and gas infrastructures, and in an area that is not typically used for subsistence other than extremely limited bearded seal hunting by residents of Kaktovik.

Because of the distance from Kaktovik and Kaktovik's very limited use of waters offshore of Prudhoe Bay, and because the proposed activities would occur in an already-developed area, it is unlikely that the proposed activities would have any effects on the use of marine mammals for subsistence by residents of Kaktovik. Therefore, we do not discuss Kaktovik's subsistence activities further.

Nuiqsut

The proposed construction activities would occur closest to the marine subsistence use area used by the Native Village of Nuiqsut. Nuiqsut is located on the west bank of the Nechelik Channel on the lower Colville River, about 25 mi (40 km) from the Arctic Ocean and approximately 150 mi (242 km) southeast of Utqiaġvik. Nuiqsut subsistence hunters utilize an extensive search area, spanning 16,322 mi^2 (km^2) across the central Arctic Slope (see Figure 19 of AGDC's application, Brown *et al.,* 2016). Marine mammal hunting is primarily concentrated in two areas: (1) Harrison Bay, between Atigaru Point and Oliktok Point, including a northward extent of approximately 50 mi (80 km) beyond the Colville River Delta (Brown *et al.,* 2016); and (2) east of the Colville River Delta between Prudhoe and Foggy Island bays, which includes an area of approximately 100 square mi surrounding the Midway Islands, McClure Island and Cross Island (Brown *et al.,* 2016). The community of Nuiqsut uses subsistence-harvest areas adjacent to the proposed construction area; however, West Dock is not a common hunting area, nor is it visited regularly by Nuiqsut subsistence hunters primarily because of its industrial history.

Ringed, spotted and bearded seals are also harvested by the community of Nuiqsut. Seal hunting typically begins in April and May with the onset of warmer temperatures. Many residents continue to hunt seals after spring breakup as well (Brown *et al.,* 2016).

The most important seal hunting area for Nuiqsut hunters is off the Colville Delta, an area extending as far west as Fish Creek and as far east as Pingok Island. Seal hunting search areas by Nuiqsut hunters also included Harrison Bay, and a 30-mi (48-km) stretch northeast of Nuiqsut between the Colville and Kuparuk rivers, near Simpson Lagoon and Jones Islands (Brown *et al.,* 2016). Cross Island is a productive area for seals, but is too far from Nuiqsut to be used on a regular basis. Seal subsistence use areas of Nuiqsut from 1995 through 2006 are depicted in Figure 21 of AGDC's application.

Ringed seals are an important subsistence resource for Native Alaskans living in communities along the Beaufort Sea coast. Nuiqsut residents commonly harvest ringed seal in the Beaufort Sea during the summer months (SRBA 2010). There are a higher number of use areas extending east and west of the Colville River delta. Residents reported traveling as far as Cape Halkett to the west and Camden Bay to the east in search of ringed seal. Survey respondents reported traveling offshore up to 30 mi (48 km; SRBA 2010). Residents reported hunting

ringed seals throughout the late spring, summer, and early fall with a higher number of use areas reported in June, July, and August (SRBA 2010). In 2006, 12 people (36 percent of survey respondents) indicated that they had recently hunted for ringed seals in Nuiqsut (SRBA 2010).

Nuiqsut bearded seal use areas extend as far west as Cape Halkett, as far east as Camden Bay, and offshore up to 40 mi (64 km). In 2006, 12 people (69 percent of survey respondents) indicated that they had recently hunted for bearded seals in Nuiqsut (SRBA 2010). Nuiqsut hunters reported hunting bearded seal during the summer season in open water as the seals are following the ice pack. Residents reported hunting bearded seal between June and September, although a small number of use areas were reportedly used in May and October (SRBA 2010). The number of reported bearded seal use areas peak in July and August, when the majority of seals are available along the ice pack (SRBA 2010).

Nuiqsut's bowhead whale hunt occurs in the fall at Cross Island, a barrier island located approximately 12 mi (19 km) northwest of West Dock. Nuiqsut whalers base their activities from Cross Island (Galginaitis 2014), and the whaling search and the harvest areas typically are concentrated north of the island. Hunting activities between 1997 and 2006 occurred almost as far west as Thetis Island, as far east as Barter Island (Kaktovik), and up to approximately 50 mi (80 km) offshore (SRBA 2010). Harvest locations in 1973–2011 and GPS tracks of 2001–2011 whaling efforts are shown in Figure 19 of AGDC's application.

Bowhead whales are harvested by Nuiqsut whalers during the fall whaling season. Nuiqsut residents typically hunt bowhead whales in September, although a small number of use areas were reported in August and extending into October (Stephen R. Braund & Associates [SRBA] 2010). Pile driving will not occur during Nuiqsut whaling.

Nuiqsut subsistence hunting crews operating from Cross Island have harvested three to four bowhead whales per year (Bacon *et al.,* 2009; Galginaitis 2014). In 2014, the Alaska Eskimo Whaling Commission (AEWC) allocated Nuiqsut a quota of four bowhead whales each year; however, through transfers of quota from other communities, in 2015 Nuiqsut was able to harvest five whales (Brown *et al.,* 2016). In 2006, 10 people (30 percent of survey respondents) in Nuiqsut indicated that they had recently hunted for bowhead whales (SRBA 2010). In 2016, Nuiqsut whaling crews harvested four bowhead whales (Suydam *et al.,* 2017).

Nuiqsut is 70 mi (112 km) away from the proposed project, and is likely to be the community that has the greatest potential to experience any impacts to subsistence practices. The primary potential for AK LNG project impacts to Nuiqsut's subsistence use of marine mammals is associated with barge activity, which could interfere with summer seal and fall bowhead whale hunting (Alaska LNG 2016). Barge activity is beyond the scope of this IHA, but noise associated with barging could deflect bowhead whales as they migrate through Nuiqsut's fall whaling grounds or cause temporary disturbances of seals, making successful harvests more difficult. Barge traffic would occur from July through September. Although barging activities would not cease during Nuiqsut's fall bowhead whale hunting activities, the potential for impact would be greatly reduced by keeping project vessels landward of Cross Island during the August 25–September 15 period, avoiding the high use areas offshore of the island during the entire whaling season in most years (Alaska LNG 2016, 2017).

Pile driving associated with construction at West Dock could also affect subsistence hunting of bowhead whales, as the Level B harassment zones extend up to 4.6 km from the pile driving site for some pile and hammer type combinations. As such, AGDC will not pile drive during the Nuiqsut whaling season (see Proposed Mitigation). AGDC has consulted with AEWC and NSB on mitigation measures to limit impacts (Alaska LNG 2016), and has continued to provide formal and informal project updates to these groups, as recently as February 2020 and May 2020.

The planned activities are not expected to impact marine mammals in numbers or locations sufficient to render them unavailable for subsistence harvest given the short-term, temporary, and localized nature of construction activities, and the proposed mitigation measures. Impacts to marine mammals would mostly include limited, temporary behavioral disturbances of seals, however, some PTS is possible. Serious injury or mortality of marine mammals is not anticipated from the proposed activities, and the activities are not expected to have any impacts on reproductive or survival rates of any marine mammal species.

In summary, impacts to subsistence hunting are not expected due to the distance between West Dock construction and primary seal hunting areas, and proposed mitigation during the Nuiqsut bowhead whale hunt.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. 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 the 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, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

In addition to the measures described later in this section, AGDC will employ the following mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving

activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

• For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions;

• For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately when it is safe to do so if such species are observed within or entering the Level B harassment zone; and

• If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

TABLE 20—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Hammer type	Shutdown zone (m)		
		LF cetaceans	MF cetaceans	Phocids
11.5-inch H-Pile	Impact	1,200	50	500
14-inch H-Pile	Impact	1,200	50	500
	Vibratory	10	10	10
48-inch Pipe Pile	Impact	1,600	50	500
Sheet Piles	Vibratory	20	10	10

AGDC is required to implement all mitigation measures described in the biological opinion (issued on June 3, 2020).

The following mitigation measures would apply to AGDC's in-water construction activities.

Establishment of Shutdown Zones—AGDC will establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (see Table 20). The largest shutdown zones are generally for low frequency cetaceans as shown in Table 20. In this instance, the largest shutdown zone for low frequency cetaceans is 1,600 m. AGDC expects that they will be able to effectively observe phocids at distances up to 500 m, large cetaceans at 2–4 km, and belugas at 2–3 km.

The placement of protected species observers (PSOs) during all pile driving and removal activities (described in detail in the Proposed Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile installation. If visibility degrades to where the PSO determines that they cannot effectively monitor the entire shutdown zone during pile driving, the applicant may continue to drive the pile section that was being driven to its target depth when visibility degraded to unobservable conditions, but will not drive additional sections of pile. Pile driving may continue during low light conditions to allow for the evaluation of night vision and infrared sensing devices.

Monitoring for Level A and Level B Harassment—AGDC will monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving) and Level A harassment zones, to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential shutdown of activity should the animal enter the shutdown zone. Placement of PSOs on elevated structures on West Dock will allow PSOs to observe phocids within the Level A and Level B harassment zones, to an estimated distance of 500 m. However, due to the large Level A and Level B harassment zones (Table 10), PSOs will not be able to effectively observe the entire zones during all activities. Therefore, marine mammal exposures will be recorded and extrapolated based upon the number of observed exposures and the percentage of the Level A or Level B harassment zone that was not visible.

Pre-activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving or removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes (pinnipeds) or 30 minutes (cetaceans). When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction pile driving or removal activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment zone and shutdown zones will commence.

Nighttime Monitoring—PSOs will use night vision devices (NVDs) and infrared (IR) for nighttime and low visibility monitoring. AGDC will select devices for monitoring, and will test the devices to determine the efficacy of the monitoring equipment and technique. For a detailed explanation of AGDC's plan to test the NVDs and IR equipment, please see AGDC's 4MP, available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* (Please note that AGDC will not assess object detection at distance intervals using buoys as stated in the 4MP. Rather, they will test object detection on land using existing landmarks at known distances from PSOs, such as road signs.)

Soft Start—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. This procedure will be conducted three times before impact pile driving begins. Soft

start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

Pile Driving During Contingency Period—In the event that AGDC must continue pile driving or removal during their contingency period (February–April 2023), AGDC must begin pile driving before March 1, the known onset of ice seal lairing season. Initiating pile driving before March 1 is expected to discourage seals from establishing birthing lairs near pile driving. Additionally, a subsistence advisor would survey areas within a buffer zone of DH4 where water depth is greater than 10 ft. (3 m) to identify potential ringed seal structures before activity begins. Construction crews would avoid identified ice seal structures by a minimum of 500 ft. (150 m).

AGDC does not plan to use a bubble curtain or other sound attenuation device. Given the shallow water in the project area, bubble curtains would be very difficult to deploy, and may not result in significant sound reduction.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require IHA applicants conducting activities in or near a traditional Arctic subsistence hunting area and/or that may affect the availability of a species or stock of marine mammals for Arctic subsistence uses to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;
- A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;
- A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and
- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

AGDC provided a draft Plan of Cooperation (POC) to NMFS on March 27, 2019. The POC outlines AGDC's extensive coordination with subsistence communities that may be affected by the AK LNG project. It includes a description of the project, community outreach that has already been conducted, and project mitigation measures. AGDC will continue coordination with subsistence communities throughout the project duration. The POC is a live document and will be updated throughout the project review and permitting process. AGDC's draft POC is available on our website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act.

AGDC continues to document its communications with the North Slope subsistence communities, as well as the substance of its communications with subsistence stakeholder groups, and has developed mitigation measures that include measures suggested by community members as well as industry standard measures. AGDC will continue to routinely engage with local communities and subsistence groups. Multiple user groups are often consulted simultaneously as part of larger coalition meetings such as the Arctic Safety Waterways Committee meetings. Local communities and subsistence groups identified by AGDC are listed in the POC. AGDC will develop a Communication Plan and will implement this plan before initiating construction operations to coordinate activities with local subsistence users, as well as Village Whaling Captains' Associations, to minimize the risk of interfering with subsistence hunting activities, and keep current as to the timing and status of the bowhead whale hunt and other subsistence hunts. A project informational mailer with a request for community feedback (traditional mail, email, phone) will be sent to community members prior to construction. Following the construction season, AGDC intends to have a post-season co-management meeting with the commissioners and committee heads to discuss results of mitigation measures and outcomes of the preceding season. The goal of the post-season meeting is to build upon the knowledge base, discuss successful or unsuccessful outcomes of mitigation measures, and possibly refine plans or mitigation measures if necessary.

The AEWC works annually with industry partners to develop a Conflict Avoidance Agreement (CAA). This agreement implements mitigation measures that allow industry to conduct their work in or transiting the vicinity of active subsistence hunters, in areas where subsistence hunters anticipate hunting, or in areas that are in sufficient proximity to areas expected to be used for subsistence hunting where the planned activities could potentially adversely affect the subsistence bowhead whale hunt through effects on bowhead whales, while maintaining the availability of bowheads for subsistence hunters. One key aspect of the CAA is the inclusion of time and area closures. AGDC is considering whether it would enter into a CAA or similar agreement with the AEWC and will discuss and evaluate a CAA in the aforementioned meetings.

AGDC will not conduct pile driving during the Nuiqsut whaling season in an effort to eliminate effects on the availability of bowhead whales for subsistence hunting that could occur as a result of project noise. Nuiqsut whaling is approximately August 25–September 15, though the exact dates may change.

Barging activities could potentially impact Nuiqsut's fall bowhead whale hunt and possibly other marine mammal harvest activities in the Beaufort Sea. As mentioned previously, barging activities are beyond the scope of this IHA, and no take is expected to occur as a result of barging activities. However, NMFS notes that AGDC will limit barges to waters shoreward of Cross Island during the Nuiqsut whaling season (approximately August 25–September 15) in an effort to avoid any potential impacts on subsistence uses. AGDC has consulted with AEWC and NSB on mitigation measures to limit impacts (Alaska LNG 2016), and has continued to provide formal and informal project updates to these groups, as recently as February 2020 and May 2020. As noted previously, AGDC's construction activities at West Dock do not overlap with the areas where subsistence hunters typically harvest ice seals, therefore, these activities are not expected to impact subsistence hunts of ice seals.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan, available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience. PSOs may also substitute Alaska native traditional knowledge for experience. (NMFS recognizes that PSOs with traditional knowledge may also have prior experience, and therefore be eligible to serve as the lead PSO.); and
- AGDC must submit PSO CVs for approval by NMFS prior to the onset of pile driving.

PSOs should have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; 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.

At least two PSOs will be present during all pile driving/removal activities. PSOs will have an unobstructed view of all water within the shutdown zone. PSOs will observe as much of the Level A and Level B harassment zone as possible. PSO locations are as follows:

i. Dock Head 4—During impact pile driving at DH4, two PSOs must be stationed to view toward the east, north, and west of the seawater treatment plant. During vibratory pile driving at DH4, two PSOs must monitor from each PSO location (four PSOs); and

ii. Barge Bridge—During work at the barge bridge, two PSOs must be stationed at the north end of the bridge.

PSOs will be stationed on elevated platforms at DH4, and on the elevated bridge during work at the barge bridge. They will possess the equipment described in the 4MP, including NVDs during nighttime monitoring. However, during the primary construction season, nighttime on the North Slope will be brief. Given the elevated PSO sites and equipment, AGDC expects that they will be able to effectively observe phocids at distances up to 500 m, large cetaceans at 2–4 km, and belugas at 2–3 km, however, PSOs will not be able to effectively observe the entire area of the Level A (seals only) or Level B harassment zones during all pile driving activities.

PSOs will begin monitoring three days prior to the onset of pile driving and removal activities and continue through three days after completion of the pile driving and removal activities. PSOs will monitor 24 hours per day, even during periods when construction is not occurring. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Acoustic Monitoring

AGDC will deploy a single, archival passive acoustic monitoring (PAM) receiver in the far field to collect data that indicates the gross presence of marine mammals and the received sound source level at distance during construction.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including precise start and stop time of

each type of construction operation mode, how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);

- Total number of hours during which each construction activity type occurred.
- Total number of hours that PSOs were on duty during each construction activity, and total number of hours that PSOs were on duty during periods of no construction activity;
- Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state), and number of hours of observation that occurred during various visibility and sea state conditions.
- The number of marine mammals observed, by species and operation mode, relative to the pile location;
- The number of marine mammals observed (including periods with no construction).
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting).
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring, including elevation above sea level;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);
- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Histograms of perpendicular distances to PSO sightings, by species (or species group if sample sizes are small);
- Sighting rates summarized into daily or weekly periods for the before, during, and after construction periods;
- Maps showing visual and acoustic detections by species and construction activity type.
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals;
- An extrapolation of the estimated takes by Level A and Level B harassment based on the number of observed exposures within the Level A and Level B harassment zone and the percentages of the Level A and Level B harassment zones that were not visible; and
- Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

AGDC's acoustic monitoring report must include the number of marine mammal detections (including species, date and time of detection, and type of pile driving underway, if applicable), the received sound levels from pile driving activity, and the following hydrophone equipment and method information: Recording devices, sampling rate, sensitivity of the PAM equipment, locations of the hydrophones, duty cycle, distance (m) from the pile where recordings were made, depth of recording devices, depth of water in area of recording devices.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the Alaska regional stranding coordinator (907–586–7209) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS.

The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed where the proposed activity may affect the availability of a species or stock for taking for subsistence uses (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state that upon receipt of a complete monitoring plan, and at its discretion, NMFS will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan (50 CFR 216.108(d)).

NMFS established an independent peer review panel to review AGDC's Monitoring Plan for the proposed project in Prudhoe Bay. NMFS provided AGDC's monitoring plan to the Peer Review Panel (PRP) and asked them to answer the following questions:

1. Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated below? If not, how should the objectives be modified to better accomplish the goals below?
2. Can the applicant achieve the stated objectives based on the methods described in the plan?
3. Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish the objectives?
4. Are there techniques not proposed by the applicant (*i.e.,* additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish the objectives?
5. What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (*i.e.,* 90-day report)?

The peer review panel (PRP) met in March 2020 and subsequently provided a final report to NMFS containing recommendations that the panel members felt were applicable to AGDC's monitoring plan. The panel concluded that the objectives are appropriate,

however they provided some recommendations to improve AGDC's ability to achieve their stated objectives. The PRP's primary recommendations and comments are summarized and addressed below. The PRP's full report is available on our website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

The PRP recommended that AGDC station PSOs on elevated platforms to increase sighting distance. NMFS agrees and proposes to require AGDC to provide elevated monitoring locations for PSOs. The structures would vary depending on the construction location.

The PRP recommended that PSOs focus on scanning the shoreline and water, alternately with visual scans and using binoculars, to detect as many animals as possible rather than following individual animals for any length of time to collect detailed behavioral information. NMFS requires PSOs to document and report the behavior of marine mammals observed within the Level A and Level B harassment zones. While NMFS agrees that PSOs should not document behavior at the expense of detecting other marine mammals, particularly within the shutdown zone, we are asking PSOs to record an estimate of the amount of time that an animal spends in the harassment zone, which is important to help understand the likelihood of incurring PTS (given the duration component of the thresholds) and the severity of behavioral disturbance.

The PRP recommended that the PSOs record visibility conditions at regular intervals (*e.g.,* every five minutes) and as they change throughout the day. The panel recommended using either laser range finders or a series of ''landmarks'' at varying distances from each observer. The PRP notes that if AGDC uses landmarks, AGDC could measure the distance to the landmarks on the ground before pile driving or removal begins, and reference these landmarks throughout the season to record visibility. The landmarks could be buildings, signs, or other stationary objects on land that are located at increasing distances from each observation platform. PSOs should record visibility according to the farthest landmark the laser range finder can detect or that the PSO can clearly see. NMFS will require AGDC to record visibility conditions throughout construction; however, NMFS will require PSOs to record visibility every 30 minutes, rather than every five minutes, in an effort to minimize distraction from observing marine mammals. PSOs will be equipped with range finders, and will establish reference landmarks on land.

The PRP recommended that AGDC have a designated person on site keeping an activity log that includes the precise start and stop dates and times of each type of construction operation mode. AGDC's field lead PSO will record this information during construction.

The PRP commended AGDC's proposed use and experimentation with night vision devices (NVD) and infrared technology. The panel noted that there are many devices with a broad range of capabilities that should be thoroughly understood before the experiment is conducted. AGDC will select the most effective devices based on surveys of experienced PSOs and literature provided by the panel.

The PRP expressed concern about the limited effective visual detection range of the PSOs in comparison with the estimated size of the Level A and Level B harassment zones, including AGDC's ability to shut down at the proposed distances, and AGDC's ability to estimate actual Level A and Level B harassment takes. The panel noted that effective sighting distances are likely 200 m for seals, and 1 km for mysticetes, based on ship-based PSO observations in the Chukchi Sea (LGL *et al.,* 2011). They noted that the effective sighting distance for beluga whales may be greater than 200 m, although visibility would likely decrease in windy conditions with white caps (DeMaster *et al.,* 2001). The panel recommended that AGDC implement real-time PAM to verify the harassment zone sizes, and to improve detection of marine mammals at distances where visual detection probability is limited or not possible. The panel recommended that AGDC begin PAM two to three weeks prior to the start of construction and continue through two to three weeks after construction activities conclude for the season. They recommended archival bottom mounted recorders as an alternative to real-time PAM, but noted that these setups are not as easy to relocate and that data can only be accessed after recovery.

In a related comment, the panel recommended that AGDC report total estimated Level A and Level B harassment takes using two methods. First, the panel recommended that AGDC assume that animal density is uniform throughout the Level B harassment zone and use distance sampling methods, such as Burt *et al.,* 2014, based only on the shore-based PSO observations to estimate actual takes by Level B harassment. Second, the PRP recommended that AGDC also use real-time PAM to estimate takes by Level B harassment only in the far field, assuming that each acoustic detection that occurs during pile driving or removal is a Level B harassment take.

In consideration of the effective sighting distances included in the PRP report, and estimated effective sighting distances from the applicant, NMFS has decreased the planned shutdown zone for phocids during impact pile driving to 500 m, as proposed herein. While this distance is greater than the 200 m estimated by the PRP, shore-based PSOs typically have greater visibility. Additionally, AGDC's PSOs will observe from elevated locations.

NMFS does not propose to require AGDC to report Level A and Level B harassment takes using distance sampling methods, as NMFS does not believe that it is appropriate to apply precise distance sampling methods intended for systematic surveys to estimating take numbers in this situation. As noted by the panel, the assumption of uniform density throughout the Level A and Level B harassment zone is likely violated in this instance, and the pile driving and removal activities are likely to further affect the distribution within the zones. Therefore, NMFS proposes to require AGDC to include an extrapolation of the estimated takes by Level A and Level B harassment based on the number of observed exposures within the Level A or Level B harassment zone and the percentage of the Level A or Level B harassment zone that was not visible in their final report.

NMFS does not propose to require AGDC to implement real-time PAM. However, NMFS proposes to require AGDC to include a single, archival PAM receiver in the far field to collect data that indicates the gross presence of marine mammals and the received sound source level at distance. AGDC will implement the majority, if not all, of the proposed pile driving and removal during the open water season. Since AGDC would need to deploy the PAM system after ice melt, deploying it two to three weeks before and after the construction period would narrow AGDC's open water work window by at least one month. Additionally, while AGDC's construction is occurring within a limited timeframe, other companies have operations in the area also, which may interfere with the ability to gather baseline data regarding marine mammal presence without interference from other industrial activities. Marine mammals in the project area are migratory, so presence within the work area would change

throughout the suggested monitoring period, even if AGDC was not conducting the activity. As such, NMFS will require AGDC to deploy the archival PAM receiver for the duration of the active construction period only.

We do not expect marine mammals within the project area to be particularly vocal, given that the project is primarily during the open water season, outside of the breeding period. The operation of real-time PAM is significantly more costly than collecting PAM data for later analyses, as someone would need to monitor the data in real-time, and the PAM buoys would need to be relocated for changes in monitoring zone sizes between various pile sizes and installation or removal methods. Real-time PAM would be helpful if there were a necessity to take an action, such as shutting down operations, at the time that a detection occurs. However, in this instance, visual monitoring by PSOs can adequately minimize Level A harassment take, and the proposed authorization includes Level A harassment take of ice seals. Given the limitations described above, implementation of real-time PAM is not warranted in light of the associated cost and effort.

The PRP also recommended that PSOs observations begin 2–3 weeks prior to construction, continue through the construction season, and continue for 2–3 weeks after the construction season ends. Given that ice conditions in the weeks leading up to the construction period will differ from that during construction (as will ice seal presence), NMFS will require PSOs to observe from shore during the three days before construction begins, and for three additional days after the construction season ends, rather than 2–3 weeks. During the construction season, NMFS will require PSOs to monitor 24 hours per day, even during periods without construction.

The PRP also made recommendations regarding how AGDC should present their monitoring data and results. Please refer to part V of the report for those suggestions. AGDC will implement the reporting recommendations that do not require PAM as stated in the recommendations. NMFS is still considering whether reporting recommendations h-j are appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses apply to all of the species listed in Table 19, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impact of expected take on the population due to differences in population status or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment, identified above, when these activities are underway. While AGDC may pile drive at any time of day (24 hours per day), we do not expect noise-producing pile driving will actually occur at all times during a 24-hour period, given the general construction process, including time for setting up piles pile for installation.

The takes from Level A and Level B harassment will be due to potential behavioral disturbance, TTS and PTS. No mortality or serious injury is anticipated given the nature of the activity. Level A harassment is only anticipated for ringed seal, spotted seal, and bearded seal. The potential for Level A harassment is minimized through the construction method and the implementation of the required mitigation measures (see Proposed Mitigation section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely for pile driving, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving, which is just a portion of AGDC's construction. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the project may produce sound at distances of many kilometers from the project site, the project site itself is located in an active industrial area, as previously described. Therefore, we expect that animals annoyed by project sound will simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that ringed seals, spotted seals, and bearded seals may sustain some limited Level A harassment in the form of auditory injury. However, animals that experience PTS will likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the frequency range of the energy produced by pile driving, *i.e.,* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal will 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.

Habitat disturbance and alteration resulting from project activities could have a few highly localized, short-term effects for a few marine mammals, however, the area of affected habitat would be small compared to that available to marine mammal species. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. We do not expect pile driving activities to have significant, long-term consequences to marine invertebrate populations. Given the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat, including fish and invertebrates, are not expected to cause significant or long-term negative consequences.

AGDC's February to April pile driving contingency period overlaps with the period when ringed seals are constructing subnivean lairs, giving birth, and nursing pups. As discussed in the Proposed Mitigation section, AGDC will be required to begin construction prior to March 1 when ringed seals are known to begin constructing lairs. As such, we expect that ringed seals will construct their lairs away from the pile driving operations, therefore minimizing disturbance and avoiding any potential for physical injury to seals in lairs. Additionally, we expect that AGDC will complete the majority, if not all of the pile driving during the open water season, so any pile driving that did remain could likely be completed in the earlier portion of the contingency period, further reducing the potential for impacts to ringed seals while lairing or pupping.

As previously described, UMEs have been declared for both gray whales and ice seals, however, neither UME provides cause for concern regarding population-level impacts to any of these stocks. For gray whales, the estimated abundance of the Eastern North Pacific stock is 26,960 (Carretta *et al.,* 2019) and the stock abundance has increased approximately 22 percent in comparison with 2010/2011 population levels (Durban *et al.,* 2017). For bearded seals, the minimum estimated mean M/SI (557) is well below the calculated partial PBR (8,210). This PBR is only a portion of that of the entire stock, as it does not include bearded seals that overwinter and breed in the Beaufort or Chukchi Seas (Muto *et al.,* 2019). For the Alaska stock of ringed seals and the Alaska stock of spotted seals, the M/SI (863 and 329, respectively) is well below the PBR for each stock (5,100 and 12,697, respectively) (Muto *et al.,* 2019). No serious injury, or mortality is expected or proposed for authorization, and Level B harassment takes of gray whale and ice seal species, and Level A harassment takes of ice seals will be reduced to the level of least practicable adverse impact through the incorporation of the proposed mitigation measures. As such, the proposed Level B harassment takes of gray whales and ice seals and proposed Level A harassment takes of ice seals is not expected to exacerbate or compound upon the ongoing UMEs.

In summary and as described above, the following factors primarily support our preliminary 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 relatively small number of Level A harassment exposures, for seals only, are anticipated to result only in slight PTS within the lower frequencies associated with pile driving;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species;
- Impacts to critical behaviors such as lairing and pupping by ringed seals would be avoided and minimized through implementation of mitigation measures described above; and
- AGDC would cease pile driving and project vessels would transit landward of Cross Island during the Nuiqsut whaling season, therefore minimizing impacts to critical behavior (*i.e.,* migration).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from 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. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of instances of take for each species or stock proposed to be taken as a result of this project is included in Table 19. Our analysis shows that less than one-third of the best available population abundance estimate of each stock could be taken by harassment (in fact, take of individuals is less than two percent of the abundance for all affected stocks). The number of animals proposed to be taken for each stock would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario.

For beluga whale, the percentages in Table 19 conservatively assume that all takes of beluga whale will be accrued to each stock, however, we expect that most, if not all, beluga whales taken by this project will be from the Beaufort Sea stock.

For the Alaska stock of bearded seals, a complete stock abundance value is not available. As noted in the 2019 Draft Alaska SAR (Muto *et al.,* 2019), an abundance estimate is currently only available for the portion of bearded seals in the Bering Sea (Conn *et al.,* 2012). The current abundance estimate for the Bering Sea is 301,836 bearded seals. Given the proposed 300 Level B harassment takes and 5 Level A harassment takes for the stock, comparison to the Bering Sea estimate, which is only a portion of the Alaska Stock (which also includes animals in the Chukchi and Beaufort Seas), shows that, at most, less than one percent of the stock is expected to be impacted.

A complete stock abundance value is also not available for the Alaska stock of ringed seals. As noted in the 2019 Draft Alaska SAR (Muto *et al.,* 2019), the abundance estimate available, 171,418 animals, is only a partial estimate of the Bering Sea portion of the population (Conn *et al.,* 2014). As noted in the SAR, this estimate does not include animals in the shore fast ice zone, and the authors did not account for availability bias. Muto *et al.* (2019) expect that the Bering Sea portion of the population is actually much higher. Given the proposed 1,765 Level B harassment takes and 32 Level A harassment takes for the stock, comparison to the Bering Sea partial estimate, which is only a

portion of the Alaska Stock (also includes animals in the Chukchi and Beaufort Seas), shows that, at most, less than two percent of the stock is expected to be impacted.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Project activities could deter target species from Prudhoe Bay and the area ensonified above the relevant harassment thresholds. However, as noted in the Effects of Specified Activities on Subsistence Uses of Marine Mammals section, subsistence use of seals is extremely limited in this area, as it is not within the preferred and frequented hunting areas. Bowhead whales typically remain outside of the area between the barrier islands and Prudhoe Bay, minimizing the likelihood of impacts from AGDC's project. Additionally, AGDC will cease pile driving activities during the Nuiqsut whaling season and will continue to coordinate with local communities and subsistence groups to minimize impacts of the project. AGDC will also be required to abide by the POC.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from AGDC's proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

NMFS is proposing to authorize take of bowhead whale, bearded seal (Beringia DPS) and ringed seal (Arctic subspecies), which are listed under the ESA. The NMFS Alaska Regional Office issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to AGDC under section 101(a)(5)(D) of the MMPA by the NMFS Office of Protected Resources. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of any of these species.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to AGDC for conducting construction of the Alaska LNG Project in Prudhoe Bay, Alaska from July 1, 2022 to June 30, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed project. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 13, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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