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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 357

**[Docket No. APHIS–2013–0055]**

**RIN 0579–AD44**

## Lacey Act Implementation Plan: De Minimis Exception

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

**ACTION:** Final rule.

**SUMMARY:** The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirement of the Lacey Act became effective on December 15, 2008, and enforcement of that requirement is being phased in. We are amending the regulations to establish an exception to the declaration requirement for products containing a minimal amount of plant materials. This action would relieve the burden on importers while continuing to ensure that the declaration requirement fulfills the purposes of the Lacey Act.

**DATES:** Effective April 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Dorothy Wayson, Agriculturist, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 851–2036.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*Need for the Regulatory Action*

Section 3 of the Lacey Act makes it unlawful to import certain plants, including plant products, without an import declaration. The import declaration serves as a tool to collect information regarding the content of a shipment, which aids in combatting illegal trade in timber and timber products by ensuring importers provide required information. Information from the declaration is also used to monitor implementation of Lacey Act requirements. The declaration must contain the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. However, the Act does not explicitly address whether the declaration requirement is intended to apply to imported products that contain minimal plant material. This final rule establishes limited exceptions to the declaration requirement for entries of products containing minimal plant material. This action relieves the burden on importers while ensuring that the declaration requirement continues to fulfill the purposes of the Lacey Act.

*Legal Authority for the Regulatory Action*

The Food, Conservation, and Energy Act of 2008 amended the Lacey Act by expanding its protections to a broader range of plants and plant products than was previously provided by the Act. The requirement that importers of plants and plant products file a declaration upon importation is set forth in 16 U.S.C. 3372(f). In 16 U.S.C. 3376(a)(1), the statute further provides rulemaking authority to the Secretary of Agriculture with respect to the declaration requirement: ''the Secretary, after consultation with the Secretary of the Treasury, is authorized to issue such regulations . . . as may be necessary to carry out the provisions of sections 3372(f), 3373, and 3374 of this title.''

*Summary of Major Provisions of the Regulatory Action*

This final rule establishes certain exceptions from the requirement that a declaration be filed when importing certain plants and plant products. Specifically, it establishes an exception to the declaration requirement for products with minimal amounts of plant material. The final rule also establishes a new section to specify the conditions under which a plant import declaration must be filed and what information it must include. These conditions reflect the provisions of the Act and provide additional context for the exceptions.

*Costs and Benefits*

To the extent that the rule provides exceptions to declaration submission, it will benefit certain U.S. importers. It relieves importers of the burden of submitting declarations for products with very small amounts of plant material, while continuing to ensure that the declaration requirement fulfills the purposes of the Lacey Act.

### II. Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in illegally taken wildlife, fish, or plants. The Food, Conservation and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). The Lacey Act now makes it unlawful to, among other things, ''import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant,'' with some limited exceptions, ''taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law,'' or in violation of any State or foreign law that protects plants or that regulates certain specified plant-related activities. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import certain plants, including plant products, without an import declaration. The import declaration serves as a tool for combatting the illegal trade in timber and timber products by ensuring importers provide required information. Information from the declaration is also used to monitor compliance with Lacey Act prohibitions. The declaration must contain the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested.

On July 9, 2018, we published in the **Federal Register** (83 FR 31697–31702, Docket No. APHIS–2013–0055) a

proposal [1] to amend the regulations by establishing an exception to the declaration requirement for products containing a minimal amount of plant materials. We also proposed that all Lacey Act declarations be submitted within 3 business days of importation.

We solicited comments concerning our proposal for 60 days ending September 7, 2018. We received 11 comments by that date. They were from private citizens, trade and industry associations, courier delivery services, and conservation groups. They are discussed below by topic.

*Scope*

Two commenters stated that it is unclear from the rule if the exceptions to the declaration requirement would apply only to those products on the Lacey enforcement schedule or if they would apply to all products, and asked that we clarify the scope of the proposed rule.

The de minimis exception to the declaration requirement will apply to all products subject to the Lacey Act. Importers of articles currently listed on the Lacey Act enforcement schedule will receive the most immediate benefit from the exception.[2]

Another commenter stated that the economic analysis must consider the full scope of the proposal and not just current practice. The same commenter added that the Animal and Plant Health Inspection Service (APHIS) only considered the impact on importers and wholesalers, noting that it is common for manufacturers, retailers, and distributors to also directly import wood products.

Impacts of the exception to the declaration requirement for articles currently listed on the Lacey Act enforcement schedule were evaluated in the initial regulatory impact analysis. We have prepared a final regulatory impact analysis for this rule in which we evaluate potential impacts of the de minimis exception to the declaration requirement for articles currently in the enforcement schedule. The de minimis exception will not immediately impact articles that are not yet on the enforcement schedule because they do not currently require submission of a declaration. Impacts on manufacturers and retailers are included in the Regulatory Impact Analysis & Final Regulatory Flexibility Analysis supporting this rule. A summary of the analysis appears below under the heading ''Executive Orders 12866, 13563, 13771, and Regulatory Flexibility Act.'' Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. For the sake of clarity, the term ''importer'' is used to represent import agents, as well as wholesalers, manufacturers, retailers, and distributors who import products directly.

*Definitions*

We proposed to define the terms *import* and *person,* and to amend the definition for *plant* so that all three definitions in the regulations conform to the definitions in the statute.

Some commenters expressed concern that the definition of *import* that we proposed is too broad. These commenters stated that adopting this definition would increase regulatory burden on importers and place burden on individuals traveling with their musical instruments. The commenters stated that the declaration requirement should apply only to formal consumption entries, and not to informal entries, personal importations, transit and exportation customs bonds, carnet importations, foreign trade zones, and warehouse entries (with some exceptions). Two commenters stated that APHIS should align the definition of *import* with the customs definition.

The definition of *import* that we proposed is the same as the definition in the Lacey Act. In a notice published in the **Federal Register** on February 3, 2009 (74 FR 5911, Docket No. APHIS–2008–0119),[3] we stated that we would be enforcing the declaration requirement only for formal consumption entries (*i.e.,* most commercial shipments). In that notice we also stated that we did not intend yet to enforce the declaration requirement for informal entries (*i.e.,* most personal shipments), personal importations, mail (unless subject to formal entry), transportation and exportation entries, in-transit movements, carnet importations (*i.e.,* merchandise or equipment that will be re-exported within a year), or upon admittance into a U.S. foreign trade zone or bonded warehouse. We clarified that the declaration is currently being enforced for all formal consumption entries of plant and plant products into the United States, including those entries from foreign trade zones and bonded warehouses, in a notice published in the **Federal Register** on June 16, 2016 (81 FR 39247–39248, Docket No. APHIS–2008–0119).

Some commenters stated that there should be an exception to the declaration requirement for items in transit. One commenter stated further that such an exception is supported by the definition of import suggested by the Model Law of International Trade in Wild Fauna and Flora.[4]

As we explained above, the definition of *import* that we proposed is the same definition that appears in the Lacey Act, and we have stated that we do not intend at this time to enforce the declaration requirement for in-transit movements.

One commenter noted that the current declaration form asks for ''country of harvest'' rather than ''the name of the country from which the plant was taken'' and suggested adding a definition of *taken* to prevent confusion.

APHIS notes that the term *taken* is defined in 16 U.S.C. 3371(j). We agree with the commenter that a definition of *taken,* consistent with the language of the Act, should be added to the regulations. We have therefore added a definition of *taken* to read ''captured, killed, or collected, and with respect to a plant, also harvested, cut, logged, or removed'' to § 357.2. This definition is the same definition that appears in the Act.

*Declaration Requirement*

We proposed to add a new § 357.3, ''Declaration Requirement,'' to specify the conditions under which a plant import declaration must be filed and what information it must include. These conditions reflect the provisions of the Act and provide additional context for the proposed exceptions.

One commenter asked for clarification that this section does not require fewer fields than appear on the declaration form.

The information specified in this section is the same information that is required by the Act. We continue to require additional information on the declaration form that links the declaration to the shipment. This is necessary to carry out the provisions of the Lacey Act. If we make any changes to the declaration form in the future, we will announce them through the stakeholder registry after receiving any necessary approvals under the

[1] To view the proposed rule, supporting document, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0055*.

[2] The Lacey Act plant declaration enforcement schedule can be viewed on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act*.

[3] To view the notice and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119*.

[4] The Model Law can be viewed online at *https://cites.org/sites/default/files/eng/prog/Legislation/E-Model%20law-updated-clean.pdf*.

Paperwork Reduction Act. We encourage interested persons to register for our stakeholder registry at *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new/* and select ''Lacey Act Declaration'' under Plant Health Information as a topic of interest.

One commenter stated that the section should list the current enforcement schedule or reference the existence of a separate enforcement schedule in another section of the regulations.

The enforcement schedule is available on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act.* The list is arranged by provisions of the Harmonized Tariff Schedule of the United States (HTSUS). Adding the enforcement schedule to the regulations is not feasible because HTSUS provisions change frequently. However, we agree with the commenter that a reference to available guidance, including the enforcement schedule, in the regulations would be helpful, and have amended § 357.3 to add a new paragraph that directs the reader to the APHIS website for more information. Any new guidance or enforcement schedule, or modifications to a previous guidance or enforcement schedule document, will be issued with appropriate public notice and opportunity for feedback.

*Exception From Declaration Requirement for Entries Containing Minimal Plant Materials*

We sought public comment on two options with respect to a de minimis exception to the declaration requirement. Under the first option, we proposed to adopt an exception from the declaration requirement for products containing plant material that represents no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of such products (at the entry line level) does not exceed 2.9 kilograms. Alternatively, as a second option, we proposed an exception from the declaration requirement for products containing plant material that represents no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an individual product unit does not exceed some amount of plant material by weight or board feet. Under this second option, we invited comment on what would be an appropriate maximum amount allowable by weight or board feet under the de minimis exception. The figure of 2.9 kilograms in the first option was selected based on the weight of a board-foot of lignum vitae (*Guaiacum officinale* and *Guaiacum sanctum*) as an appropriately minimal amount of plant material. A board-foot (that is, 12 x 12 x 1 inches or 30.48 x 30.48 x 2.54 centimeters) is a common unit of volume in the timber industry, and the woods of these species are among the densest known, weighing 1.23 grams per cubic centimeter.

In the event that the weight of the plant material in an individual product unit could not be determined, we proposed an exception from the declaration requirement for products containing plant material that represents no more than 10 percent of the declared value of the individual product unit, provided that the total quantity of the plant material in an entry of such products (at the entry line level) has a volume of less than 1 board-foot. Alternatively, as a second option in the event that the weight of the plant material in an individual product unit could not be determined, we proposed an exception from the declaration requirement for products containing plant material that represents no more than 10 percent of the declared value of the individual product unit, provided that the total quantity of the plant material in an individual product unit does not exceed some amount of plant material by weight or board feet. We invited comment on what would be an appropriate maximum amount allowable by value or board feet under the de minimis exception.

The commenters were generally supportive of the idea of establishing a de minimis exception from the plant declaration requirement for products with minimal amounts of plant material. These commenters stated that whatever approach is adopted, it should be simple, straightforward, and affordable for small and medium entities.

One commenter suggested that we adopt a conservative approach to any exceptions so as not to exempt future product categories that include illegal timber even in small quantities.

APHIS agrees with the commenter. Although importers will still be responsible for meeting Lacey Act requirements other than the declaration, setting the threshold for the de minimis exception to the declaration requirement at too high a level would not be consistent with the intent of the Lacey Act. For this reason we proposed and are adopting a threshold of no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of products in the same 10-digit HTSUS provision does not exceed 2.9 kilograms.

One commenter stated that the declaration skews the volume figures because importers take different approaches to the reporting requirements. The commenter stated that some importers split the volume among possible species, while others report the maximum volume possible for each species. The same commenter also stated that for the value option, it is unclear how such a calculation would be made as the value of the imported item is known, but the value of the plant product prior to its incorporation into a final product may not be known.

We agree with the commenter that implementation of de minimis exceptions based on volume or value would present challenges. We have therefore decided not to implement de minimis exceptions based on volume or value at this time. We will continue to consider ways to implement de minimis exceptions based on criteria other than weight to the plant declaration requirement.

One commenter stated that they supported modified versions of the proposed weight and volume exceptions with fixed and measurable weight and volume limits per entry line. The commenter suggested that there also be a value threshold that works in tandem with either of the options (weight or volume) chosen to qualify for the de minimis exception.

APHIS agrees that these modifications could provide an effective way to implement de minimis exceptions and will consider them if we propose additional exceptions in the future. One commenter supported providing multiple options to importers to determine if their product meets the threshold requirement (*i.e.,* weight and value). The commenter stated that as proposed, the regulations would only allow importers to choose the second method of calculation if the first method cannot be calculated. The commenter suggested that we should provide importers with discretion to choose whichever option that makes most sense for their business operations. As noted above, we have decided to implement only the de minimis exception based on weight at this time. We will take these suggestions into consideration if we propose additional exceptions in the future.

Commenters expressed concern that using percentage of weight would be a new process that importers would have to develop in order to take advantage of the de minimis exception.

The commenters are correct that they may have to develop a new process to take advantage of the de minimis exception. We anticipate, however, that once importers have determined the percentage weight of an individual

product unit and the maximum number of individual product units that will meet the de minimis threshold, they will be able to use that as a model for future shipments. We also anticipate that importers will only develop a new process if they consider doing so to be less onerous than filing the declaration.

One commenter stated that the cost of any procedure that depends on trying to calculate the percentage of plant material as part of the importing process on a transaction-by-transaction basis would far outweigh any benefit gained from the proposed change and suggested that APHIS allow importers to register their standard products that meet the de minimis criteria, and in return APHIS would grant a blanket exception for that set of products. Another commenter supported the use of what they described as ''representative samples'' so that an importer could use that analysis on multiple entries eliminating the need for complex calculations on each and every entry.

As we explained above, we expect that once importers determine the percentage weight for individual product units, they will be able to use that as a model for future shipments. With respect to registering representative samples or granting blanket exceptions, APHIS has concerns that such measures could be difficult to enforce and are not being pursued at this time.

One commenter expressed support for the current exceptions from the declaration requirement for packaging material. The commenter stated that APHIS should retain these exceptions and make it clear that the requirements have not changed from current guidance.

APHIS notes that for purposes of the Lacey Act plant declaration requirement, packaging material is any material used to support, protect, or carry another item. This includes, but is not limited to, items such as wood crating, wood pallets, cardboard boxes, and packing paper used as cushioning. Under 16 U.S.C. 3372(f)(3), packaging material is excluded from the declaration requirement unless the packaging material itself is the item being imported. This is unchanged by this final rule.

It may take some time for the de minimis exception to be implemented in ACE. APHIS will announce the availability of the disclaim code through the stakeholder registry, and importers may begin using the disclaim code for the de minimis exception as soon as it is available in ACE.

*Time Limit for Submission of Declarations*

Lacey Act plant declarations are required pursuant to the language of the statute ''upon importation,'' that is, upon landing in United States jurisdiction. We proposed to allow importers to file Lacey Act plant declarations within 3 business days of importation without facing any enforcement action or penalty for late filing. This change was intended to accommodate the needs of industry while ensuring that declarations are submitted in a timely manner for the purposes of the statute.

Commenters were generally opposed to establishing a 3-day grace period. One commenter stated that allowing this grace period was contrary to the statute. Several commenters stated that allowing importers to file declarations within 3 days constituted establishing a new deadline where one did not exist before. Some commenters suggested setting longer time frames for the submissions of the declaration, either to correspond with customs regulations or to allow for administrative corrections.

As we explained above, Lacey Act plant declarations are required to be filed upon landing in United States jurisdiction. Allowing importers to file declarations within 3 days would have established a grace period, not a new deadline. However, after considering the comments we received, we believe it is necessary to reexamine the establishment of a grace period and therefore are not adopting this aspect of the proposed rule at this time. We note that there are already mechanisms in place to allow importers to submit corrections to declarations. These mechanisms vary depending on which method of submission was used.

*Miscellaneous*

Some commenters expressed concern that establishing a de minimis exception to the Lacey Act plant declaration requirement would increase the risk of plant pests and diseases being introduced into the United States.

As we explained in the proposed rule, the intent of the Lacey Act is to prevent trade in illegally taken wildlife or plants. APHIS' authority to enforce the Lacey Act plant declaration requirement is distinct from our authority to regulate the movement of plant pests, noxious weeds, plants, plant products, and articles capable of harboring plant pests or noxious weeds in interstate commerce or foreign commerce under the Plant Protection Act (7 U.S.C. 7701 *et seq.*) We are making no changes to the plant protection regulations in this final rule.

One commenter stated that APHIS should maintain the current exception from the declaration requirement for composite plant material that acknowledges the need to conduct reasonable due care without mandating the tracking and reporting of species. Another commenter noted that there is currently an administrative Special Use Designation for composite material and stated that establishing de minimis exceptions for composite products would be more complex and costly than continuing to use the administrative designation.

APHIS notes that the provisions of the Act do not include permanent exceptions from the declaration requirement for composite products. On July 9, 2018, we published in the **Federal Register** an advance notice of proposed rulemaking (83 FR 31702–31704, Docket No. APHIS–2018–0017) [5] seeking public comment on regulatory options that could address certain issues that have arisen with the implementation of the declaration requirement for composite plant materials. The concerns and recommendations of all the commenters will be considered if any new proposed regulations regarding the Lacey Act plant declaration are developed for composite materials.

One commenter recommended that we specifically include ''hardboard'' among the examples of composite plant materials.

We do not reference such examples in the proposed rule, but in the advance notice of proposed rulemaking we refer to ''pulp, paper, paperboard, medium density fiberboard, high density fiberboard, and particleboard.''

A commenter stated that the final rule should include explicit provisions providing ample lead time of 1 year or longer for implementation by the regulated industry based on the complexity of product supply chains.

In our February 2009 notice, we committed to providing affected individuals and industry with at least 6 months' notice for any products that would be added to the phase-in schedule. The phased-in enforcement schedule began April 1, 2009. The most recent phase (V) began on August 6, 2015. The enforcement schedule is available on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act/*.

[5] To view the advance notice of proposed rulemaking and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0017*.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

**Executive Orders 12866, 13563, 13771, and Regulatory Flexibility Act**

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This final rule is expected to be an Executive Order 13771 deregulatory action. Assessment of the costs and cost savings may be found in the accompanying economic analysis.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirement of the Lacey Act became effective on December 15, 2008, and enforcement of that requirement is being phased in. We are establishing an exception to the declaration requirement for products containing a minimal amount of plant material.

This rule will benefit certain U.S. importers, large or small. The provisions of this rule relieve importers of the burden of submitting declarations for products containing very small amounts of plant material and for which obtaining declaration information may be difficult, while continuing to ensure that the declaration requirement fulfills the purposes of the Lacey Act.

The Lacey Act amendments included in the 2008 Farm Bill were effective as of May 22, 2008. As a practical matter, this means that enforcement actions may be taken for any violations committed on or after that date. The requirement to provide a declaration under the amended Act went into effect May 1, 2009. Declarations serve several purposes including but not limited to data acquisition and accountability, and they assist regulatory and enforcement authorities in monitoring implementation of the Lacey Act's prohibitions on importing illegally harvested plants. Enforcement of the declaration requirement is being phased in. The phase-in schedule is largely based on the degree of processing and complexity of composition of the affected products. The requirement that importers file a declaration upon importation is currently being enforced for products in parts of the Harmonized Tariff Schedule of the United States (HTSUS) Chapters 44, 66, 82, 92, 93, 94, 95, 96 and 97. Products in parts of HTSUS Chapters 33, 42, 44, 92 and 96 are to be included in the next phase of implementation.

Some importers of products containing a minimal amount of plant material who have been required to file declarations upon importation of their products will be excepted from the declaration requirement. The cost savings from not having to file those declarations is one measure of the expected benefits of this rule. In 2018, there was an average of about 400 weekly shipments of commodities requiring declarations that contained amounts of plant material that possibly would have been eligible for de minimis status under this rule. Based on information available on those shipments, we estimate that between 10 and 20 percent of those commodities would have actually met the definition for de minimis exception. Had those commodity shipments not needed to be accompanied by declarations, we estimate the annual cost savings for affected entities would have ranged in total from a low of about $31,800 to a high of about $229,500, with annual government processing savings of between about $250 and $500.

In addition, we estimate that in 2018 about 1,300 weekly shipments of commodities contained amounts of plant material that possibly would have been eligible for *de minimis* status under the next phase of declaration enforcement. The cost savings for affected entities associated with those products would have ranged from about $103,300 to $745,900, with annual government processing savings of between about $800 and $1,600. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the annual private sector cost savings, including those expected to be realized under the next phase of enforcement, is $555,300. This value is the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate.

The total cost of compliance directly associated with the collection, compilation and submission of declarations currently enforced is estimated to be between $12.5 million and $45 million, and between $5 million and $18.2 million under the next phase of enforcement. The total estimated reduction in compliance costs under both the current and next phase of enforcement ranges from about $135,100 to about $975,400, representing an overall cost savings of between 0.8 and 1.5 percent.

Both the declaration costs and the cost savings expected with this rule are small when compared to the value of the commodities imported. In 2018, the value of U.S. imports of products currently requiring a declaration totaled about $23.4 billion, and the value of U.S. imports of such commodities as umbrellas, walking sticks, and handguns that may include small amounts of plant material was $3.2 billion. In 2018, the value of imported commodities that will be included in the next phase of enforcement and may contain small amounts of plant material was $2.6 billion.

Because enforcement of the declaration requirement is being phased in, some products that meet the de minimis criteria do not currently require a declaration; their importation will not be initially affected. For example, apparel articles such as shirts with wood buttons may be considered to have minimal plant material, but the declaration requirement for products in that HTSUS code are not part of the current enforcement schedule. While the volume of imported commodities for which the exceptions will be applicable could be large, the cost savings for affected importers are expected to be small relative to the value of the commodities. Regardless of the number of declaration exceptions for which an entity qualifies, those exceptions will benefit affected entities, large and small.

*Executive Order 12372*

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 2 CFR chapter IV.)

*Executive Order 12988*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

*Executive Order 13175*

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions 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.

APHIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to their knowledge, have Tribal implications that require Tribal consultation under Executive Order 13175. The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that Tribal consultation under Executive Order 13175 is not required. If a Tribe requests consultation, APHIS will work with the OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

*Congressional Review Act*

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

*Paperwork Reduction Act*

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this final rule have been approved under Office of Management and Budget control number 0579–0349.

*E-Government Act Compliance*

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

**List of Subjects in 7 CFR Part 357**

Endangered and threatened species, Plants (agriculture).

Accordingly, we are amending 7 CFR part 357 as follows:

## PART 357—CONTROL OF ILLEGALLY TAKEN PLANTS

■ 1. The authority citation for part 357 continues to read as follows:

**Authority:** 16 U.S.C. 3371 *et seq.;* 7 CFR 2.22, 2.80, and 371.2(d).

■ 2. Section 357.1 is revised to read as follows:

**§ 357.1 Purpose and scope.**

The Lacey Act, as amended (16 U.S.C. 3371 *et seq.*), makes it unlawful to, among other things, import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of any Federal or Tribal law, or in violation of a State or foreign law that protects plants or that regulates certain specified plant-related activities. The Lacey Act also makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act. Common cultivars (except trees) and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead authorizes the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. The regulations in this part provide the required definitions. Additionally, the regulations in this part address the declaration requirement of the Act.

■ 3. Section 357.2 is amended as follows:

■ a. By adding in alphabetical order definitions for ''Import'' and ''Person'';

■ b. By revising the definition of ''Plant''; and

■ c. By adding in alphabetical order a definition for ''Taken''.

The additions and revision read as follows:

**§ 357.2 Definitions.**

* * * * *

*Import.* To land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

*Person.* Any individual, partnership, association, corporation, trust, or any officer, employee, agent, department, or instrumentality of the Federal Government or of any State or political subdivision thereof, or any other entity subject to the jurisdiction of the United States.

*Plant.* Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands. The term plant excludes:

(1) Common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);

(2) A scientific specimen of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that is to be used only for laboratory or field research; and

(3) Any plant that is to remain planted or to be planted or replanted.

(4) A plant is not eligible for these exclusions if it is listed:

(i) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(ii) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(iii) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

*Taken.* Captured, killed, or collected, and with respect to a plant, also harvested, cut, logged, or removed.

* * * * *

■ 4. Sections 357.3 and 357.4 are added to read as follows:

**§ 357.3 Declaration requirement.**

(a) Any person importing any plant shall file upon importation a declaration that contains:

(1) The scientific name of any plant (including the genus and species of the plant) contained in the importation;

(2) A description of the value of the importation and the quantity, including the unit of measure, of the plant; and

(3) The name of the country from which the plant was taken.

(b) The declaration relating to a plant product shall also contain:

(1) If the species of plant used to produce the plant product that is the

subject of the importation varies, and the species used to produce the plant product is unknown, the name of each species of plant that may have been used to produce the plant product;

(2) If the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, the name of each country from which the plant may have been taken; and

(3) If a paper or paperboard plant product includes recycled plant product, the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this section.

(c) Guidance on completion and submission of the declaration form can be found on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act*.

(Approved by the Office of Management and Budget under control number 0579–0349)

**§ 357.4 Exceptions from the declaration requirement.**

Plants and products containing plant materials are excepted from the declaration requirement if:

(a) The plant is used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported; or

(b) The plant material in a product represents no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of products in the same 10-digit provision of the Harmonized Tariff Schedule of the United States does not exceed 2.9 kilograms.

(c) A product will not be eligible for an exception under paragraph (b) of this section if it contains plant material listed:

(1) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(2) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(3) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Done in Washington, DC, this 24th day of February 2020.

**Greg Ibach,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2020–04165 Filed 2–28–20; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1437

**[Docket No. CCC–2019–0005]**

**RIN 0560–AI48**

## Noninsured Crop Disaster Assistance Program

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements changes to the Noninsured Crop Disaster Assistance Program (NAP) as required by the Agriculture Improvement Act of 2018 (the 2018 Farm Bill). The rule makes buy-up coverage levels available for 2019 and future years, increases service fees, and extends the service fee waiver and premium reduction to eligible veterans. The rule includes the changes to the payment limitation and native sod provisions and clarifies when NAP coverage is available for crops when certain crop insurance is available under the Federal Crop Insurance Act. This rule is adding provisions for eligibility and program requirements for new producers or producers with less than 1-year growing experience with a new crop (for example, most hemp producers). This rule also makes some additional minor changes to clarify existing NAP requirements and improve program integrity.

**DATES:** *Effective:* March 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Tona Huggins, (202) 720–7641; *Tona.Huggins@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

**SUPPLEMENTARY INFORMATION:**

### Background

NAP provides financial assistance to producers of noninsurable crops to protect against natural disasters that result in crop losses or prevent crop planting. FSA administers NAP for the Commodity Credit Corporation (CCC) as authorized by section 196 of the Federal Agriculture Improvement and Reform Act of 1996, as amended (7 U.S.C. 7333). NAP is administered under the general supervision of the FSA Administrator and is carried out by FSA State and county committees.

NAP is available for crops for which catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b) and (c), and (h)) are not available or, if such coverage is available, it is only available under a policy that is in a ''pilot'' program category, provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance. The eligibility for NAP coverage is limited to:

- Crops other than livestock that are commercially produced for food and fiber, and
- Other specific crops including floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea grass and sea oats, camelina, sweet sorghum, biomass sorghum, and industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products).

Qualifying losses to eligible NAP crops must be due to an eligible cause of loss as specified in 7 CFR part 1437, which includes damaging weather (drought, hurricane, freeze, etc.) or adverse natural occurrence (volcanic eruption, flood, etc.). In order to be eligible for a NAP payment, producers must first apply for NAP coverage and submit the required NAP service fee or service fee waiver to their FSA county office by the application closing date for their crop. The NAP application for coverage must be completed, including submission of the service fee or a service fee waiver, before NAP coverage can begin. Losses occurring outside a coverage period are not eligible for NAP assistance. Producers who choose not to obtain NAP coverage for a crop are not eligible for NAP assistance for the crop. This rule does not change the core provisions of NAP.

The 2018 Farm Bill (Pub. L. 115–334) made several changes to NAP. This rule amends the NAP regulations to be consistent with those changes. The mandatory changes make ''buy-up'' coverage available for 2019 and later crop years, allowing producers to buy additional NAP coverage for a premium, resulting in a risk management product that has equivalent coverage levels to some types of crop insurance offered by the Risk Management Agency (RMA). This rule also implements the 2018 Farm Bill's provisions regarding payment limitation, increased service fees, a service fee waiver and a premium

reduction for eligible veterans, the beginning of the coverage period, benefit restrictions for crops grown on native sod acreage, and the availability of NAP coverage for crops for which crop insurance is available under the Federal Crop Insurance Act. This rule also makes some additional minor changes to clarify existing NAP requirements and improve program integrity.

**Eligibility of Crops Not Covered by Federal Crop Insurance**

This rule implements changes required by the 2018 Farm Bill with regard to NAP crop eligibility. The 2018 Farm Bill specifies that NAP is available for crops for which catastrophic risk protection is not available under section 508(b) of the Federal Crop Insurance Act and additional coverage under subsections 508(c) and 508(h) is not available or, if such coverage is available, it is only available under a policy that is in a ''pilot'' program category, provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance. This rule amends provisions at §§ 1437.1 and 1437.4 to be consistent with the 2018 Farm Bill.

**Buy-Up Coverage Levels and Premiums**

Prior to the 2014 Farm Bill, NAP provided only catastrophic coverage (basic 50/55 coverage), which is based on the amount of loss that exceeds 50 percent of expected production at 55 percent of the average market price for the crop. The 2014 Farm Bill changes authorized additional higher levels of coverage (''buy-up'' coverage) ranging from 50 to 65 percent of production, in 5 percent increments, at 100 percent of the average market price. However, that buy-up coverage was only available for 2015 through 2018. The 2018 Farm Bill makes buy-up coverage available for 2019 and future crop years. This rule amends § 1437.5 to remove the reference to 2015 through 2018 program years to be consistent with the 2018 Farm Bill. As under the 2014 Farm Bill, crops and grasses intended for grazing are specifically excluded from buy-up coverage.

To obtain buy-up coverage, producers are required to pay a premium, equal to 5.25 percent times the level of coverage, in addition to the NAP service fee. The 50 percent premium reduction for beginning, limited resource, and socially disadvantaged farmers or ranchers specified in the regulation continues to apply for 2019 and future years. The 2018 Farm Bill and this rule also extend the premium reduction to eligible veteran farmer or ranchers as defined in 7 CFR 718.2. To qualify for the waiver, a veteran must have either been farming for 10 years or less or achieved veteran status in the past 10 years.

Because the application closing dates for all 2019 crops and some 2020 crops passed prior to the announcement of 2018 Farm Bill provisions that authorized the availability of buy-up NAP coverage, FSA allowed producers of those crops to retroactively obtain buy-up coverage for 2019 and 2020. On April 8, 2019, FSA announced an extended application period for buy-up coverage for those crops through a press release and extensive outreach efforts. Producers were required to submit an application for coverage requesting buy-up coverage and pay the applicable service fee by May 24, 2019. Basic 50/55 coverage was not affected by the 2018 Farm Bill and was available prior to the application closing dates; therefore, the application closing dates for basic 50/55 coverage were not extended.

**Service Fees**

This rule amends the NAP service fees in § 1437.7 as required by the 2018 Farm Bill. The service fee has increased from $250 to $325 per crop, from $750 to $825 maximum per producer per county, and from $1,875 to $1,950 maximum per producer for all counties. FSA implemented the service fee increase administratively on April 8, 2019.

Prior to this rule, the NAP service fee was waived for beginning, limited resource, and socially disadvantaged farmers. That waiver continues to apply for those groups for 2019 and future years, and is also made available to eligible veteran farmers as defined in 7 CFR 718.2.

**Payment and Income Limitation**

The 2018 Farm Bill establishes payment and income limitations that apply to 2018 and subsequent crop, program, or fiscal year benefits. FSA is implementing the payment and income limitations through a separate final rule to be published in the **Federal Register**. The payment and income limitations are specified in 7 CFR part 1400.

The 2018 Farm Bill established separate payment limitations for NAP assistance. The total NAP payment amount for all crops with basic 50/55 coverage is limited to $125,000 per person or legal entity, directly or indirectly. The total NAP payment amount for all crops with buy-up coverage is limited to $300,000 per person or legal entity, directly or indirectly. A producer may elect different coverage levels for different crops; therefore, both payment limitations may apply to the same person or legal entity. For example, a person or legal entity that is a producer may elect basic 50/55 coverage for green peppers, a buy-up coverage level of 55/100 for cantaloupe, and a buy-up coverage level of 65/100 for tomatoes. In that case, the producer could receive an annual per person or legal entity payment of up to $125,000 for eligible losses to green peppers, and a total payment of up to $300,000 for eligible losses to cantaloupe and tomatoes.

Attribution of payments specified in 7 CFR part 1400 applies in administering the payment limitation. The average adjusted gross income (AGI) limit for most FSA and CCC programs, including NAP, is $900,000.

**Native Sod**

The 2014 Farm Bill introduced native sod provisions that required increased NAP service fees and premiums and also reduced the actual production history and only applied, per the 2014 Farm Bill, to certain producers in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota. The 2014 Farm Bill applied those provisions to native sod tilled for production of annual crops after February 7, 2014, in any year in the first 4 years of cropping. The 2018 Farm Bill continues the previous policy under the 2014 Farm Bill for native sod tilled for annual crop production from February 7, 2014, through December 20, 2018. It also applies the provisions to native sod tilled for production of any crop enrolled in NAP after December 20, 2018, for no more than 4 years during the first 10 years of cropping. As under the 2014 Farm Bill, the NAP service fee and premiums for crops planted on acreage subject to these provisions will be 200 percent of the amount calculated according to § 1437.7, with the premium not to exceed the maximum amount of 5.25 percent times the payment limitation. This rule also amends the definition of native sod to be consistent with the new provisions. The 2018 Farm Bill does not change the de minimis acreage exemption, which applies to areas of 5 acres or less, meaning that for these areas are exempt from the native sod provision.

**Coverage Period**

Prior to the 2018 Farm Bill, the NAP coverage period could not begin earlier than 30 days after a producer filed a NAP application for coverage. The 2018 Farm Bill changed this requirement to specify that the application for coverage must be filed ''by an appropriate

deadline before the beginning of the coverage period, as determined by the Secretary.'' This rule amends § 1437.6 to specify that a coverage period could now begin as soon as one calendar day after an application for coverage is filed, provided that the NAP-covered crop has an otherwise defined coverage period that would ordinarily accommodate that start date. This rule also specifies that the coverage period for honey will begin the later of one calendar day after the date the application for coverage is filed, one calendar day after the application closing date, or the date the colonies are set in place for honey production.

**Hemp Eligibility**

The 2018 Farm Bill defines ''hemp'' as the plant species *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. The 2018 Farm Bill allows commercial hemp production if the crop is grown in compliance with a State, Tribal, or federal plan. Beginning with the 2020 crop year, hemp will be considered an eligible crop under NAP similar other NAP crops for which catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b) and (c), and (h)) are not available or, if such coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance. This rule adds a new section containing hemp eligibility and program requirements at § 1437.108 and defines ''hemp,'' ''hemp processor,'' ''hemp processor contract,'' and ''THC'' in § 1437.3.

NAP only offers coverage to eligible hemp, which must be grown under a Federal, State, or Tribal plan. Those plans require a license. Therefore, to be eligible for NAP coverage, the hemp must be grown under an official certification or license issued by the applicable governing authority, the producer must have a hemp processor contract for the crop by the acreage reporting date, and the crop must be planted for harvest as hemp in accordance with that contract. If a producer is also a hemp processor, a corporate resolution including an adoption of the terms specified in this rule for a hemp processor contract by the Board of Directors or officers will be considered a hemp processor contract.

Hemp producers must provide the certification or license number and a copy of the certificate or license, and copies of all hemp processor contracts by the acreage reporting date. As for all crops, one of the NAP eligibility requirements is proof of marketability. To be marketed, hemp must be processed. Therefore, proof of marketability of the hemp crop is shown by the contract the producer has with a hemp processor. Hemp is not eligible for NAP benefits if the crop has a THC level above 0.3 percent; therefore, producers must also submit copies of THC test results taken at harvest, which are required under applicable State, Tribal, and federal plans. Due to the risk of transmission of crop diseases that do not have adequate treatment options for hemp, hemp is not eligible for NAP if it is grown on acres on which Cannabis, canola, dry beans, dry peas, mustard, rapeseed, soybeans in certain states specified by FSA, or sunflowers were grown the preceding crop year. Hemp is not eligible for NAP benefits if the producer's certification or license is terminated or suspended during the crop year.

**Growing History Requirement for Buy-Up Coverage**

FSA is making an additional change to § 1437.5 to limit buy-up coverage to crops with at least one year of successful growing history. The 2018 Farm Bill re-authorized buy-up NAP coverage and at the same time increased the payment limitation for crops with buy-up coverage levels from $125,000 to $300,000 per crop year. Therefore, and consistent with how some crop insurance products are first made available to producers of new crops, to safeguard against potential program abuse and ensure that the higher level of coverage and increased payment limitation is only made available to those who have at least demonstrated an ability to produce the crop successfully absent disaster, FSA is making this change. Such ability is reflected in their previous successful production of the crop. Accordingly, the producer must have successfully produced the crop in a prior crop year in order to be eligible to purchase buy-up NAP coverage for that crop. Production of a crop is ''successful'' if there is some documented record that proves that the producer was able to produce at least 50 percent of the county expected yield of the crop in the county in a prior crop year, unless the producer's crop suffered a loss due to an eligible cause of loss in § 1437.10.

**Additional Changes**

In addition to the changes required by the 2018 Farm Bill, this rule makes several additional changes to improve program integrity and clarify NAP requirements. FSA is making changes to specify that lightning is an eligible cause of loss and wildfire is an eligible related condition when it occurs with an eligible cause of loss listed in § 1437.10(b)(1) or (2). It also specifies that failure to harvest and market a crop due to lack of a sufficient plan for harvesting and marketing given the kind of crop, amount of crop, and time that all production may be mature and ready for harvest, the perishability of the crop, and the means or the resources to carry out that plan is an ineligible cause of loss. These changes to eligible and ineligible causes of loss are intended to clarify existing policy and do not change how FSA administers NAP.

This rule clarifies in § 1437.7 that the premium for buy-up coverage for value loss crops will be based on the lesser of the maximum dollar value for which a producer requests coverage, subject to the applicable payment limitation, times the coverage level, times the 5.25 percent premium. This change corrects the regulation to conform to the statute and current NAP policy. It removes duplicate provisions for the premium calculation for value loss crops in § 1437.301.

Throughout this rule, FSA is clarifying that the certain requirements specific to hand-harvested crops that require notification of damage or loss within 72 hours of the date damage or loss first becomes apparent will as well as certain appraisal requirements will also apply to rapidly deteriorating crops. Because hand-harvested crops are typically also crops that deteriorate quickly in the field, this change does not substantially alter the crops subject to these requirements. This rule amends § 1437.11 to require that for hand-harvested or rapidly deteriorating crops, a producer must request an appraisal and release of unharvested acreage within 72 hours after the acreage is abandoned. This change is needed in order for FSA to obtain an accurate appraisal of potential production before the crop begins to deteriorate. This rule does not change the current provision for crops that are not hand-harvested or rapidly deteriorating, which requires the producer to request an appraisal within 15 calendar days. This rule corrects § 1437.11 to apply the requirement for filing a notice of loss to producers of value loss crops, in addition to producers of yield-based crops. This correction is needed to ensure that all

crop losses are timely reported and FSA has adequate time to ensure that an appraisal is completed.

For clarity, this rule also adds a definition of ''abandoned'' in § 1437.3, which is consistent with how FSA has previously interpreted this term.

This rule adds provisions to § 1437.7 to specify when an acreage report must be filed. These requirements reflect current NAP policy. This rule adds provisions to § 1437.8 to require producers to provide acceptable evidence of their risk in the crop and ability and intent to harvest, transport, and market their expected production determined based on the approved yield of the crop, or their inventory for value loss crops. Acceptable evidence includes documentation such as receipts for seed and fertilizer and contracts for harvest labor or transport of the crop. FSA is making this clarifying change to be consistent with the intent of NAP, which is to provide assistance to producers who have a legitimate risk in their crops based on what they would have reasonably been expected to successfully produce and market.

This rule amends § 1437.12 to specify that FSA will establish the average market price for a crop by obtaining market prices for the 5 consecutive crop years beginning with the most recent year for which price data is available. This change is consistent with current implementation of NAP and is intended to provide flexibility when price data for a crop is unavailable for the immediately preceding crop year.

Under § 1437.16, when a producer has adopted a scheme or device or made fraudulent misrepresentations or misrepresented facts to FSA, that producer must refund a NAP payment with interest and other amounts as determined appropriate to the circumstances by FSA. This rule amends those provisions to specify that FSA may assess liquidated damages of 10 percent of an expected NAP payment in those situations.

FSA has become aware that there are locations for which there are no independent assessors or assessments available from which collective loss determinations can be made for the geographical area. Therefore, to provide flexibility when two independent assessments of grazed forage acreage conditions cannot be obtained, this rule clarifies in § 1437.401 that when there is no similar mechanically harvested forage acreage on a farm or similar farms in the area and no independent assessments, FSA may use alternative methods for establishing the collective percentage of loss as, determined by the Deputy Administrator. Additionally, FSA is amending § 1437.401 to specify that if a NAP-covered producer seeks a NAP payment for forage crop acreage intended for grazing determined based on the collective percentage of loss, the producer is only required to file an application for payment. A notice of loss will not be required unless the NAP-covered producer wants a NAP payment determined based on the NAP-covered producer's unit production similar to any other NAP-covered crop.

This rule removes provisions in § 1437.503 that made prevented planting coverage available in Hawaii, Puerto Rico, and other tropical areas approved by the Deputy Administrator for Farm Programs. Common program provisions in § 718.103(a) provide that in order to be eligible for coverage for prevented planting, an eligible cause of loss must have occurred before the final planting date for the crop or, in the case of multiple plantings, the harvest date of the first planting in the applicable planting period. Multiple planting periods and final planting dates are not applicable to covered tropical crops; therefore, tropical crops cannot be eligible for prevented planting coverage. This rule also amends § 1437.502 to refer to the maximum service fee per crop per administrative county provided in § 1437.7.

This rule also specifies that the regulation is applicable to the 2019 and subsequent crop years, and makes minor technical corrections to § 1437.5.

**Streamlining Reporting and Premium Prices**

The 2018 Farm Bill directed FSA to establish a streamlined process for the submission of records and acreage reports for diverse production systems, such as those typical of urban production systems, other small-scale production systems, and direct-to-consumer production systems. FSA is currently reviewing its existing policies to determine how the process can be simplified while continuing to meet all other statutory requirements. Any changes made will be announced in separate rulemaking.

The 2018 Farm Bill also amended the payment provisions for crops with buy-up coverage levels to specify that payments will be based on ''the average market price, contract price, or other premium price (such as a local, organic, or direct market price, as elected by the producer).'' The average market price has been typically established on a state-by-state basis, meaning that all NAP payments for a crop and, if applicable, for an intended use within a state would be based on the same average market price. Average market prices are based on the best available data (including National Agricultural Statistics Service (NASS) data, National Institute of Food and Agriculture (NIFA) data, knowledge of local markets, etc.) and are comparable (though not required to be equal) to established Federal Crop Insurance Corporation (FCIC) prices.

Beginning with the 2015 crop year, FSA had the ability to establish separate average market prices within a State that more closely reflected the prices obtained by producers based on specific situations, such as the use of different farming practices (conventional or organic) and sales to different markets (such as direct sales to consumers at farm stands or farmer's markets). An organic price option is currently available for crops regardless of whether they have basic 50/55 NAP coverage or buy-up NAP coverage, and a direct market option is currently available for crops with buy-up coverage. FSA currently offers a contract marketing percentage option for producers with buy-up coverage, which results in a payment based on an established average market price for fresh and processed intended uses. This is based on a producer's contracted uses of the crop for that crop year, but does not use a producer's individual contract price to calculate a NAP payment.

**Effective Date, Notice and Comment, and Paperwork Reduction Act**

As specified in 7 U.S.C. 9091, the regulations to implement the provisions of Title I and the administration of Title I of the 2018 Farm Bill are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553,
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35), and
- To use the authority in 5 U.S.C. 808 related to Congressional review and any potential delay in the effective date.

The APA provides that the 30-day delay in the effective date and notice and comment provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs NAP payments and therefore falls within that exemption.

The authority provided in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the regulations

expeditiously to provide assistance to producers, FSA and CCC find that notice and public procedure are contrary to the public interest.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Accordingly, this rule is effective upon publication in the **Federal Register**.

**Executive Orders 12866, 13563, 13771 and 13777**

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits to loans apply to rules that are determined to be significant. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule and an analysis of costs and benefits to loans is not required under either Executives Orders 12866 or 13563.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated not significant, it is not subject to Executive Order 13771. In general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Forces, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an on-going approach. FSA reviewed this regulations and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

**Environmental Review**

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). Some of the changes being made in the rule were self-enacting and have already been implemented administratively. FSA has determined that participation in programs similar to those found in 7 CFR 1437 will not significantly affect the quality of the human environment (7 CFR part 799.9(d)). In addition, most of these changes are mandatory with limited or no discretionary decisions regarding implementation. Therefore, they are not subject to review under NEPA.

Additional changes will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective farmers will not change from the current process followed for all farm program actions. Therefore, FSA will not prepare an environmental assessment or environmental impact statement on this rule.

The changes proposed include clarifications regarding eligible losses and causes of loss (types of natural disasters). FSA has likewise determined that these efforts do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively, because of their context and the anticipated intensity of impacts.

**Executive Order 12372**

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. This rule does not have retroactive effect. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

**Executive Order 13132**

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions 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.

FSA has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications that require Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1, 2019, at the National Museum of American Indian, in Washington DC. USDA Under Secretary for the Farm Production and Conservation mission area, as part of Title I session. There were no specific comments from Tribes on this rule during Tribal consultation. If a Tribe requests additional consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Federal Assistance Programs**

The title and number of the Federal Assistance Program found in the Catalog of Federal Domestic Assistance, to which this rule applies, is: 10.451—Noninsured Assistance.

**E-Government Act Compliance**

FSA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR part 1437**

Acreage allotments, Agricultural commodities, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

For the reasons as stated in the preamble, CCC amends 7 CFR part 1437 as follows:

## PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

■ 1. The authority citation for part 1437 continues to read as follows:

**Authority:** 7 U.S.C. 1501–1508 and 7333; 15 U.S.C. 714–714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

### Subpart A—General Provisions

■ 2. Amend § 1437.1 as follows:
■ a. Revise paragraph (b); and
■ b. In paragraph (c), remove ''2015'' and add ''2019'' in its place.

The revision reads as follows:

**§ 1437.1 Applicability.**

* * * * *

(b) The provisions in this part are applicable to eligible producers and eligible crops for which catastrophic risk protection is not available under subsection (b) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) and additional coverage under subsections (c) and (h) of section 508 or, if coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance.

* * * * *

■ 3. Amend § 1437.3 as follows:
■ a. Add the definitions of ''Abandoned'', ''Hemp'', ''Hemp processor'', ''Hemp processor contract'', and ''THC'' in alphabetical order; and
■ b. In the definition of ''Native sod'', remove the words ''for the production of an annual crop through February 7, 2014''.

The additions read as follows:

**§ 1437.3 Definitions.**

* * * * *

*Abandoned* means to have discontinued care for a crop or provided care so insignificant as to provide no benefit to the crop, or failed to harvest in a timely manner.

* * * * *

*Hemp* means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3 percent on a dry weight basis.

*Hemp processor* means any business enterprise regularly engaged in processing hemp that possesses all licenses and permits for processing hemp required by the applicable state or Federal governing authority, and that possesses facilities, or has contractual access to such facilities with enough equipment to accept and process contracted hemp within a reasonable amount of time after harvest.

*Hemp processor contract* means a legal written agreement executed between the producer and hemp processor engaged in the production and processing of hemp containing at a minimum:

(1) The producer's promise to plant and grow hemp and to deliver all hemp to the hemp processor;

(2) The hemp processor's promise to purchase the hemp produced by the producer; and

(3) A base contract price, or method to derive a value that will be paid to the producer for the production as specified in the processor's contract.

(4) For a producer who is also a hemp processor, a corporate resolution by the Board of Directors or officers of the hemp processor will be considered a hemp processor contract if it contains the required terms listed in this definition.

* * * * *

*THC* means delta-9 tetrahydrocannabinol.

* * * * *

■ 4. Amend § 1437.4 as follows:
■ a. Revise paragraph (a)(4)(i);
■ b. Remove paragraph (a)(4)(ii);
■ c. Redesignate paragraphs (a)(4)(iii) and (a)(4)(iv) as (a)(4)(ii) and (a)(4)(iii), respectively;
■ d. Revise paragraph (c);
■ e. Redesignate paragraphs (d) and (e) as (e) and (f), respectively;
■ f. Add new paragraph (d); and
■ g. In newly redesignated paragraph (e), remove ''paragraph (c)'' and add ''paragraph (d)'' in its place.

The revisions and addition read as follows.

**§ 1437.4 Eligibility.**

(a) * * *

(4) * * *

(i) Catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b), (c), and (h)) are not available or, if coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance; or

* * * * *

(c) Except as specified in paragraph (e) of this section, paragraph (d) of this

section will apply to native sod acreage in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota that has been tilled:

(1) During the first 4 crop years of planting for native sod acreage that has been tilled for the production of an annual crop during the period beginning on February 8, 2014, and ending on December 20, 2018; and

(2) For not more than any 4 crop years for native sod acreage that has been tilled for the production of any crop after December 20, 2018:

(i) During the first 10 crop years after the initial tillage; and

(ii) For which a NAP applicant must submit a service fee or NAP premium for a crop on that acreage.

(d) For acreage specified in paragraph (c) of this section:

(1) The approved yield will be determined by using a yield equal to 65 percent of the producer's T-yield for the annually planted crop; and

(2) The service fee or premium for the annual covered crop planted on native sod will be equal to 200 percent of the amount determined in § 1437.7, as applicable, but the premium will not exceed the maximum amount specified in § 1437.7(d)(2).

* * * * *

■ 5. Amend § 1437.5 as follows:

■ a. In paragraph (d) introductory text, remove the words ''For 2015 through 2018 crop years, producers'' and add the words ''Subject to paragraph (e) of this section, producers'' in their place; and

■ b. In paragraph (d)(1), remove the word ''your'' and add the word ''the'' in its place;

■ c. Redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

■ d. Add new paragraph (e).

The addition reads as follows:

**§ 1437.5 Coverage levels.**

* * * * *

(e) A producer cannot obtain buy-up coverage for a crop if the producer has not successfully produced the crop in a previous year for which documentation exists and that documentation shows that the crop can be successfully grown by the producer in the county. Production of the crop is considered to be successful if the producer produced at least 50 percent of the county expected yield for the same county for which buy-up coverage is sought, unless the producer suffered a loss on the crop due to an eligible cause of loss in § 1437.10. If not already provided to FSA for any reason including NAP coverage or assistance, the producer must submit documentation showing successful growing of the crop in a previous year and, in the event a loss due to an eligible cause of loss was sustained, submit documentation of that loss satisfying the requirements of § 1437.11.

* * * * *

■ 6. Amend § 1437.6 as follows:

■ a. In paragraph (a) introductory text, remove the phrase ''30 days'' and add the phrase ''1 calendar day'' in its place;

■ b. In paragraph (a)(2), remove the phrase ''30 days'' and add the phrase ''30 calendar days'' in its place;

■ c. In paragraphs (b)(1)(i), (c), and (d), remove the phrase ''30 calendar days'' each time it appears and add the phrase ''1 calendar day'' in its place;

■ d. Revise paragraph (e);

■ e. In paragraph (f), remove the phrase ''30 calendar days'' and add the phrase ''1 calendar day'' in its place both times it appears;

■ f. In paragraph (g), remove the phrase ''30 calendar days'' and add the phrase ''1 calendar day'' in its place, and remove the phrase ''30 days'' and add the phrase ''1 calendar day'' in its place; and

■ g. Revise paragraph (h).

The revisions read as follows:

**§ 1437.6 Coverage period.**

* * * * *

(e) *Honey.* Except as provided in paragraph (h) of this section, the coverage period for honey begins the later of 1 calendar day after the date of the application for coverage is filed; 1 calendar day after the application closing date; or the date the colonies are set in place for honey production. The coverage ends the last day of the crop year.

* * * * *

(h) *2019 and 2020 crop years.* For the 2019 and 2020 crop years only, if a crop's application closing date is before April 8, 2019, the coverage period of the crop will be as specified in paragraphs (a) through (g) of this section except that the date coverage begins will be retroactive as long as the application for coverage is filed by the application closing date as specified in § 1437.7(i). This limited retroactive coverage for the 2019 and 2020 crop years only will begin 1 calendar day after the established application closing date, which would be the same as if they had filed by the deadlines as specified in paragraphs (a) through (g) of this section.

■ 7. Amend § 1437.7 as follows:

■ a. Revise the section heading and paragraphs (b) and (e);

■ b. In paragraph (g), remove the words ''and socially'' and add the word ''socially'' in their place, and remove the words ''ranchers will'' and add the words ''ranchers, and veteran farmers and ranchers will'' in their place;

■ c. Revise paragraph (i); and

■ d. Add paragraphs (j), (k), and (l).

The revisions and additions read as follows:

**§ 1437.7 Application for coverage, service fee, premium, transfers of coverage, and acreage report.**

* * * * *

(b) The service fee or request for service fee waiver specified in paragraph (g) of this section must accompany the application for coverage in order for it to be considered filed. The service fee is:

(1) For applications filed by April 7, 2019, $250 per crop per administrative county, up to $750 per producer per administrative county, not to exceed $1,875 per producer; and

(2) For applications filed on or after April 8, 2019, $325 per crop per administrative county, up to $825 per producer per administrative county, not to exceed $1,950 per producer.

* * * * *

(e) For value loss crops, premiums will be equal to the lesser of:

(1) The product obtained by multiplying:

(i) A 5.25-percent premium fee; and

(ii) The applicable payment limit; or

(2) The sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying:

(i) The maximum dollar value for which coverage is sought by the applicant;

(ii) The coverage level elected by the producer; and

(iii) A 5.25-percent premium fee.

* * * * *

(i) For the 2019 and 2020 crop years, if a crop's application closing date is before April 8, 2019, FSA will accept applications for coverage without regard to whether or not the application for coverage was filed by the crop's application closing date, provided that the application for coverage includes buy-up coverage according to § 1437.5(d) and is filed by May 24, 2019. Except as specifically stated in this rule, the provisions of this paragraph do not apply to crops having an application closing date established on or after April 8, 2019, or to applications for coverage that do not include buy-up coverage as an option selected by the applicant. The coverage period for applications for coverage filed according to this paragraph will be as specified in § 1437.6.

(j) An accurate acreage report must be filed for each crop included on an application for coverage by the earliest of:

(1) The acreage reporting date for the crop announced by FSA;

(2) 15 calendar days before the onset of harvest or grazing of the crop acreage being reported; or

(3) The established normal harvest date for the end of the coverage period.

(k) Applications for coverage for hemp are governed by this part.

(l) Applications for coverage that were filed with FSA for all crops other than hemp that were covered under the regulations in effect at the time of filing and which meet all the other requirements of this section will be recognized by FSA.

■ 8. Amend § 1437.8 as follows:

■ a. In paragraph (a) introductory text, remove the words ''records of crop acreage'' and add the words ''accurate records of crop acreage'' in their place and revise the last sentence.

■ b. In paragraph (b)(1), remove the words ''crops must'' and add the words ''or rapidly deteriorating crops, as determined by the Deputy Administrator, must'' in their place, and remove the words ''hand-harvested crop acreage'' and add the words ''acreage of hand-harvested or rapidly deteriorating crops'' in their place;

■ c. In paragraph (c)(1), remove the word ''and'';

■ d. In paragraph (c)(2), remove the period at the end of the paragraph and add a semicolon in its place; and

■ e. Add paragraphs (c)(3) and (c)(4).

The revision and additions read as follows:

**§ 1437.8 Records.**

(a)* * * A certification of an amount of production itself is not a record of production. Certifications must be accompanied by a record of production; records of production'' in their place;

* * * * *

(c) * * *

(3) The producer's risk in the crop; and

(4) The producer's ability and intent to harvest, transport, and market the crop's expected production determined by using the approved yield or inventory of the crop or commodity.

* * * * *

■ 9. Amend § 1437.10 as follows:

■ a. Redesignate paragraphs (b)(1)(viii) and (b)(1)(ix) as paragraphs (b)(1)(ix) and (b)(1)(x), respectively;

■ b. Add new paragraph (b)(1)(viii);

■ c. In newly redesignated paragraph (b)(1)(ix), remove the cross reference ''(viii)'' and add the reference ''(ix)'' in its place;

■ d. In paragraph (b)(3)(iv), remove the word ''or'';

■ e. Redesignate paragraph (b)(3)(v) as paragraph (b)(3)(vi);

■ f. Add new paragraph (b)(3)(v);

■ g. In paragraph (d)(15), remove the words ''practices; or'' and add the word ''practices;'' in their place;

■ h. In paragraph (d)(16), remove the ''.'' and add ''; or'' in its place; and

■ i. Add paragraph (d)(17).

The additions read as follows:

**§ 1437.10 Causes of loss.**

* * * * *

(b) * * *

(1) * * *

(viii) Lightning;

* * * * *

(3) * * *

(v) Wildfire; or

* * * * *

(d) * * *

(17) Failure to harvest or market the crop due to lack of a sufficient plan or resources.

* * * * *

■ 10. Amend § 1437.11 as follows:

■ a. In paragraph (a) and paragraph (b) introductory text, remove the word ''hand-harvested'' and add the words ''hand-harvested or rapidly deteriorating'' both times they appear;

■ b. In paragraph (b)(2), remove the word ''claims'' add the words ''claims and value loss claims'' in its place; and

■ c. Revise paragraph (d)(2)(ii).

The revision reads as follows:

**§ 1437.11 Notice of loss, appraisal requirements, and application for payment.**

* * * * *

(d) * * *

(2) * * *

(ii) Within 72 hours after the acreage is abandoned for hand-harvested or rapidly deteriorating crops, or within 15 calendar days after the acreage is abandoned for all other crops;

* * * * *

**§ 1437.12 [Amended]**

■ 11. Amend § 1437.12 as follows:

■ a. In paragraph (b)(1), remove the words ''immediately preceding the crop year of coverage, if available'' and add the words ''beginning with the most recent year for which price data is available'' in their place; and

■ b. In paragraph (b)(4), remove the words ''immediately preceding the previous crop year'' and add the words ''beginning with the most recent year for which price data is available'' in their place.

■ 12. In § 1437.16, amend paragraph (d) by adding two sentences to the end of the paragraph to read as follows:

**§ 1437.16 Miscellaneous provisions.**

* * * * *

(d) * * *

FSA may assess liquidated damages of 10 percent of the projected or received NAP payment for the crop or commodity in violation. Liquidated damages are in addition to any refund of program benefits and are not considered a penalty.

* * * * *

## Subpart B—Determining Yield Coverage Using Actual Production History

■ 13. Add § 1437.108 to read as follows.

**§ 1437.108 Hemp.**

(a) Hemp is eligible for NAP coverage only if the hemp is:

(1) Grown under an official certification or license issued by the applicable governing authority that permits the production of the hemp;

(2) Grown under a hemp processor contract executed by the applicable acreage reporting date; and

(3) Planted for harvest as hemp in accordance with the requirements of the hemp processor contract and the production management practices of the hemp processor.

(b) In addition to all other requirements under this part, a producer who obtains NAP coverage for hemp must submit by the acreage reporting date:

(1) The certification or license number;

(2) A copy of the certification form or official license issued by the applicable governing authority authorizing the producer to produce hemp; and

(3) A copy of each fully executed hemp processor contract.

(c) A producer must submit THC test results taken at harvest of the hemp crop. If the producer does not submit the THC test results, that production will not be included in the producer's actual yield for the purpose of determining a producer's APH under § 1437.101.

(d) Hemp is not eligible for NAP coverage if it is planted on acres on which Cannabis, canola, dry beans, dry peas, mustard, rapeseed, soybeans in states as determined by the Deputy Administrator, or sunflowers were grown the preceding crop year.

(e) Hemp that has a THC level above 0.3 percent:

(1) Is not eligible for NAP benefits; and

(2) Is not included in the producer's actual yield for the purpose of determining a producer's APH under § 1437.101.

(f) Hemp will be ineligible for NAP payment for that NAP crop year if the producer's certification or license is

terminated or suspended during that NAP crop year.

### Subpart D—Determining Coverage Using Value

**§ 1437.301 [Amended]**

■ 14. In § 1437.301, remove paragraph (d).

### Subpart E—Determining Coverage of Forage Intended for Animal Consumption

■ 15. Amend § 1437.401 as follows:

■ a. In paragraph (f)(2), remove the word ''conditions'' and add the words ''conditions, or by alternative methods as determined by the Deputy Administrator'' in its place; and

■ b. Add paragraph (g).

The addition reads as follows:

**§ 1437.401 Forage.**

* * * * *

(g) For those NAP covered participants who seek to have a NAP payment determined based on paragraph (f)(2) of this section, a notice of loss under § 1437.11 will not be required; only an application for payment must be filed. Unless otherwise expressed by the NAP covered participant, FSA will presume the participant to want assistance for grazed forage determined according to paragraph (f)(2) of this section.

### Subpart F—Determining Coverage in the Tropical Region

**§ 1437.502 [Amended]**

■ 16. Amend § 1437.502 as follows:

■ a. In paragraph (b), remove ''December 1'' and add ''December 31'' in its place.

■ b. In paragraph (c), remove the words ''per county per crop year, a maximum service fee of $250'' and add the words ''the maximum service fee per crop per county provided at § 1437.7'' in their place.

**§ 1437.503 [Amended]**

■ 17. In § 1437.503(a), remove the words ''crops, other than in Hawaii, Puerto Rico, and other areas approved by the Deputy Administrator, except as approved by the Deputy Administrator in special cases'' and add the word ''crops'' in their place.

**Richard Fordyce,**

*Administrator, Farm Service Agency.*

**Robert Stephenson,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2020–04103 Filed 2–28–20; 8:45 am]

**BILLING CODE 3410–05–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

**[Release Nos. 33–10757; 34–88245; IA–5446; IC–33802]**

### Delegation of Authority to the General Counsel of the Commission

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is revising regulations with respect to the delegations of authority to the Commission's General Counsel. The revisions are a result of the Commission's experience with its bankruptcy program and they are intended to conserve Commission resources by delegating to staff the discretion to file objections in bankruptcy cases with respect to the frequently recurring issue of non-debtor third-party releases. The revisions will expedite and enhance the effectiveness of the Commission's bankruptcy program by enabling staff to meet bankruptcy court deadlines that affect issues important to the Commission.

**DATES:** Effective March 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Morgan Bradylyons, Bankruptcy Counsel, and Tracey Hardin, Assistant General Counsel for Appellate Litigation and Bankruptcy, Office of the General Counsel, (202) 551–7926, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–9040.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Commission is revising the delegations of authority to its General Counsel as a result of the Commission's experience with its bankruptcy program. The revisions are intended to increase the efficiency of the Commission's operations by delegating to staff the discretion to file objections in bankruptcy cases with respect to the frequently recurring issue of non-debtor third-party releases. The revisions will expedite and enhance the effectiveness of the Commission's bankruptcy program by enabling staff to meet bankruptcy court deadlines that affect issues important to the Commission. Congress has authorized such delegation by Public Law 87–592, 76 Stat. 394, 15 U.S.C. 78d–1(a), which provides that the Commission ''shall have the authority to delegate, by published order or rule, any of its functions to . . . an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business or matter.''

Accordingly, the Commission is amending its rules to delegate authority to the General Counsel to file objections in bankruptcy cases with respect to the routine, recurring issue of non-debtor third-party release provisions. Under this delegation, the General Counsel (or, under his or her direction, such persons as might be designated from time to time by the Chairman of the Commission) would authorize the staff, in bankruptcy cases, to take the following actions with respect to plan or settlement provisions that have the effect of releasing, exculpating, discharging, or permanently enjoining actions against non-debtor third parties in contravention of Section 524(e) of the Bankruptcy Code or applicable law: (1) Object to approval of disclosure statements, including on the basis that the disclosure statement lacks adequate information under Section 1125(b) to support such release provisions; (2) object to confirmation of bankruptcy plans; or (3) object to approval of settlements.

Notwithstanding this delegation, the General Counsel may submit any matter he or she believes appropriate to the Commission. Furthermore, any action taken by the General Counsel pursuant to delegated authority would be subject to Commission review as provided by Rules 430 and 431 of the Commission's Rules of Practice, 17 CFR 201.430–201.431 and 15 U.S.C. 78d–1(b).

#### II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (''APA''), that these revisions relate solely to agency organization, procedure, or practice and do not constitute a substantive rule. 5 U.S.C. 553(b)(3)(A). Accordingly, the APA's provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments prior to their effective date are not applicable. These changes are therefore effective on March 2, 2020. For the same reason, and because these amendments do not affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable. 5 U.S.C. 804(3)(C) (the term ''rule'' does not include ''any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.'') Additionally, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which apply

only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995. *See* 5 CFR 1320.3. Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a)(2) of the Securities Exchange Act of 1934. 15 U.S.C. 78w(a)(2).

**III. Statutory Authority**

This rule is adopted pursuant to statutory authority granted to the Commission, including Section 19 of the Securities Act of 1933, 15 U.S.C. 77s; Sections 4A, 4B, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78d–2, and 78w; Section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a–37; Section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–11; and Section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202.

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Authority delegations (Government agencies).

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

### Subpart A—Organization and Program Management

■ 1. The general authority citation for part 200, subpart A continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77o, 77s, 77z–3, 77sss, 78d, 78d–1, 78d–2, 78o–4, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Amend § 200.30–14 by:
■ a. Redesignating paragraphs (f) through (o) as paragraphs (g) through (p); and
■ b. Adding new paragraph (f).

The addition reads as follows.

**§ 200.30–14 Delegation of authority to the General Counsel.**

* * * * *

(f) In bankruptcy cases, to take the following actions with respect to plan or settlement provisions that have the effect of releasing, exculpating, discharging, or permanently enjoining actions against non-debtor third parties in contravention of Section 524(e) of the Bankruptcy Code or applicable law:

(1) Object to approval of disclosure statements, including on the basis that the disclosure statement lacks adequate information under Section 1125(b) to support such release provisions;

(2) Object to confirmation of bankruptcy plans; or

(3) Object to approval of settlements.

* * * * *

By the Commission.

Dated: February 19, 2020.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2020–03705 Filed 2–28–20; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 1

**[Docket No. PTO–P–2019–0035]**

## Clarification of the Practice for Requiring Additional Information in Petitions Filed in Patent Applications and Patents Based on Unintentional Delay

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Clarification.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is clarifying its practice as to situations that will require additional information about whether a delay in seeking the revival of an abandoned application, acceptance of a delayed maintenance fee payment, or acceptance of a delayed priority or benefit claim was unintentional.

**DATES:** The clarification of practice set forth is applicable to any petition decided on or after March 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Christina Tartera Donnell, Attorney Advisor, Office of Petitions, by telephone at 571–272–3211; or Douglas I. Wood, Attorney Advisor, Office of Petitions, by telephone at 571–272–3231; or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

**SUPPLEMENTARY INFORMATION:** Title II of the PLTIA amended the provisions of title 35, United States Code (U.S.C.), to implement the Patent Law Treaty (PLT). *See* Public Law 112–211, § 201–203, 126 Stat. 1527, 1533–37 (2012). Section 201(b) of the PLTIA added a new 35 U.S.C. 27, which expressly provides that the director of the USPTO may establish procedures to revive an unintentionally abandoned application for patent or accept an unintentionally delayed issue fee payment, upon petition by the applicant for patent or patent owner. *See* Public Law 112–211, 201(b)(1), 126 Stat. at 1534. Section 202(b)(1)(B) of the PLTIA amended 35 U.S.C. 41(c)(1) to provide that the director may accept the payment of any maintenance fee required by 35 U.S.C. 41(b) after the six-month grace period if the delay is shown to the satisfaction of the director to have been unintentional. *See* Sec. 202(b)(1)(B), Public Law 112–211, 126 Stat. at 1535–36. The 18-month publication provisions of the American Inventors Protection Act of 1999 (AIPA) amended 35 U.S.C. 119 and 120 to provide that a priority claim for a foreign or international application and a benefit claim to an earlier domestic provisional or nonprovisional application must be filed within the period required by the USPTO, but that the USPTO may establish procedures to accept an unintentionally delayed priority or benefit claim. *See* Public Law 106–113, 113 Stat. 1501, 1501A–563 through 1501A–564 (1999).

The USPTO revised the rules of practice to implement the 18-month publication provisions of section 4503 of the AIPA in September 2000. This included revising the rules of practice pertaining to foreign priority and domestic benefit claims (37 CFR 1.55 and 1.78) to set a time period within which such priority and benefit claims must be filed, and to provide for the acceptance of unintentionally delayed priority or benefit claims. *See* Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57024–25, 57030–31, 57053–55 (September 20, 2000). The USPTO revised the rules of practice for consistency with the PLT and title II of the PLTIA in October 2013. This included revising the rules of practice pertaining to the revival of abandoned applications (37 CFR 1.137) and acceptance of delayed maintenance fee payments (37 CFR 1.378) to provide for the revival of abandoned applications and acceptance of delayed maintenance fee payments solely on the basis of ''unintentional'' delay, as well as revisions to the rules of practice pertaining to foreign priority and domestic benefit claims (37 CFR 1.55 and 1.78). *See* Changes to Implement the Patent Law Treaty, 78 FR 62368, 62377–78, 62380–83, 62399–400, 62402–07 (October 21, 2013).

The provisions for the revival of an abandoned application (37 CFR 1.137)

require a petition including, inter alia, a statement that the entire delay in filing the required reply, from the due date of the reply until the filing of a grantable petition, was unintentional, but also provide that ''[t]he Director may require additional information where there is a question whether the delay was unintentional'' (37 CFR 1.137(b)(4)). The provisions for the acceptance of a delayed maintenance fee payment (37 CFR 1.378) similarly require a petition including, inter alia, a statement that the delay in payment of the maintenance fee was unintentional, but also provide that ''[t]he Director may require additional information where there is a question whether the delay was unintentional'' (37 CFR 1.378(b)(3)). The provisions for the acceptance of a delayed priority or benefit claim (37 CFR 1.55 and 1.78) likewise require a statement that the delay between the date the claim was due and the date the claim was filed was unintentional, but also provide that ''[t]he Director may require additional information where there is a question whether the delay was unintentional'' (37 CFR 1.55(e)(4), 1.78(c)(3) and (e)(3)).

The USPTO is clarifying its practice as to situations that will require additional information about whether a delay in seeking the revival of an abandoned application, acceptance of a delayed maintenance fee payment, or acceptance of a delayed priority or benefit claim was unintentional. Specifically, the USPTO will require additional information in these cases, first, when a petition to revive an abandoned application is filed more than two years after the date the application became abandoned; second, when a petition to accept a delayed maintenance fee payment is filed more than two years after the date the patent expired for nonpayment; and third, when a petition to accept a delayed priority or benefit claim is filed more than two years after the date the priority or benefit claim was due. *See, e.g.,* Changes to Patent Practice and Procedure, 62 FR 53131, 53158–59, 53161 (October 10, 1997) (the length of the delay in filing a petition to revive may itself raise a question as to whether the delay was unintentional, and thus the USPTO may require additional information as to the cause of the delay when a petition to revive is not filed promptly). The reason for requiring additional information in cases where there has been an extended delay—a delay of more than two years from the date the application became abandoned, the patent expired, or a priority or benefit claim was due—until the filing of a petition, is to ensure that, in situations where there has been such an extended delay in filing the petition, the USPTO is provided with sufficient information of the facts and circumstances surrounding the entire delay to support a conclusion that the entire delay was ''unintentional.''

Section 711.03(c) of the Manual of Patent Examining Procedure (MPEP) discusses the ''unintentional'' delay standard with respect to petitions to revive an abandoned application, but its discussion of the ''unintentional'' delay is generally applicable to any petition under the ''unintentional'' delay standard. The USPTO usually relies upon the applicant's duty of candor and good faith and accepts the statement that the entire delay was unintentional without requiring further information because the applicant or patentee is obligated under 37 CFR 11.18 to inquire into the underlying facts and circumstances when providing this statement to the USPTO. *See* MPEP § 711.03(c), subsection II.C. An extended period of delay (*i.e.,* more than two years from the date the application became abandoned, the patent expired, or a priority or benefit claim was due) in filing a petition to revive an application, accept a delayed maintenance fee payment, or accept a delayed priority or benefit claim, however, raises a question as to whether the entire delay was unintentional. This may create uncertainty and unpredictability relating to patent rights in that there is a greater likelihood that the entire delay may not be ''unintentional'' within the meaning of 37 CFR 1.55, 1.78, 1.137, and 1.378, as compared to a petition that was filed within a shorter time period after the abandonment of the application, expiration of the patent, or due date for a priority or benefit claim. An applicant or patentee cannot meet the ''unintentional delay'' standard in 37 CFR 1.55(e), 1.78(c) and (e), 1.137(a), or 1.378(b) if the entire delay is not unintentional. *See* MPEP 711.03(c), subsections II.C. through F.

Furthermore, providing an inappropriate statement that the delay was ''unintentional'' may have an adverse effect when attempting to enforce the patent. *See In re Rembrandt Technologies LP Patent Litigation,* 899 F.3d 1254, 1272–73 (Fed. Cir. 2018) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the delay was unintentional). Revival of an application, reinstatement of a patent, or acceptance of a priority or benefit claim after an extended delay (*i.e.,* more than two years since the date of abandonment, expiration of the patent, or due date of the priority claim) can also create uncertainty and unpredictability relating to patent rights because the abandoned status of an application, or the expired status of a patent, or an absence of the priority or benefit claim, may be relied upon by other parties. Requiring additional information in these situations will improve the reliability and predictability of patent rights by ensuring that only applications and patents in which the entire delay was unintentional are revived or reinstated, and only priority or benefit claims for which the entire delay was unintentional are accepted.

Accordingly, any applicant filing a petition to revive an abandoned application under 37 CFR 1.137 more than two years after the date of abandonment, any patentee filing a petition to accept a delayed maintenance fee under 37 CFR 1.378 more than two years after the date of expiration for nonpayment of a maintenance fee, and any applicant or patent owner filing a petition to accept a delayed priority or benefit claim under 37 CFR 1.55(e) or 1.78(c) and (e) more than two years after the due date of the priority or benefit claim should expect to be required to provide an additional explanation of the circumstances surrounding the delay that establishes that the entire delay was unintentional. This requirement is in addition to the requirement to provide a statement that the entire delay was unintentional in 37 CFR 1.137(b)(4) and 1.378(b)(3), or 1.55(e)(4), or 1.78(c)(3) and (e)(3).

The USPTO may revisit the two-year time period established in this notice for requiring an additional explanation as to whether a delay is unintentional at a future point and may adjust the time period based on an evaluation of whether a two-year time period is appropriate for requesting additional information when determining whether a period of delay is unintentional. Nothing in this notice should be taken as an indication that the USPTO will only require additional information in consideration of a petition to revive an abandoned application under 37 CFR 1.137 filed more than two years after the date the application became abandoned, a petition to accept a delayed maintenance fee payment in an expired patent under 37 CFR 1.378 filed more than two years after the date the patent expired, or a petition under 37 CFR 1.55(e) or 1.78(c) or (e) to accept a delayed priority or benefit claim filed more than two years after the due date of the priority or benefit claim. The USPTO may require additional information whenever there is a

question as to whether the delay was unintentional.

Dated: February 18, 2020.

**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2020–03715 Filed 2–28–20; 8:45 am]

**BILLING CODE 3510–16–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 31

**[FRL–10005–45–OECA]**

**RIN 2020–AA53**

## On-Site Civil Inspection Procedures

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

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating this rule of Agency procedure to fulfill the objectives outlined in the October 9, 2019 Executive Order (E.O.) 13892, *Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication.* This rule describes certain Agency procedures for conducting on-site civil inspections, as contemplated by section 7 of E.O. 13892, *Ensuring Reasonable Administrative Inspections.* This rule applies to on-site civil inspections conducted by federally credentialed EPA civil inspectors, federally credentialed contractors and Senior Environmental Employment (SEE) employees conducting inspections on behalf of EPA.

**DATES:** This rule is effective March 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Chad Carbone (202–564–2523), Office Enforcement and Compliance Assurance (2221A), U.S. Environmental Protection Agency, Washington, DC 20460; telephone number: (202) 564–2523; fax number: (202) 564–0050; email: *carbone.chad@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The following outline is provided to assist the reader in locating topics of interest in the rule.

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### I. General Information

*A. Does this action apply to me?*

This rule applies to all federally credentialed EPA civil inspectors, federally credentialed contractors and Senior Environmental Employment (SEE) employees conducting inspections on behalf of EPA. As an internal rule of Agency procedure, the rule does not apply to federally credentialed state and tribal inspectors conducting inspections on EPA's behalf. This rule describes certain important aspects of the Agency's process of conducting on-site civil inspections and does not alter the rights or interests of parties or any person or entity outside the EPA.

*B. What action is the Agency taking?*

The purpose of this rulemaking is to provide direction to agency personnel on how to conduct EPA on-site civil administrative inspections, as required by section 7 of E.O. 13892, entitled *Ensuring Reasonable Administrative Inspections,* and which states: ''Within 120 days of the date of this order, each agency that conducts civil administrative inspections shall publish a rule of agency procedure governing such inspections, if such a rule does not already exist. Once published, an agency must conduct inspections of regulated parties in compliance with the rule.'' This rulemaking addresses the common elements applicable to on-site civil inspections for compliance with all of the environmental laws that EPA implements. The specific activities that may occur during an inspection may vary depending on the facility and the statutory authority upon which the inspection is based. It is also important to note that EPA inspections are only one type of compliance monitoring activity that EPA conducts in order to help evaluate compliance. The primary focus of inspections is on recording observations and gathering information. As such, compliance determinations are an independent process that rely upon a myriad of information and are reviewed by Agency attorneys and management.

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

EPA's authority to issue this procedural rule is contained in the: Clean Air Act (CAA): 42 U.S.C. 7414, 7525, 7542, 7603, 7621; Clean Water Act (CWA): 33 U.S.C. 1318, 1321, 1364, 1367; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Superfund): 42 U.S.C. 9604, 9606, 9622, Executive Order 12580, section 2(j)(2); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA): 7 U.S.C. 136; Resource Conservation and Recovery Act (RCRA): 42 U.S.C. 6908, 6912, 6927, 6928, 6934, 6971, 6973, 6991, 6992; Safe Drinking Water Act (SDWA): 42 U.S.C. 300; and the Toxic Substances Control Act (TSCA): 15 U.S.C. 2610. EPA is also issuing this rule under its housekeeping authority. Section 301 of Title 5 U.S.C. authorizes an agency head to prescribe regulations governing his or her department and the performance of its business, among other purposes. EPA gained housekeeping authority through the Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970), as recognized by the U.S. Department of Justice Office of Legal Counsel. *See* ''Authority of EPA to Hold Employees Liable for Negligent Loss, Damage, or Destruction of Government Personal Property,'' 32 O.L.C. 79, 2008 WL 4422366 at *4 (May 28, 2008). As a rule of Agency procedure this rule is exempt from the notice and comment requirements set forth in the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A).

### II. Background

*A. General Overview of On-Site Civil Inspections*

Below is a general overview of the process for conducting on-site civil inspections. To ensure greater transparency and clearer direction to its inspectors, the Agency is codifying the major elements of inspections it carries out in its civil enforcement of environmental laws. (This rule does not apply to investigations of environmental crimes.) This overview also provides information regarding additional activities that may occur during the civil inspection process.

1. Timing of Inspections and Facility Notification

EPA inspectors should generally conduct inspections during the facility's normal work hours. However, there may be circumstances which require EPA inspectors to access, monitor, or observe specific operations or activities at other times. Where possible, for announced

inspections, EPA inspectors shall take reasonable steps to work with the facility to agree on a workable schedule for accessing areas for the inspection. EPA inspectors have the authority to conduct, and do conduct, inspections with or without prior notice to a facility.

2. Inspector Qualifications

EPA inspectors must hold a valid credential to perform the inspection. EPA credentials are issued to inspectors that have completed training relevant to the statutory programs under which they will inspect and training for health and safety hazards they may encounter or experience while conducting inspections.

3. Obtaining Consent To Enter

Upon arrival at a facility, EPA inspectors shall present their valid EPA Inspector Credentials to a facility employee, describe the authority and purpose of the inspection, and where possible seek the facilities' consent to enter. Inspectors are required under certain statutes to advise facility personnel that they can deny entry, but EPA may then seek a warrant for entry.

EPA inspectors should not sign a facility release of liability (waiver) or any statement limiting EPA's use of information. However, the EPA inspector can sign a ''visitors log sheet,'' if there are no limitations printed on the sheet. EPA inspectors are not authorized to relinquish their EPA Inspector Credential. EPA inspectors are also not authorized to relinquish their personally identifiable information (*e.g.,* driver's license), except in certain circumstances to obtain Federal Facility security access. Finally, some statutes also require the facility to sign a ''Notice of Inspection'' form at the time of entry.

4. Opening Conference

The EPA inspector shall request an opening conference with available facility representatives or employees, where practicable. This may not be possible, for example, where facility personnel are not on-site or where the site is geographically isolated, and no facility or staff are located nearby. The opening conference will commence as early as possible upon arrival at the facility, unless there are specific reasons why that is not feasible or conflicts with the inspection objectives. The EPA inspector shall discuss the overall objectives of the inspection and establish him or herself as a spokesperson for EPA during the inspection. EPA inspectors may request access to/copies of facility records and request to interview facility employees, as necessary. EPA inspectors may also ask facility personnel for an overview of plant operations, potential site-specific health and safety hazards, confirm whether the inspection requires access to specific portions of the facility, and obtain a site map indicating the locations where potentially regulated activities are conducted.

If the facility is a small business, EPA inspectors will offer a Small Business Resources Information Sheet that provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources may also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

5. Physical Inspection

EPA inspectors shall inspect the areas, units, sources and processes relevant to the scope of the inspection. The inspectors will generally document their observations with photos and notes.

6. Managing Confidential Business Information (CBI)

Pursuant to existing statutory and regulatory requirements, inspectors shall complete appropriate, statute-specific, CBI training before managing CBI. The EPA inspectors shall manage all CBI claims made by a facility during an inspection in accordance with 40 CFR part 2, subpart B.

7. Interview Facility Personnel

EPA inspectors may conduct interviews of facility personnel as appropriate. Interviews may include, but are not limited to, the environmental contacts, process operators, contractors, maintenance personnel, process engineers, control room operators, and other employees working in the area(s) of interest. EPA inspectors should document names and titles of all facility personnel interviewed including the places and dates in which these interviews occurred.

8. Records Review

Once the records requested by the EPA inspector are assembled, the EPA inspector shall review any records relevant to the facility inspection/field investigation. EPA inspectors may request copies of many different types of records (paper, electronically scanned, downloaded or recorded through other digital storage devices), when appropriate, and record copies of records taken from the facility. An EPA inspector may request records before, during, or after an inspection.

9. Sampling

EPA inspectors may take samples when appropriate. Where applicable and practicable, during the opening conference, the inspector shall offer facility personnel the opportunity to obtain split samples or to collect duplicate samples.

10. Closing Conference

EPA inspectors shall offer a closing conference with available facility employees, as practicable. A closing conference may not be possible where, for example, an inspection is conducted at a geographically isolated portion of the facility and no facility staff are located nearby. If a closing conference is possible and appropriate, EPA inspectors will discuss any outstanding questions or missing documents and the process for follow up. EPA inspectors may also discuss next steps and how the facility will be contacted on the results of the inspection and identify the appropriate point of contact for further communication and coordination. EPA inspectors may also summarize any potential ''areas of concern'' identified in the inspection.

*B. Inspection Report*

After an inspection, EPA shall share an inspection report with the facility. The content and format of the report may vary depending on the facility, type of the inspection, and the statutory authority upon which the inspection is based. The inspection report may be a narrative, form, checklist, letter, email message or other type of document.

## III. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget (OMB) because it is limited to agency organization, management or personnel matters.

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

This action is not an Executive Order 13771 regulatory action because it relates to ''agency organization, management or personnel.''

*C. Paperwork Reduction Act (PRA)*

This action does not contain any information collection activities and

therefore does not impose an information collection burden under the PRA.

*D. Regulatory Flexibility Act (RFA)*

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule pertains to agency management or personnel, which the EPA expressly exempts from notice and comment rulemaking requirements under 5 U.S.C. 553(a)(2).

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1536, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have 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.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175.

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

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

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

This action is not subject to Executive Order 12898 (59 Fed 7629, Feb. 16, 1994) because it does not establish an environmental health or safety standard.

*L. Congressional Review Act (CRA)*

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

**List of Subjects in 40 CFR Part 31**

Environmental protection, On-site civil inspection procedures.

Dated: February 6, 2020.

**Andrew R. Wheeler,**

*Administrator.*

■ For the reasons set forth in the preamble, EPA adds 40 CFR part 31, consisting of § 31.1, to subchapter A to read as follows:

## PART 31—ON-SITE CIVIL INSPECTION PROCEDURES

**Authority:** Clean Air Act 42 U.S.C. 7414, 7525, 7542, 7603, 7621; Clean Water Act 33 U.S.C. 1318, 1321, 1364, 1367; Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. 9604, 9606, 9622, Executive Order 12580, section 2(j)(2); Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. 136; Resource Conservation and Recovery Act 42 U.S.C. 6908, 6912, 6927, 6928, 6934, 6971, 6973, 6991, 6992; Safe Drinking Water Act 42 U.S.C. 300; Toxic Substances Control Act 15 U.S.C. 2610; 5 U.S.C. 301; and Reorganization Plan No. 3 of 1970, 84 Stat. 2086.

### § 31.1 Procedures conducted by EPA for on-site civil inspections.

(a) All on-site civil inspections by EPA inspectors shall be conducted in accordance with this part. For purposes of this part, all references throughout to ''inspection'' or ''inspections'' refer to on-site civil inspections; this part does not apply to criminal inspections or investigations of environmental crimes.

(b) EPA inspections shall take place at such times and in such places as appropriate.

(c) At the beginning of an inspection, EPA inspectors shall present their credentials to the owner, operator, or agent in charge at the facility or site, if available. EPA inspectors shall generally explain the nature and purpose of the inspection; offer an opening conference; confirm any safety hazards; and indicate generally the scope of the inspection and the records which they wish to review. However, such designation of records shall not preclude access to additional records.

(1) During the opening conference, EPA inspectors shall, where applicable and practicable, offer facility personnel the opportunity to obtain split samples or to collect duplicate samples.

(2) If the facility is a small business, EPA inspectors shall offer a Small Business Resources Information Sheet to help small businesses understand and comply with federal and state environmental laws.

(d)(1) EPA inspectors shall document observations, and, as appropriate, take environmental or other samples and take or obtain photographs and copies of documents related to the purpose of the inspection, and employ other reasonable investigative techniques.

(2) Where possible, EPA inspectors shall interview the owner, operator, agent or employee of an establishment. Reasonable investigative techniques include, but are not limited to, the use of monitoring devices/equipment to measure releases to the environment.

(e) EPA inspectors shall take reasonable precautions to ensure actions conducted during inspections will not cause hazardous situations, and, where appropriate, wear and use appropriate protective clothing and equipment.

(f)(1) At the conclusion of an inspection, EPA inspectors shall offer a closing conference, where practicable, to confer with the facility/site representative and informally advise them of any observations, potential deficiencies and concerns discovered by the inspection, as applicable.

(2) During such conference, the facility/site representative shall be afforded an initial opportunity to bring to the attention of the EPA inspector any pertinent information regarding the potential concerns identified.

(g) After an inspection, EPA shall prepare an inspection report and share it with the facility. The content and format of the report may vary.

[FR Doc. 2020–03508 Filed 2–28–20; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 85, No. 41
Monday, March 2, 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 25

**[Docket No. FAA–2019–0840; Notice No. 25–20–01–SC]**

## Special Conditions: The Boeing Company Model 777–300ER Series Airplanes; Dynamic Test Requirements for Single-Occupant Oblique Seats With Pretensioner Restraint Systems

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for Boeing Model 777–300ER series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is single-occupant, oblique seats equipped with pretensioner restraint systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send comments on or before April 16, 2020.

**ADDRESSES:** Send comments identified by Docket No. FAA–2019–0840 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

### Background

On July 18, 2018, Boeing applied for a change to Type Certificate No. T00001SE for single-occupant oblique seats with pretensioner restraint systems, instead of airbags, which are the typical restraints used to protect the passengers from head injuries. These seats are to be installed in Boeing Model 777–300ER series airplanes. The Boeing Model 777–300ER series airplanes are twin-engine, transport-category airplanes with passenger seating capacity of 550 and a maximum takeoff weight of 775,000 pounds.

### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–300ER series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777–300ER series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–300ER series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

**Novel or Unusual Design Features**

The Boeing Model 777–300ER series airplanes will incorporate the following novel or unusual design feature:

Single-occupant oblique seats with pretensioner restraint systems to protect the passengers from head injuries.

**Discussion**

Boeing will install, in Model 777–300ER series airplanes, oblique (side-facing) seats that incorporate seatbelts with a pretensioner system at each seat place, to comply with the occupant injury criteria of § 25.562(c)(5).

The FAA has been conducting and sponsoring research on appropriate injury criteria for oblique seat installations. However, the FAA research program is not complete, and the FAA may update these criteria as further research results are collected. To reflect current research findings, the FAA issued policy statement PS–ANM–25–03–R1, ''Technical Criteria for Approving Side-Facing Seats,'' November 12, 2012, which updates injury criteria for fully side-facing seats, and policy statement PS–AIR–25–27, ''Technical Criteria for Approving Oblique Seats,'' July 11, 2018, to define injury criteria for oblique seats. These policies provide background and technical information as well as applicable injury criteria.

The installation of obliquely oriented passenger seats are novel such that the current certification basis does not adequately address occupant-protection expectations with regard to the occupant's neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from airplane centerline.

The installation of passenger seats at angles of 18 to 45 degrees from the aircraft centerline are unusual due to the seat occupant interface with the surrounding furniture, and which introduce occupant alignment and loading concerns with or without the installation of 3-point or airbag-restraint systems.

FAA-sponsored research has found that an unrestrained flailing of the upper torso, even when the pelvis and torso are nearly aligned, can produce serious spinal and torso injuries. At lower impact severities, even with significant misalignment between the torso and pelvis, these injuries did not occur. Tests with the FAA Hybrid III anthropomorphic test device (ATD) have identified a level of lumbar spinal tension corresponding to the no-injury impact severity. This level of tension is included as a limit in the special conditions. The spinal-tension limit selected is conservative with respect to other aviation injury criteria because it corresponds to a no-injury loading condition, but the degree of conservatism is unknown because the precise spinal-loading level at which injuries would begin to occur is unknown. The small number of human-subject tests accomplished during this research project limits the robustness of the selected tension limit.

Other restraint systems have been used to comply with the occupant injury criteria of § 25.562(c)(5). For instance, shoulder harnesses have been widely used on flight-attendant seats, flight-deck seats, in business jets, and in general-aviation airplanes to reduce occupant head injury in the event of an emergency landing. Special conditions, pertinent regulations, and published guidance exist that relate to other restraint systems. However, the use of pretensioners in the restraint system on transport-airplane seats is a novel design.

Pretensioner technology involves a step-change in loading experienced by the occupant for impacts below and above that at which the device deploys, because activation of the shoulder harness, at the point at which the pretensioner engages, interrupts upper-torso excursion. This could result in the head injury criteria (HIC) being higher at an intermediate impact condition than that resulting from the maximum impact condition corresponding to the test conditions specified in § 25.562. See condition 7 in these special conditions.

The ideal triangular maximum-severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the pretensioner setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 $t_1$ is reached, where $t_1$ represents the time interval between 0 and $t_1$ on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Additionally, the pretensioner might not provide protection, after actuation, during secondary impacts. Therefore, the case where a small impact is followed by a large impact should be addressed. If the minimum deceleration severity at which the pretensioner is set to deploy is unnecessarily low, the protection offered by the pretensioner may be lost by the time a second larger impact occurs.

The existing special conditions for Boeing Model 777–300ER series airplane oblique seat installations do not address oblique seats with 3-point restraint systems equipped with pretensioners. Therefore, the proposed configuration requires special conditions.

Conditions 1 through 6 address occupant protection in consideration of the oblique-facing seats. Conditions 7 through 10 address ensuring that the pretensioner system activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 11 through 16 address maintenance and reliability of the pretensioner system, including any outside influences on the mechanism, to ensure it functions as intended.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Applicability**

As discussed above, these special conditions are applicable to Boeing Model 777–300ER series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**Authority Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702 and 44704.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for Boeing Model 777–300ER series airplanes.

In addition to the requirements of § 25.562, passenger seats installed at an angle 18 degrees and 45 degrees from the aircraft longitudinal centerline must meet the following:

1. Body-to-Wall and Body-to-Furnishing Contact:

If a seat is installed aft of structure, such as an interior wall or furnishings, and which does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example if, in addition to a pretensioner restraint system, an airbag device is present, different yaw angles could result in different airbag-device performance, then additional analysis or separate tests may be necessary to evaluate performance.

2. Neck Injury Criteria:

a. The seating system must protect the occupant from experiencing serious neck injury. In addition to a pretensioner restraint system, if an airbag device also is present, the assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck injury potential would be higher for impacts below the airbag-device deployment threshold.

b. The $N_{ij}$ (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and $N_{ij}$ critical values are:

$F_{zc}$ = 1,530 lbs for tension
$F_{zc}$ = 1,385 lbs for compression
$M_{yc}$ = 229 lb-ft in flexion
$M_{yc}$ = 100 lb-ft in extension

c. Peak $F_z$ must be below 937 lbs in tension and 899 lbs in compression.

d. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward facing.

e. The neck must not impact any surface that would produce concentrated loading on the neck.

3. Spine and Torso Injury Criteria:

a. The lumbar spine tension ($F_z$) cannot exceed 1,200 lbs.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE recommended practice J211/1, ''Instrumentation for Impact Test–Part 1–Electronic Instrumentation.''

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

4. Pelvis Criteria:

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

5. Femur Criteria:

Axial rotation of the upper leg (about the Z-axis of the femur per SAE Recommended Practice J211/1) must be limited to 35 degrees from the nominal seated position. Evaluation during rebound does not need to be considered.

6. ATD and Test Conditions:

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999–01–1609. The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (*e.g.,* armrests or walls) installed.

**Note:** Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in policy memorandum PS–ANM–100–2000–00123, ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,'' dated February 2, 2000, is acceptable to the FAA.

7. Head Injury Criteria (HIC):

The HIC value must not exceed 1000 at any condition at which the pretensioner does or does not deploy, up to the maximum severity pulse that corresponds to the test conditions specified in § 25.562. Tests must be performed to demonstrate this, taking into account any necessary tolerances for deployment.

8. Protection During Secondary Impacts:

The pretensioner activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering secondary impacts.

9. Protection of Occupants Other than 50th Percentile:

Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown. For shoulder harnesses that include pretensioners, protection of occupants other than a 50th percentile male may be shown by test or analysis. In addition, the pretensioner must not introduce a hazard to passengers due to the following seating configurations:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child-restraint device.

c. The seat occupant is a pregnant woman.

10. Occupants Adopting the Brace Position:

Occupants in the traditional brace position when the pretensioner activates must not experience adverse effects from the pretensioner activation.

11. Inadvertent Pretensioner Actuation:

a. The probability of inadvertent pretensioner actuation must be shown to be extremely remote (*i.e.,* average probability per flight hour of less than $10^{-7}$).

b. The system must be shown not susceptible to inadvertent pretensioner actuation as a result of wear and tear, or inertia loads resulting from in-flight or ground maneuvers likely to be experienced in service.

c. The seated occupant must not be seriously injured as a result of inadvertent pretensioner actuation.

d. Inadvertent pretensioner activation must not cause a hazard to the airplane, nor cause serious injury to anyone who may be positioned close to the retractor or belt (*e.g.,* seated in an adjacent seat or standing adjacent to the seat).

12. Availability of the Pretensioner Function Prior to Flight:

The design must provide means for a crewmember to verify the availability of the pretensioner function prior to each flight, or the probability of failure of the pretensioner function must be demonstrated to be extremely remote (*i.e.,* average probability per flight hour of less than $10^{-7}$) between inspection intervals.

13. Incorrect Seat Belt Orientation:

The system design must ensure that any incorrect orientation (twisting) of the seat belt does not compromise the pretensioner protection function.

14. Contamination Protection:

The pretensioner mechanisms and controls must be protected from external contamination associated with that which could occur on or around passenger seating.

15. Prevention of Hazards:

The pretensioner system must not induce a hazard to passengers in case of fire, nor create a fire hazard, if activated.

16. Functionality After Loss of Power:

The system must function properly after loss of normal airplane electrical power, and after a transverse separation in the fuselage at the most critical location. A separation at the location of the system does not have to be considered.

Issued in Des Moines, Washington, on February 21, 2020.

**James E. Wilborn,**

*Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2020–04179 Filed 2–28–20; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

**[Docket No. FAA–2019–0841; Notice No. 25–20–02–SC]**

## Special Conditions: The Boeing Company Model 787–10 Series Airplanes; Dynamic Test Requirements for Single-Occupant Oblique Seats With Pretensioner Restraint Systems

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for The Boeing Company (Boeing) Model 787–10 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is single-occupant oblique seats equipped with pretensioner restraint systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send comments on or before April 16, 2020.

**ADDRESSES:** Send comments identified by Docket No. FAA–2019–0841 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

### Background

On July 18, 2018, Boeing applied for a change to Type Certificate No. T00021SE for single-occupant oblique seats with pretensioner restraint systems, instead of airbags, which are the typical restraints used to protect the passengers from head injuries. These seats are to be installed in Boeing Model 787–10 series airplanes. The Boeing Model 787–10 series airplanes are twin-engine, transport-category airplanes with passenger seating capacity of 440 and a maximum takeoff weight of 560,000 pounds.

### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 787–10 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. T00021SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 787–10 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 787–10 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

### Novel or Unusual Design Features

The Boeing Model 787–10 series airplanes will incorporate the following novel or unusual design feature:

Single-occupant oblique seats with pretensioner restraint systems to protect the passengers from head injuries.

### Discussion

Boeing will install, in Model 787–10 series airplanes, oblique (side-facing) seats that incorporate seatbelts with a pretensioner system at each seat place, to comply with the occupant injury criteria of § 25.562(c)(5).

The FAA has been conducting and sponsoring research on appropriate injury criteria for oblique seat installations. However, the FAA research program is not complete, and the FAA may update these criteria as further research results are collected. To reflect current research findings, the FAA issued policy statement PS–ANM–25–03–R1, ''Technical Criteria for Approving Side-Facing Seats,'' November 12, 2012, which updates injury criteria for fully side-facing seats, and policy statement PS–AIR–25–27,

''Technical Criteria for Approving Oblique Seats,'' July 11, 2018, to define injury criteria for oblique seats. These policies provide background and technical information as well as applicable injury criteria.

The installation of obliquely oriented passenger seats are novel such that the current certification basis does not adequately address occupant-protection expectations with regard to the occupant's neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from airplane centerline.

The installation of passenger seats at angles of 18 to 45 degrees from the aircraft centerline are unusual due to the seat occupant interface with the surrounding furniture, and which introduce occupant alignment and loading concerns with or without the installation of 3-point or airbag-restraint systems.

FAA-sponsored research has found that an unrestrained flailing of the upper torso, even when the pelvis and torso are nearly aligned, can produce serious spinal and torso injuries. At lower impact severities, even with significant misalignment between the torso and pelvis, these injuries did not occur. Tests with the FAA Hybrid III anthropomorphic test device (ATD) have identified a level of lumbar spinal tension corresponding to the no-injury impact severity. This level of tension is included as a limit in the special conditions. The spinal-tension limit selected is conservative with respect to other aviation injury criteria because it corresponds to a no-injury loading condition, but the degree of conservatism is unknown because the precise spinal-loading level at which injuries would begin to occur is unknown. The small number of human-subject tests accomplished during this research project limits the robustness of the selected tension limit.

Other restraint systems have been used to comply with the occupant injury criteria of § 25.562(c)(5). For instance, shoulder harnesses have been widely used on flight-attendant seats, flight-deck seats, in business jets, and in general-aviation airplanes to reduce occupant head injury in the event of an emergency landing. Special conditions, pertinent regulations, and published guidance exist that relate to other restraint systems. However, the use of pretensioners in the restraint system on transport-airplane seats is a novel design.

Pretensioner technology involves a step-change in loading experienced by the occupant for impacts below and above that at which the device deploys, because activation of the shoulder harness, at the point at which the pretensioner engages, interrupts upper-torso excursion. This could result in the head injury criteria (HIC) being higher at an intermediate impact condition than that resulting from the maximum impact condition corresponding to the test conditions specified in § 25.562. See condition 7 in these special conditions.

The ideal triangular maximum-severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the pretensioner setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 $t_1$ is reached, where $t_1$ represents the time interval between 0 and $t_1$ on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Additionally, the pretensioner might not provide protection, after actuation, during secondary impacts. Therefore, the case where a small impact is followed by a large impact should be addressed. If the minimum deceleration severity at which the pretensioner is set to deploy is unnecessarily low, the protection offered by the pretensioner may be lost by the time a second larger impact occurs.

The existing special conditions for Boeing Model 777–300ER series airplane oblique seat installations do not address oblique seats with 3-point restraint systems equipped with pretensioners. Therefore, the proposed configuration requires special conditions.

Conditions 1 through 6 address occupant protection in consideration of the oblique-facing seats. Conditions 7 through 10 address ensuring that the pretensioner system activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 11 through 16 address maintenance and reliability of the pretensioner system, including any outside influences on the mechanism, to ensure it functions as intended.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Applicability**

As discussed above, these special conditions are applicable to Boeing Model 787–10 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**Authority Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702 and 44704.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for Boeing Model 787–10 series airplanes.

In addition to the requirements of § 25.562, passenger seats installed at an angle 18 degrees and 45 degrees from the aircraft longitudinal centerline must meet the following:

1. Body-to-Wall and Body-to-Furnishing Contact:

If a seat is installed aft of structure, such as an interior wall or furnishings, and which does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example if, in addition to a pretensioner restraint system, an airbag device is present, different yaw angles could result in different airbag-device performance, then additional analysis or separate tests may be necessary to evaluate performance.

2. Neck Injury Criteria:

a. The seating system must protect the occupant from experiencing serious neck injury. In addition to a pretensioner restraint system, if an airbag device also is present, the assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck injury potential would be higher for impacts below the airbag-device deployment threshold.

b. The $N_{ij}$ (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and $N_{ij}$ critical values are:

$F_{zc}$ = 1,530 lbs for tension
$F_{zc}$ = 1,385 lbs for compression
$M_{yc}$ = 229 lb-ft in flexion
$M_{yc}$ = 100 lb-ft in extension

c. Peak $F_z$ must be below 937 lbs in tension and 899 lbs in compression.

d. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward facing.

e. The neck must not impact any surface that would produce concentrated loading on the neck.

3. Spine and Torso Injury Criteria:

a. The lumbar spine tension ($F_z$) cannot exceed 1,200 lbs.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE recommended practice J211/1, ''Instrumentation for Impact Test–Part 1–Electronic Instrumentation.''

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

4. Pelvis Criteria:

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

5. Femur Criteria:

Axial rotation of the upper leg (about the Z-axis of the femur per SAE Recommended Practice J211/1) must be limited to 35 degrees from the nominal seated position. Evaluation during rebound does not need to be considered.

6. ATD and Test Conditions:

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999–01–1609. The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (*e.g.,* armrests or walls) installed.

**Note:** Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in policy memorandum PS–ANM–100–2000–00123, ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,'' dated February 2, 2000, is acceptable to the FAA.

7. Head Injury Criteria (HIC):

The HIC value must not exceed 1000 at any condition at which the pretensioner does or does not deploy, up to the maximum severity pulse that corresponds to the test conditions specified in § 25.562. Tests must be performed to demonstrate this, taking into account any necessary tolerances for deployment.

8. Protection During Secondary Impacts:

The pretensioner activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering secondary impacts.

9. Protection of Occupants Other than 50th Percentile:

Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown. For shoulder harnesses that include pretensioners, protection of occupants other than a 50th percentile male may be shown by test or analysis. In addition, the pretensioner must not introduce a hazard to passengers due to the following seating configurations:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child-restraint device.

c. The seat occupant is a pregnant woman.

10. Occupants Adopting the Brace Position:

Occupants in the traditional brace position when the pretensioner activates must not experience adverse effects from the pretensioner activation.

11. Inadvertent Pretensioner Actuation:

a. The probability of inadvertent pretensioner actuation must be shown to be extremely remote (*i.e.,* average probability per flight hour of less than $10^{-7}$).

b. The system must be shown not susceptible to inadvertent pretensioner actuation as a result of wear and tear, or inertia loads resulting from in-flight or ground maneuvers likely to be experienced in service.

c. The seated occupant must not be seriously injured as a result of inadvertent pretensioner actuation.

d. Inadvertent pretensioner activation must not cause a hazard to the airplane, nor cause serious injury to anyone who may be positioned close to the retractor or belt (*e.g.,* seated in an adjacent seat or standing adjacent to the seat).

12. Availability of the Pretensioner Function Prior to Flight:

The design must provide means for a crewmember to verify the availability of the pretensioner function prior to each flight, or the probability of failure of the pretensioner function must be demonstrated to be extremely remote (*i.e.,* average probability per flight hour of less than $10^{-7}$) between inspection intervals.

13. Incorrect Seat Belt Orientation:

The system design must ensure that any incorrect orientation (twisting) of the seat belt does not compromise the pretensioner protection function.

14. Contamination Protection:

The pretensioner mechanisms and controls must be protected from external contamination associated with that which could occur on or around passenger seating.

15. Prevention of Hazards:

The pretensioner system must not induce a hazard to passengers in case of fire, nor create a fire hazard, if activated.

16. Functionality After Loss of Power:

The system must function properly after loss of normal airplane electrical power, and after a transverse separation in the fuselage at the most critical location. A separation at the location of the system does not have to be considered.

Issued in Des Moines, Washington, on February 25, 2020.

**James E. Wilborn,**

*Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2020–04180 Filed 2–28–20; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2020–0093; FRL–10005–86–Region 7]**

### Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve certain elements of a State Implementation Plan (SIP) revision submission from the Iowa Department of Natural Resources (IDNR) addressing the applicable requirements of section 110 of the Clean Air Act (CAA) for the 2015 Ozone National Ambient Air Quality Standards (NAAQS). Section

110 requires that each state adopt and submit a SIP revision to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the State's responsibilities under the CAA. In this action, the EPA is proposing to approve the interstate transport portions of the State's 2015 Ozone NAAQS infrastructure SIP submittal.

**DATES:** Comments must be received on or before April 1, 2020.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0093 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219, telephone number (913) 551–7214, email address *kemp.lachala@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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## I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0093, at *https://www.regulations.gov.* 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://www.epa.gov/dockets/commenting-epa-dockets.*

## II. What is being addressed in this document?

The EPA is proposing to approve portions of the infrastructure SIP submission received from the State on November 30, 2018, in accordance with section 110(a)(1) of the CAA. Specifically, the EPA is proposing to approve the following elements of section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), and interference with maintenance of the NAAQS (prong 2). The EPA will address other elements of section 110(a)(2) including: (A) Through (C), (D)(i)(II)—prevention of significant deterioration of air quality (prong 3), (D)(ii), (E) through (H), and (J) through (M) in a separate rulemaking. EPA previously approved Iowa's protection of visibility (prong 4) SIP in a separate action. *See 84 FR 66075.*

## III. Have the requirements for approval of a SIP revision been met?

The submission has met the public notice requirements of 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided a public comment period for the submission from September 18, 2018, to October 19, 2018. The State received two comments during the comment period and addressed them in the final SIP submission to the EPA.

## IV. Background

### *A. General Framework for Analyzing Interstate Transport*

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in section 110(a)(2)(D)(i), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called ''prongs'' within CAA section 110(a)(2)(D)(i): Section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This proposed action addresses the first two prongs under section 110(a)(2)(D)(i)(I). Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another State (prong 1) or interfere with maintenance of the NAAQS in another State (prong 2). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(I).[3]

We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the 2011 Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards, and the 2016 Cross-State Air Pollution Rule Update (CSAPR Update), which resolved certain good neighbor obligations for the 1997 ozone NAAQS

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–911 (2008).

and partially addressed interstate transport for the 2008 ozone NAAQS.[4]

Through the development and implementation of CSAPR, the CSAPR Update, and previous regional rulemakings pursuant to the good neighbor provision,[5] the EPA developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS. This framework provides a reasonable and logical structuring of the key elements that should be considered in addressing the requirements of the good neighbor provision. While states are not mandated to follow this structure in preparing good neighbor SIPs, it has been upheld as a reasonable approach to address good neighbor requirements by various courts, including the U.S. Supreme Court, and the EPA generally uses the framework to evaluate whether state SIP submittals can be approved under the good neighbor provision.

*Step 1: Identify downwind air quality problems relative to the ozone NAAQS.* The EPA historically identified downwind areas with air quality problems, or receptors, using air quality modeling projections for a future analytic year and, where appropriate, considering monitored ozone data. The agency relied on modeled and monitored data to identify receptors expected to be in nonattainment with the ozone NAAQS in the future analytic year, and relied on modeled data to identify additional receptors that may have difficulty maintaining the NAAQS in the future analytic year, notwithstanding clean monitored data or projected attainment. These latter receptors are sometimes referred to as ''maintenance-only'' receptors.

*Step 2: Determine which upwind states contribute to these identified downwind air quality problems sufficiently to warrant further analysis to determine whether their emissions violate the good neighbor provision.* These states are referred to as ''linked'' states. Historically, the EPA identified such upwind states as those modeled to impact a downwind receptor in the future analytic year at or above an air quality threshold equivalent to 1 percent of the ozone NAAQS. However, as discussed below, the EPA recognizes that there may be other methods of defining a ''contribution'' threshold that are reasonable and appropriate to apply.

*Step 3: For states linked to downwind air quality problems, identify upwind emissions on a statewide basis that will significantly contribute to nonattainment or interfere with maintenance of a standard at a receptor in another state.* In the EPA's prior rulemakings addressing interstate ozone pollution transport, the agency has used cost-based and air quality-based criteria to evaluate regionally uniform $NO_X$ control strategies that were then used to quantify the amount of a linked upwind state's emissions, if any, that will significantly contribute to nonattainment or interfere with maintenance in another state in the future analytic year. The agency then established emissions budgets reflecting remaining emissions levels following the reduction of emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind.

*Step 4: For upwind states that are found to have emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implement the necessary emissions reductions within the state through permanent and enforceable measures.* In the CSAPR Update, for instance, the EPA implemented the emissions budgets for upwind states found to have good neighbor obligations via Federal Implementation Plans (FIPs) requiring certain large power plants in the upwind states to participate in the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

### *B. EPA Memoranda Regarding the 2015 Ozone NAAQS*

The EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. In these documents, the EPA made clear that the information provided is to assist states' efforts to develop good neighbor SIPs. While the information in those documents, including associated air quality data, could be used to inform the development of such SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision.

On January 6, 2017, the EPA published in the **Federal Register** a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.[6] The EPA used the 2023 analytic year for this preliminary modeling because that year aligns with the 2015 ozone NAAQS attainment year for Moderate ozone nonattainment areas.[7] On October 27, 2017, we released a memorandum (October 2017 memorandum) containing updated projected ozone design values for 2023, which incorporated changes made in response to comments on the NODA.[8] In the October 2017 memorandum, we specifically stated that the updated 2023 modeling data may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS. The October 2017 memorandum did not address the 2015 ozone NAAQS. Subsequently, on March 27, 2018, we issued a memorandum (March 2018 memorandum) indicating the same 2023 projected ozone design values released in the October 2017 memorandum would also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step interstate transport framework). The March 2018 memorandum also included newly available contribution modeling results to assist states in evaluating their impact on projected downwind air quality problems (step 2 of the four-step interstate transport framework).[9]

The March 2018 memorandum describes the methods and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by-state contributions to those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the October 2017 and

[4] *See* 76 FR 48208 (August 8, 2011) (CSAPR) and 81 FR 74504 (October 26, 2016) (CSAPR Update). As discussed later in this document, the D.C. Circuit Court of Appeals in *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019), remanded the rule to the extent it failed to eliminate states' significant contributions in accordance with downwind attainment dates.

[5] Other regional rulemakings addressing ozone transport include the $NO_X$ SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

[6] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[7] 82 FR 1735 (January 6, 2017). The basis for selection of the analytic year is further discussed in Section IV.A below.

[8] *See* Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action and at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[9] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.,* monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 memorandum presents design values calculated in two ways: First, following the EPA's historical ''3 x 3'' approach [10] for all sites, and second, following a modified approach for coastal monitoring sites in which ''overwater'' modeling data were not included in the calculation of future year design values (referred to as the ''no water'' approach).

For purposes of identifying potential nonattainment and maintenance receptors in 2023 (step 1), the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with measured design values [11] exceeding the NAAQS that also have projected average design values (*i.e.,* modeled average 2023 values) exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with projected maximum design values (*i.e.,* modeled maximum 2023 values) exceeding the NAAQS. Sites identified as *only* maintenance receptors included sites with 2016 measured design values below the NAAQS but with projected average and maximum design values exceeding the NAAQS and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in attachment B to the March 2018 memorandum.

As described further in the March 2018 memorandum, after identifying potential downwind nonattainment and maintenance receptors, the EPA next performed nationwide, state-level ozone source-apportionment modeling to determine the expected impact from each state to each nonattainment and maintenance receptor in 2023.[12] The EPA included contribution information resulting from the source-apportionment modeling in attachment C to the March 2018 memorandum. For more specific information on the modeling and analysis, please see the October 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this proposed action.

On August 31, 2018, the EPA issued a memorandum (the August 2018 memorandum) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Similar to the process for selecting the 1 percent threshold for the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update, respectively, the memorandum included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of pollution transported from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall (*i.e.,* on average across all receptors), to the amount captured using a threshold equivalent to 1 percent of the 2015 ozone NAAQS (*i.e.,* 0.70 ppb). Specifically, the data indicated that using a 1 percent threshold captures 77 percent of the total upwind contribution when summed across all receptors and using a 1 ppb threshold captures 70 percent when summed across all receptors. By contrast, using a 2 ppb threshold captures 55 percent of the total upwind contribution, much less of the total contribution summed across all receptors. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the 1 percent threshold, at step 2 of the four-step interstate transport framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.[13]

## V. Iowa's SIP Submission

On November 30, 2018, Iowa submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Iowa chose to rely on the results of EPA's 2023 modeling, as presented in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Iowa. Based on Iowa's review of the EPA's modeling assumptions and model performance evaluation, Iowa determined that EPA's future year projections were appropriate for purposes of evaluating Iowa's impact on attainment and maintenance of the 2015 ozone NAAQS in other states.

Iowa relied on EPA's 2023 modeling to conclude that the state does not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Iowa referred to the analytic information in EPA's August 2018 memorandum as a basis to use a 1 ppb contribution threshold when evaluating the state's contribution to downwind receptors at step 2 of EPA's four-step interstate transport framework. Using EPA's modeling, Iowa identified that it is projected to contribute below 1 percent of the 2015 ozone NAAQS (*i.e.,* less than 0.70 ppb) to all but two downwind receptors: The nonattainment receptor in Milwaukee County, Wisconsin (Milwaukee receptor), and the maintenance-only receptor in Allegan County, Michigan (Allegan receptor). Iowa's contribution to these two receptors is between 1 percent and 1 ppb. Iowa concluded that 1 ppb is an appropriate contribution threshold to apply with respect to the 2015 ozone NAAQS and that Iowa's emissions therefore do not contribute to nonattainment or maintenance problems at either receptor.

Iowa notes that its 2023 modeled contribution to the Milwaukee receptor is 0.79 ppb, and its 2023 modeled contribution to the Allegan receptor is 0.77 ppb. Consistent with the regional analysis provided in the August 2018 memorandum, Iowa further notes that application of the 1 ppb threshold captures 83 percent of the upwind contribution captured at the 1 percent threshold at the Milwaukee receptor and 94 percent of the upwind contribution captured at the 1 percent threshold at the Allegan receptor. Based on these data, Iowa concludes that the 1 ppb threshold is therefore appropriate because it captures a ''substantial portion'' of the transported contribution from upwind states when compared to the 1 percent threshold at both receptors. Because the state's impact on both receptors is below the 1 ppb threshold, the state concluded that its

[10] *See* March 2018 memorandum, p. 4.

[11] The EPA used 2016 ozone design values, based on 2014–2016 measured data, which were the most current data at the time of the analysis. *See* attachment B of the March 2018 memorandum, p. B–1.

[12] As discussed in the March 2018 memorandum, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

[13] *See* August 2018 memorandum, p. 4.

emissions will not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in downwind states.

## VI. EPA's Analysis

The EPA proposes to approve Iowa's SIP submittal concluding that the State will not contribute significantly to downwind nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states, including its reliance on the information and modeling presented in EPA's October 2017 and 2018 memoranda. The EPA presents additional analysis in support of the use of the 2023 analytic year, as well as the State's selection of the 1 ppb contribution threshold.

### *A. Use of 2023 Analytic Year*

On September 13, 2019, the D.C. Circuit issued its decision in *Wisconsin* v. *EPA* addressing legal challenges to the CSAPR Update, in which the EPA partially addressed certain upwind states' good neighbor obligations for the 2008 ozone NAAQS. 938 F.3d 303. While the court generally upheld the rule as to most of the challenges raised in the litigation, the court remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by which downwind states must come into compliance with the NAAQS. *Id.* at 313. In light of the court's decision, the EPA is providing further explanation regarding why it proposes to find that it is appropriate and consistent with the statute—as well as legal precedent—to use the 2023 analytic year for assessing good neighbor obligations for the 2015 ozone NAAQS.

The EPA believes that 2023 is an appropriate year for analysis of good neighbor obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 2, 2024, Moderate area attainment date for the 2015 ozone NAAQS. The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 2, 2021, which currently applies in several downwind nonattainment areas evaluated in the EPA's modeling.[14] However, as explained below, the EPA does not believe that either the statute or applicable case law requires the evaluation of good neighbor obligations in a future year aligned with the attainment date for nonattainment areas classified as Marginal.

The good neighbor provision instructs the EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. CAA section 110(a)(2)(D)(i); *see also North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Cir. 2008). This consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. As the D.C. Circuit held in *North Carolina,* and more recently in *Wisconsin,* the good neighbor provision must be applied in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas and submit plans demonstrating how those areas will attain, relative to the applicable attainment dates. *See North Carolina,* 896 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I); *Wisconsin,* 938 F.3d at 313–18.

While the EPA recognizes, as the court held in *North Carolina* and *Wisconsin,* that upwind emissions reduction obligations therefore must generally be aligned with downwind receptors' attainment dates, unique features of the statutory requirements associated with the Marginal area planning requirements and attainment date under CAA section 182 lead the EPA to conclude that it is more reasonable and appropriate to require the alignment of upwind good neighbor obligations with later attainment dates applicable for Moderate or higher classifications. Under the CAA, states with areas designated nonattainment are generally required to submit, as part of their SIP, an ''attainment demonstration'' that shows, usually through air quality modeling, how an area will attain the NAAQS by the applicable attainment date. *See* CAA section 172(c)(1).[15] Such plans must also include, among other things, the adoption of all ''reasonably available'' control measures on existing sources, a demonstration of ''reasonable further progress'' toward attainment, and contingency measures, which are specific controls that will take effect if the area fails to attain by its attainment date or fails to make reasonable further progress toward attainment. *See, e.g.,* CAA section 172(c)(1); 172(c)(2); 172(c)(9). Ozone nonattainment areas classified as Marginal are excepted from these general requirements under the CAA. Unlike other areas designated nonattainment under the Act (including for other NAAQS pollutants), Marginal ozone nonattainment areas are specifically exempted from submitting an attainment demonstration and are not required to implement *any* specific emissions controls at existing sources to meet the planning requirements applicable to such areas. *See* CAA section 182(a) (''The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.'') [16] Marginal ozone nonattainment areas are also exempted from demonstrating reasonable further progress towards attainment and submitting contingency measures. *See* CAA section 182(a) (does not include a reasonable further progress requirement and specifically notes that ''Section [172(c)(9)] of this title (relating to contingency measures) shall not apply to Marginal Areas'').

Existing regulations—either local, state, or Federal—are typically a part of the reason why ''additional'' local controls are not needed to bring Marginal nonattainment areas into attainment. As described in the EPA's record for its final rule defining area classifications for the 2015 ozone NAAQS and establishing associated attainment dates, history has shown that the majority of areas classified as Marginal for prior ozone standards attained the respective standards by the

[14] The Marginal area attainment date is not applicable for nonattainment areas already classified as Moderate or higher, such as the New York Metropolitan Area. For the status of all nonattainment areas under the 2015 ozone NAAQS, see U.S. EPA, 8-Hour Ozone (2015) Designated Area/State Information, *https://www3.epa.gov/airquality/greenbook/jbtc.html* (last updated Sept. 30, 2019).

[15] Part D of title I of the Clean Air Act provides the plan requirements for all nonattainment areas. Subpart 1, which includes section 172(c), applies to all nonattainment areas. Congress provided in subparts 2–5 additional requirements specific to the various NAAQS pollutants that nonattainment areas must meet.

[16] States with Marginal nonattainment areas are required to implement new source review permitting for new and modified sources, but the purpose of those requirements is to ensure that potential emissions increases do not interfere with progress towards attainment, as opposed to reducing existing emissions. Moreover, the EPA acknowledges that states within ozone transport regions must implement certain emissions control measures at existing sources in accordance with CAA section 184, but those requirements apply regardless of the applicable area designation or classification.

Marginal area attainment date (*i.e.,* without being re-classified to a Moderate designation). 83 FR 10376 (March 9, 2018). As part of a historical lookback, the EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1-hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS. *See* Response to Comments, section A.2.4.[17] Based on these historical data, the EPA expects that many areas classified Marginal for the 2015 ozone NAAQS will also attain by the relevant attainment date as a result of emissions reductions that are already expected to occur through implementation of existing local, state, and federal emissions reduction programs. To the extent states have concerns about meeting their attainment date for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed.

Areas that are classified as Moderate typically have more pronounced air quality problems than Marginal areas or have been unable to attain the NAAQS under the minimal requirements that apply to Marginal areas. *See* CAA sections 181(a)(1) (classifying areas based on the degree of nonattainment relative to the NAAQS) and (b)(2) (providing for reclassification to the next highest designation upon failure to attain the standard by the attainment date). Thus, unlike Marginal areas, the statute explicitly requires a state with an ozone nonattainment area classified as Moderate or higher to develop an attainment plan demonstrating how the state will address the more significant air quality problem, which generally requires the application of various control measures to existing sources of emissions located in the nonattainment area. *See generally* CAA sections 172(c) and 182(b)–(e).

Given that downwind states are not required to demonstrate attainment by the attainment date or impose additional controls on existing sources in a Marginal nonattainment area, the EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring the EPA to evaluate the necessity for upwind state emissions reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, the EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emissions reductions, in a year aligned with an area classification in connection with which downwind states are also required to demonstrate attainment and implement controls on existing sources—*i.e.,* with the Moderate area attainment date, rather than the Marginal area date. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

The EPA's interpretation of the good neighbor requirements in relation to the Marginal area attainment date is consistent with the *Wisconsin* opinion. For the reasons explained below, the court's holding does not contradict the EPA's view that 2023 is an appropriate analytic year in evaluating good neighbor SIPs for the 2015 ozone NAAQS. The court in *Wisconsin* was concerned that allowing upwind emissions reductions to be implemented after the applicable attainment date would require downwind states to obtain more emissions reductions than the Act requires of them, to make up for the absence of sufficient emissions reductions from upwind states. *See* 938 F.3d at 316. As discussed previously, however, this equitable concern only arises for nonattainment areas classified as Moderate or higher for which downwind states are required by the CAA to develop attainment plans securing reductions from existing sources and demonstrating how such areas will attain by the attainment date. *See, e.g.,* CAA section 182(b)(1) & (2) (establishing ''reasonable further progress'' and ''reasonably available control technology'' requirements for Moderate nonattainment areas). Ozone nonattainment areas classified as Marginal are not required to meet these same planning requirements, and thus the equitable concerns raised by the *Wisconsin* court do not arise with respect to downwind areas subject to the Marginal area attainment date.

The distinction between planning obligations for Marginal nonattainment areas and higher classifications was not before the court in *Wisconsin.* Rather, the court was considering whether the EPA, in implementing its obligation to promulgate Federal Implementation Plans under CAA section 110(c), was required to fully resolve good neighbor obligations by the 2018 *Moderate* area attainment date for the 2008 ozone NAAQS. *See* 938 F.3d at 312–13. Although the court noted that petitioners had not ''forfeited'' an argument with respect to the Marginal area attainment date, *see id.* at 314, the court did not address whether its holding with respect to the 2018 Moderate area date would have applied with equal force to the Marginal area attainment date because that date had already passed. Thus, the court did not have the opportunity to consider these differential planning obligations in reaching its decision regarding the EPA's obligations relative to the then-applicable 2018 Moderate area attainment date because such considerations were not applicable to the case before the court.[18] For the reasons discussed here, the equitable concerns supporting the *Wisconsin* court's holding as to upwind state obligations relative to the Moderate area attainment date also support the EPA's interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, the EPA proposes to conclude that its reliance on an evaluation of air quality in the 2023 analytical year for purposes of assessing good neighbor obligations with respect to the 2015 ozone NAAQS is based on a reasonable interpretation of the CAA and legal precedent.

### *B. Selection of the 1 ppb Threshold*

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors. The March 2018 memorandum also provides state-by-state contribution data for each nonattainment and maintenance receptor. The EPA is proposing to rely on the 2023 modeling data identifying downwind receptors and upwind state contributions, as released in the March 2018 memorandum, to evaluate Iowa's good neighbor obligation with respect to the 2015 ozone NAAQS and to find Iowa's reliance on EPA's modeling and identification of receptors reasonable and approvable.

The 2023 modeling projects that emissions from Iowa impact two

[17] Available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122.*

[18] The D.C. Circuit, in a short judgment, subsequently vacated and remanded the EPA's action purporting to fully resolve good neighbor obligations for certain states for the 2008 ozone NAAQS, referred to as the CSAPR Close-Out, 83 FR 65878 (December 21, 2018). *New York* v. *EPA,* No. 19–1019 (D.C. Cir. October 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as the EPA conceded, the Close-Out ''relied upon the same statutory interpretation of the Good Neighbor Provision'' rejected in *Wisconsin. Id.* slip op. at 3. In the Close-Out, the EPA had analyzed the year 2023, which was two years after the Serious area attainment date for the 2008 ozone NAAQS and not aligned with any attainment date for that NAAQS. *Id.* at 2. In *New York,* as in *Wisconsin,* the court was not faced with addressing specific issues associated with the unique planning requirements associated with the Marginal area attainment date.

potential receptors (the Milwaukee nonattainment receptor and Allegan maintenance-only receptor) above the 1 percent threshold that the EPA has recently applied in CSAPR and the CSAPR Update to address the 1997 and 2008 ozone NAAQS, respectively. However, based on the EPA's August 2018 memorandum, Iowa provides an analysis intended to demonstrate that a 1 ppb contribution threshold is appropriate for analyzing its linkages to the identified receptors. We propose to approve the State's conclusion that it does not contribute to any receptors for the purposes of the good neighbor provision, based on the information and analysis provided in the State's SIP submittal and additional analysis as presented below.

Consistent with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update described earlier, the EPA proposes to conclude that, at least where a state's impacts to downwind nonattainment and maintenance receptors are less than 1 percent of the NAAQS, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS at such locations. As discussed earlier, Iowa's impacts on all but two potential receptors identified in the March 2018 memorandum are below 1 percent of the 2015 ozone NAAQS. Therefore, where Iowa's impacts are less than 1 percent at a given receptor, the EPA proposes to find that this serves as a wholly sufficient basis to determine that the state will not significantly contribute to nonattainment or interfere with maintenance at that receptor for purposes of CAA section 110(a)(2)(D)(i)(I).

As discussed in its August 2018 memorandum, the EPA believes that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at step 2 of the four-step interstate transport framework, for the purposes of identifying linkages to downwind receptors. In this action, the EPA proposes to determine, for the reasons discussed below, that it is appropriate to apply a 1 ppb threshold for purposes of evaluating upwind state linkages at the Allegan County, Michigan and Milwaukee County, Wisconsin receptors.

As stated in the Iowa SIP submission, the EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Iowa is shown to have an impact below 1 percent of the 2015 ozone NAAQS to all but two downwind nonattainment and maintenance receptors: The nonattainment receptor in Milwaukee County, Wisconsin, and the maintenance receptor in Allegan County, Michigan, to which Iowa's impacts are 0.79 ppb and 0.77 ppb, respectively.[19] These values are greater than 0.70 ppb (1 percent of the 2015 ozone NAAQS) and less than a 1 ppb threshold. Therefore further analysis is required to determine whether or not a 1 ppb threshold is reasonable and appropriate to apply as a contribution threshold for evaluation of these receptors in step 2 of the four-step interstate transport framework.

In the August 2018 memorandum, EPA stated that the amount of upwind contribution captured with the 1 percent and 1 ppb thresholds is generally comparable, overall (*i.e.,* on average across all receptors), and therefore EPA believes it may be reasonable and appropriate for states to use a 1 ppb contribution threshold at step 2 of the four-step interstate transport framework. To determine the appropriateness of using a 1 ppb contribution threshold for purposes of this action, the EPA first assessed whether the general observation in the August 2018 memorandum that a 1 ppb threshold captures a comparable amount of upwind collective contribution as a 1 percent threshold holds true for the specific receptors at issue here. The EPA also considered the following additional quantitative factors to further evaluate the reasonableness and appropriateness of using a 1 ppb threshold at each receptor:

1. How does the impact of in-state emissions on ozone levels at this receptor compare to collective upwind impacts?

2. What are the impacts of individual upwind states linked at 1 ppb or higher to the receptor?

3. Are individual upwind states impacting this receptor between 1 percent and 1 ppb linked above 1 ppb to *other* receptors?

For the reasons that follow, the EPA proposes to evaluate these factors in a weight-of-the-evidence analysis to determine whether it is appropriate to apply a 1 ppb threshold for the Allegan and Milwaukee receptors at step 2 of the four-step interstate transport framework.

As to the first additional factor that the EPA proposes to consider, the magnitude of in-state emissions compared to collective upwind impacts at a receptor can indicate whether or not the ozone problem at a given receptor is largely driven by transport from upwind states or by in-state emissions sources. A relatively large collective upwind impact compared to the in-state impact at a given receptor indicates that the ozone problem at the receptor is driven to an important degree by transport from upwind states, which may support applying a lower threshold. Conversely, if the in-state impact far exceeds the collective impact from upwind states, then this comparison could indicate the that transport from upwind states is not an important part of the ozone problem at the receptor of interest, which may support applying a higher threshold.

As to the second additional factor, we consider the impacts of individual upwind states linked at 1 ppb or more to the receptor. When discussing the rationale for the threshold in the August 2018 memorandum, the EPA described that a comparable amount of emissions reductions from states with individual impacts below the 1 percent threshold would have a relatively small impact on the downwind receptors relative to other states with higher impacts. While greater than the impact of emissions reductions from states with impact below 1 percent, the relative air quality impact of emissions reductions from states with contributions between 1 percent and 1 ppb could be less important than states with contributions higher than 1 ppb. As stated in the August 2018 memorandum ''the use of a 1 ppb threshold to identify linked upwind states still provides the potential, at step 3, for meaningful emissions reductions in linked upwind states in order to aid downwind states with attainment and maintenance of the 2015 NAAQS.''

As to the third additional factor, we consider whether individual upwind states that impact the receptor between 1 percent and 1 ppb are also linked to other receptor(s) at levels above 1 ppb. We would expect states to evaluate emissions reductions as part of a step 3 analysis in their SIPs regarding their contributions to the other receptor(s). Any resulting emissions reductions would also likely benefit the receptor to which the states contribute between 1 percent and 1 ppb.

The EPA evaluated each of these factors for the two downwind receptors (*i.e.,* Milwaukee and Allegan) to which Iowa's impacts are greater than 1 percent of the NAAQS but less than 1 ppb.

1. Milwaukee Receptor

EPA's modeling shows the 2023 average design value at the Milwaukee, Wisconsin receptor is 71.2 ppb. At the Milwaukee receptor, the collective upwind ozone contribution captured

[19] *See* the March 2018 memorandum, attachment C.

with a 1 percent threshold is 28.4 ppb and with a 1 ppb threshold it is 23.6 ppb. Thus, a 1 ppb threshold captures 83 percent of the upwind contribution that would be captured using a 1 percent threshold. Consistent with the August 2018 memorandum, these data indicate that the percent of upwind contribution captured at 1 ppb is generally comparable to the percent captured at 1 percent of the NAAQS, indicating that the 1 ppb threshold may be appropriate to apply to the Milwaukee receptor. We therefore proceeded to further examine data regarding the upwind impacts at this receptor using the three additional weight-of-evidence factors.

Under the first additional factor, transport of emissions from upwind states collectively contributes 46 percent (32.5 ppb) to the 2023 average ozone design value as compared to a 19 percent (13.3 ppb) impact from in-state emissions, highlighting that both upwind and in-state emissions have substantial impact at the Milwaukee receptor. In general, this factor would tend to weigh in favor of recognizing the importance of addressing upwind contributions at this receptor.

Under the second factor, the EPA's analysis shows that four upwind states contribute above 1 ppb to the Milwaukee receptor, and as noted above, the collective contribution from these four states is 23.6 ppb, which represents 72 percent of the total contribution of all the upwind states. By contrast, Iowa's contribution to the Milwaukee receptor is 0.79 ppb and represents 2 percent of the total contribution of all upwind states. This factor tends to support the view that a substantial amount of upwind contribution from states linked above 1 ppb to this receptor will be captured and further assessed for potential emissions reduction at step 3 of the interstate transport framework.

Under the third factor, in addition to Iowa, there are five other upwind states that contribute between 1 percent and 1 ppb to the Milwaukee receptor. The collective contribution of these five additional states linked between 1 percent and 1 ppb is 4.1 ppb, which represents 12 percent of the total contribution of all the upwind states. Unlike Iowa, all five of these other upwind States that are linked between 1 percent and 1 ppb to the Milwaukee, Wisconsin receptor are also linked above 1 ppb to additional projected 2023 nonattainment or maintenance receptors. Thus, even though we would not expect these States to make emissions reductions to address the Milwaukee receptor if a 1 ppb threshold is applied, we do expect these States to evaluate their potential for additional emissions reductions to address their linkage to other receptors, which would also provide co-benefits to the Milwaukee receptor.

Based on this analysis, EPA finds that for the Milwaukee, Wisconsin receptor, a vast majority (85 percent) of the upwind states' emissions will be captured for further evaluation for possible control at step 3 of the four-step interstate transport framework from states which contribute above the 1 ppb threshold to this receptor or from states which contribute between 1 percent and 1 ppb to the Milwaukee receptor and above 1 ppb to at least one other receptor. This demonstrates that for the Milwaukee receptor, the effect of applying a 1 ppb threshold rather than a 1 percent threshold is likely less consequential than if a major share of contribution from upwind states contributing between 1 percent and 1 ppb to the Milwaukee receptor did not contribute above 1 ppb to any other receptor.

Given the technical information and analysis discussed above, the EPA finds that Iowa's use of the 1 ppb contribution threshold is reasonable and appropriate to support the conclusion that it will not contribute to the Milwaukee, Wisconsin nonattainment receptor.

2. Allegan Receptor

In assessing Iowa's conclusions as to the Allegan, Michigan receptor, the EPA applied the weight-of-evidence analysis identified above, again using the 2023 contribution data. EPA's modeling shows that the 2023 average design value at the Allegan, Michigan receptor is 69.0 ppb. The upwind ozone collectively captured at Allegan, Michigan is 38.8 ppb and 36.6 ppb, respectively for the 1 percent and 1 ppb contribution thresholds, which indicates that a 1 ppb threshold captures nearly all (*i.e.,* 94 percent) of the amount of contribution captured using a 1 percent threshold. The August 2018 memorandum states that if the amount captured at 1 ppb is generally comparable to the amount captured at 1 percent of the NAAQS, then the 1 ppb threshold may be appropriate. The EPA proposes to find that the amounts captured by the two thresholds for the Allegan receptor are comparable. We therefore proceeded to further examine the receptor using the three additional weight of evidence factors.

Under the first factor, transport of emissions from upwind states collectively contribute 62 percent to the 2023 average ozone design value compared to a 5 percent contribution from in-state emissions, highlighting that upwind emissions have a large impact at the Allegan, Michigan receptor. In general, this factor would tend to weigh in favor of recognizing the importance of upwind contributions at this receptor.

Under the second factor, seven upwind states contribute above 1 ppb to the Allegan, Michigan receptor, and as noted above the collective impact from these states is 36.6 ppb, which represents 85 percent of the total impact of all the upwind states. By contrast, Iowa's contribution to Allegan, Michigan is 0.77 ppb and represents 2 percent of the total contribution of all upwind states. This factor strongly supports the view that a substantial amount of upwind contribution will be captured by states linked above 1 ppb to this receptor and further assessed for potential emissions reduction at step 3 of the interstate transport framework.

Under the third factor, in addition to Iowa, there are two other upwind states that contribute between 1 percent and 1 ppb to Allegan, Michigan. The collective contribution of these two states linked between 1 percent and 1 ppb is 1.4 ppb and this represents 3 percent of the total contribution of all the upwind states. One of the two additional states linked between 1 percent and 1 ppb to the Allegan, Michigan receptor is also linked above 1 ppb to other 2023 nonattainment or maintenance receptors. Thus, even though we would not expect this State to make emissions reductions to address the Allegan receptor if a 1 ppb threshold is applied, we do expect this State to evaluate its potential for additional emissions reductions due to its linkage to other receptors, which would also provide co-benefits to the Allegan receptor.

Based on this analysis, the EPA finds that for the Allegan, Michigan receptor, a vast majority (85 percent) of the contribution from upwind states will be captured using a 1 ppb threshold. Emissions in the upwind states that contribute above 1 ppb to this receptor or which contribute between 1 percent and 1 ppb to the Allegan receptor and above 1 ppb to at least one other receptor will be evaluated for possible control at step 3. The analysis presented here demonstrates that the effect of applying a 1 ppb threshold rather than a 1 percent threshold to the Allegan receptor is likely less consequential than if a major share of the total upwind contribution to the receptor came from states contributing between 1 percent and 1 ppb to the Milwaukee receptor and not contributing above 1 ppb to any other receptor.

Given the technical information and analysis discussed above, EPA finds that the state of Iowa's use of the 1 ppb contribution threshold is reasonable and appropriate to support the conclusion that it will not contribute to the Allegan, Michigan maintenance receptor.

**VII. What action is the EPA taking?**

The EPA is proposing to approve Iowa's November 30, 2018, submission addressing certain infrastructure elements for the 2015 ozone NAAQS. Specifically, the EPA is proposing to approve the following elements of CAA section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment of the NAAQS (prong 1) and interference with maintenance of the NAAQS (prong 2). The EPA is processing this as a proposed action because it is soliciting comments. Final rulemaking will occur after consideration of any comments.

**VII. 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 review state choices, and approve them if they meet the criteria and requirements of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Environmental protection, Air pollution control, Air quality control region, Incorporation by reference, Infrastructure, Intergovernmental relations, Ozone, Reporting and record-keeping.

Dated: February 25, 2020.

**James Gulliford,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart Q—Iowa

■ 2. In § 52.820, the table in paragraph (e) is amended by adding the entry ''(53)'' in numerical order to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * * * | * | * | * * | * |
| (53) Section 110(a)(2) (D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQs (prong 2) (Interstate Transport) Infrastructure Requirements for the 2015 Ozone ($O_3$) NAAQS. | Statewide ..... | 11/30/2018 | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | This action approves the following CAA elements: 110(a)(1) and 110(a)(2 (D)(i)(I)—prongs 1 and 2. [EPA–R07–OAR–2020–0093; FRL–10005–86–Region 7]. |

[FR Doc. 2020–04229 Filed 2–28–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2019–0696; FRL–10005–71–Region 8]**

## Approval and Promulgation of Air Quality State Implementation Plans; Provo, Utah Second 10-Year Carbon Monoxide Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Utah. On January 14, 2019, the Governor of Utah submitted to the EPA a Clean Air Act (CAA) section 175A(b) second 10-year maintenance plan for the Provo area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This limited maintenance plan (LMP) addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. This action is being taken under sections 110 and 175A of the CAA.

**DATES:** Written comments must be received on or before April 1, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0696, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* All documents in the docket are listed in the *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 hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Amrita Singh, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6103, *singh.amrita@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us'' or ''our'' is used, we mean the EPA.

### I. Background

Under the CAA Amendments of 1990, the Provo area was designated as nonattainment and classified as a ''moderate >12.7 ppm'' CO area (56 FR 56839, November 6, 1991). On April 1, 2004, the Governor of Utah submitted to the EPA a request to redesignate the Provo CO nonattainment area to attainment for the CO NAAQS. Along with this request, the Governor submitted a CAA section 175A(a) maintenance plan which demonstrated that the area would maintain the CO NAAQS for the first 10 years following our approval of the redesignation request. We approved the State's redesignation request and 10-year maintenance plan on November 2, 2005 (70 FR 66264).

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to the EPA, covering a second 10-year period.[1] This second 10-year maintenance plan must demonstrate continued compliance with the NAAQS during this second 10-year period. To fulfill this requirement of the CAA, the Governor of Utah submitted the second 10-year update of the Provo CO maintenance plan (hereafter; ''revised Provo Maintenance Plan'') to us on January 14, 2019. With this action, we are proposing approval of the revised Provo Maintenance Plan.

The 8-hour CO NAAQS—9.0 parts per million (ppm)—is attained when such value is not exceeded more than once a year. 40 CFR 50.8(a)(1). The Provo area has attained the 8-hour CO NAAQS from 1994 to the present.[2] In October 1995, the EPA issued guidance that provided CO nonattainment areas the option of using a less rigorous ''limited maintenance plan'' (LMP) option to demonstrate continued attainment and maintenance of the CO NAAQS.[3] According to this ''LMP Guidance,'' areas that can demonstrate design values (2nd highest max) at or below 7.65 ppm (85% of exceedance levels of the 8-hour CO NAAQS) for eight consecutive quarters qualify to use an LMP. For the revised Provo Maintenance Plan, the State used the LMP option to demonstrate continued maintenance of the CO NAAQS in the Provo area. We have determined that the Provo area qualifies for the LMP option because the maximum design value for the most recent eight consecutive quarters with certified data at the time the State adopted the plan (years 2016 and 2017) was 1.6 ppm.[4]

### II. The EPA's Evaluation of the Provo Second 10-Year CO Maintenance Plan

The following are the key elements of an LMP for CO: Emission Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Conformity Determinations. Below, we describe our evaluation of each of these elements as it pertains to the revised Provo Maintenance Plan.

#### *A. Emission Inventory*

The revised Provo Maintenance Plan contains an emissions inventory for 2016. The emission inventory is a list, by source category, of the tons per day

[1] In this case, the initial maintenance period extended through 2015.

[2] In a direct final rulemaking published September 20, 2002, the EPA determined that the Provo area had attained the CO NAAQS from 1994 through 2001. (67 FR 59165). The measures taken by the State to achieve attainment of the CO NAAQS are also detailed in this rulemaking action.

[3] Memorandum ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph W. Paisie, Group Leader, EPA Integrated Policy and Strategies Group, to Air Branch Chiefs, October 6, 1995.

[4] See Table 4 below. Additionally, according to the LMP guidance, an area using the LMP option must continue to have a design value ''at or below 7.65 ppm until the time of final EPA action on the redesignation.'' Table 4, below, demonstrates that the area meets this requirement.

of CO directly emitted in Utah County (in which the Provo CO maintenance area is located) on a typical winter day in 2016.[5] This inventory is shown in Table 1, below.

TABLE 1—UTAH COUNTY EMISSIONS INVENTORY FOR A TYPICAL WINTER DAY IN 2016

| Emission inventory summary | CO (tons/day) |
|---|---|
| Point Sources | 0.901 |
| Onroad Mobile | 94.827 |
| Nonroad Mobile | 27.769 |
| Railroads | 0.255 |
| Wood Burning | 6.454 |
| Commercial Cooking | 0.137 |
| Nat. Gas Fuel Combustion | 3.144 |
| Total | 133.488 |

The State noted that 92% of the CO in the 2016 emissions inventory were from mobile sources. For that reason, the State also calculated mobile source emissions data for the city of Provo on a typical winter day in 2011, 2014 and 2016 using EPA-recommended mobile sources emissions modeling methods (MOVES2014a).[6]

TABLE 2—PROVO VEHICLE MILES TRAVELED ON AN AVERAGE WINTER DAY

| Year | Vehicle miles traveled/ winter day in Provo city | Average CO tons/day in Provo city |
|---|---|---|
| 2011 | 1,255,778 | 16.53 |
| 2014 | 1,312,491 | 14.46 |
| 2016 | 1,497,156 | 13 |

As shown in Table 2 (and as noted in the revised Provo Maintenance Plan), modeled average CO emissions declined from 2011 to 2014, and again from 2014 to 2016, despite an increase in vehicle miles traveled in each of these periods, which the State attributed to vehicles growing continuously cleaner over time. The Provo LMP contains a detailed emission inventory that was prepared in accordance with EPA guidance and is acceptable to the EPA.[7]

*B. Maintenance Demonstration*

We consider the maintenance demonstration requirement to be satisfied for areas that qualify for and use the LMP option. As mentioned above, a maintenance area is qualified to use the LMP option if that area's maximum 8-hour CO design value for eight consecutive quarters does not exceed 7.65 ppm (85% of the CO NAAQS). The EPA maintains that if an area begins the maintenance period with a design value no greater than 7.65 ppm, the applicability of prevention of significant deterioration requirements, the control measures already in the SIP, and federal measures should provide adequate assurance of maintenance over the 10-year maintenance period. Therefore, the EPA does not require areas using the LMP option to project emissions over the maintenance period. Because CO design values in the Provo area are consistently well below the LMP threshold (see Table 4), the State has adequately demonstrated that the Provo area will maintain the CO NAAQS into the future.

*C. Monitoring Network/Verification of Continued Attainment*

Per the EPA's LMP Guidance, ''to verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved air quality monitoring network.'' [8] In instances where a state has used the LMP option for a second ten-year CO maintenance plan in an area whose monitoring values have consistently been well below the NAAQS, the EPA has allowed the state to monitor CO in the maintenance area using average daily traffic (ADT) counts in lieu of ambient air quality monitoring.[9] For the revised Provo Maintenance Plan, the State has elected to use a similar alternative monitoring method which does not rely on ambient monitoring to verify continued attainment of the CO NAAQS. This method utilizes ADT counts that are collected by a Utah Department of Transportation (UDOT) traffic counter located along a major thoroughfare (North University Avenue) in Provo, by comparing ongoing ADT counts to those collected when monitoring data in the area showed design values well below the CO NAAQS.

Since 2007, no Provo CO monitor has registered a design value greater than 2.6 ppm, which is below one-third of the NAAQS.[10] Citing these consistently low monitor values, and expressing a desire to reallocate monitoring resources, the State has requested to discontinue CO monitoring in Provo and instead use an alternative strategy for monitoring maintenance of the CO NAAQS.

The State's alternative monitoring method utilizes ADT vehicle counts collected from a permanent automatic traffic counter in the Provo CO maintenance area to determine average monthly traffic during the traditional high CO concentration season of November through February. The State will compare the latest rolling 3-years of monthly ADT volumes to the 2013–2016 baseline ADT volumes (see Table 3) that correlate to the low CO monitored values during that period (see Table 4). Because mobile sources are the biggest driver of CO levels (as demonstrated in the ''Emission Inventory'' section), the State reasoned that any significant increase in CO emissions would have to be accompanied by a significant increase in ADT.[11] The EPA agrees with the State's reasoning.

TABLE 3—TRAFFIC VOLUMES FOR PROVO, UTAH

Rolling 2013–2016 ADT: November to February

| Month-year | Provo |
|---|---|
| November 2013 | 27,223 |
| December 2013 | 24,881 |
| January 2014 | 27,361 |
| February 2014 | 28,679 |
| November 2014 | 28,453 |
| December 2014 | 27,156 |
| January 2015 | 29,056 |
| February 2015 | 30,682 |
| November 2015 | 29,582 |
| December 2015 | 27,518 |
| January 2016 | 30,452 |
| February 2016 | 32,301 |
| Average | 28,612 |

TABLE 4—8-HOUR CO DESIGN VALUES FOR PROVO, UTAH

| Design value (ppm) [12] | Year |
|---|---|
| 2.6 | 2007 |
| 1.8 | 2008 |
| 2.5 | 2009 |
| 1.9 | 2010 |
| 2.0 | 2011 |
| 1.8 | 2012 |
| 2.1 | 2013 |
| 1.9 | 2014 |
| 2.1 | 2015 |
| 1.3 | 2016 |
| 1.6 | 2017 |

[5] Violations of the CO NAAQS are most likely to occur on winter weekdays.

[6] Motor Vehicle Emissions Simulator (MOVES) model; version 2014a.

[7] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, September 4, 1992.

[8] See LMP Guidance, October 6, 1995, at 4.

[9] See, *e.g.,* ''Approval and Promulgation of Air Quality Implementation Plans; State of Montana Second 10-Year Carbon Monoxide Maintenance Plan for Billings,'' 80 FR 16571, March 30, 2015.

[10] See Table 4 below. Design values were derived from the EPA Air Data (*https://www.epa.gov/outdoor-air-quality-data*) website.

[11] See ''Review of National Ambient Air Quality Standards for Carbon Monoxide,'' 76 FR 54294, August 31, 2011.

If the rolling 3-year ADT value is 25% higher than the average value of 28,612 from the 2013–2016 baseline period, the State will reestablish CO ambient monitoring in Provo the following high season (November–February). If the CO design value in that season has not increased from the baseline mean by an equal or greater rate at which ADT has increased, and the monitor values remain at or below 50% of the CO NAAQS (2nd max concentration ≤4.5 ppm), the monitor may again be removed and the ADT counts will continue to be relied upon to determine compliance with the NAAQS.

40 CFR 58.14(c) allows approval of requests to discontinue ambient monitors ''on a case-by-case basis if discontinuance does not compromise data collection needed for implementation of a NAAQS and if the requirements of appendix D to this part, if any, continue to be met.'' The EPA finds that Utah's alternative monitoring method meets the criteria of 40 CFR 58.14(c) for the Provo CO maintenance area. Given the long history of low CO concentrations in the Provo area, and the adequacy of the State's alternative monitoring method at ensuring continued attainment of the CO NAAQS, the EPA finds it appropriate to approve the State's request to discontinue the Provo monitor and use their alternative monitoring method in its place.

*D. Contingency Plan*

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

The revised Provo Maintenance Plan stated that Utah will use an exceedance of the CO NAAQS as the trigger for adopting specific contingency measures for the Provo area. As noted, the State's alternative monitoring method requires reinstitution of a CO monitor in Provo if traffic levels increase from the 2013–2016 baseline by a factor of 25%. Therefore, the EPA finds that CO emissions in Provo are very unlikely to increase to the point of an exceedance without that exceedance being observed by a gaseous monitor.

The revised Provo Maintenance Plan indicates that, once monitoring is reinstated, a measured 8-hour CO concentration in a given year which exceeds the LMP eligibility requirement of 7.65 ppm would require the State to evaluate the cause of the CO increase. Within 6 months of validation of the concentration above 7.65 ppm, the State must present the Utah Air Quality Board (UAQB) with a recommended strategy to either prevent or correct any violation of the 8-hour CO standard. The revised Provo Maintenance Plan also states that, if a violation of the CO NAAQS occurs, the UAQB will hold a public meeting to consider the prior contingency measures that helped bring the Provo area into attainment, including the mandatory 2.7% oxygen fuels program and annual inspection and maintenance tests for mobile sources, in addition to any measures that could help the area reduce CO emissions. Selected contingency measures would then be adopted and required by November 1st of the next winter season.

We find that the contingency measures provided in the revised Provo Maintenance Plan are sufficient and meet the requirements of section 175A(d) of the CAA.

*E. Transportation Conformity*

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(B)). The EPA's conformity rule provisions in 40 CFR part 93, subpart A require that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they demonstrate conformity. The EPA's conformity rule provisions include requirements for a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emission budget (MVEB) contained in the SIP revision (40 CFR 93.118 and 93.124). The MVEB is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area.[13]

Under the LMP policy, emissions budgets are treated as essentially not constraining for the length of the maintenance period. While the EPA's LMP policy does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting a MVEB. This is because it is unreasonable to expect that an LMP area will experience so much growth in that period that a violation of the CO NAAQS would result.[14] Therefore, for the Provo CO maintenance area, all actions that require conformity determinations for CO under our conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118.

Since LMP areas are still maintenance areas, certain aspects of transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and projects must still demonstrate that they are fiscally constrained (40 CFR 93.108) and must meet the criteria for consultation (40 CFR 93.105 and 40 CFR 93.112) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113). In addition, projects in LMP areas will still be required to meet the applicable criteria for CO hot spot analyses to satisfy ''project level'' conformity determinations (40 CFR 93.116 and 40 CFR 93.123) which must also incorporate the latest planning assumptions and models available (40 CFR 93.110 and 40 CFR 93.111 respectively).

In view of the CO LMP policy, the effect of this proposed approval will be that no regional emissions analyses for future transportation CO conformity determinations will be required of the Mountainland Association of Governments, who is the Metropolitan Planning Organization for Utah County, for the CO LMP period (as per the EPA's CO LMP policy and 40 CFR 93.109(e)).

## III. Proposed Action

The EPA is proposing to approve the revised Provo Maintenance Plan submitted on January 14, 2019. This maintenance plan meets the applicable CAA requirements and the EPA has determined it is sufficient to provide for maintenance of the CO NAAQS over the course of the second 10-year maintenance period out to 2025.

## IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

[12] Design values were derived from the EPA Air Data (*https://www.epa.gov/outdoor-air-quality-data*) website.

[13] The EPA's transportation conformity requirements and policy on MVEBs are found in the preamble to the November 24, 1993, transportation conformity rule (see 58 FR 62193–62196) and in the sections of 40 CFR part 93 referenced above.

[14] See LMP Guidance, October 6, 1995, at 4.

Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

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

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

Dated: February 25, 2020.

**Gregory Sopkin,**

*Regional Administrator, Region 8.*

[FR Doc. 2020–04230 Filed 2–28–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 171

**[EPA–HQ–OPP–2011–0037; FRL–10005–59]**

## EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country; Proposed Revisions; Notice of Availability and Request for Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA is announcing proposed revisions to the EPA-administered federal pesticide applicator certification plan to certify applicators of restricted use pesticides in areas of Indian country that are not covered by any other EPA-approved certification plan. After this proposed plan is finalized and implemented, certification of applicators in Indian country will be administered by EPA, unless a tribe submits its own tribal certification plan, enters into a tribal-EPA agreement, or opts out of the revised EPA Plan. EPA is soliciting comments on EPA's proposed revisions to the federal certification plan in Indian country where no other EPA-approved plan applies.

**DATES:** Comments must be received on or before June 1, 2020.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0037, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Jackie Mosby, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7102; email address: *Mosby.Jackie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an individual or business that is seeking certification to apply restricted use pesticides (RUPs), as defined under section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a *et seq.*) and 40 CFR part 152, subpart I, in areas of Indian country where no other EPA-approved plan applies. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. You may be potentially affected by this action if you are: A state lead agency (SLA), tribe, or federal agency who administers a certification program for pesticides applicators or a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification. This document also addresses EPA's work on a government-to-government basis with tribes (see Unit VIII.). If you have any questions regarding the applicability of this action to a particular entity, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark

the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

## II. What action is the Agency taking?

EPA is announcing its proposed revisions to the EPA-administered federal pesticide applicator certification plan (EPA Plan) to certify applicators of RUPs in Indian country and seeks public comment. This proposed EPA Plan describes the process by which EPA will implement a program for the certification of applicators of RUPs in areas of Indian country based upon the certification requirements enumerated at 40 CFR part 171. The proposed EPA Plan, in its entirety, is included in the docket (Ref. 1).

## III. What is the Agency's authority for this plan?

The proposed EPA Plan will be implemented under the authority of FIFRA section 11(a)(1), and in accordance with the regulations found at 40 CFR 171.307(c) and 171.311. Additional enforcement authorities are found in FIFRA sections 8, 9, 12, 13, 14, and 23.

## IV. Background

Under FIFRA, EPA has the authority to classify registered pesticides as either ''restricted use'' or ''general use.'' Pesticides (or a particular use or uses of a pesticide) that may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, shall be classified for ''restricted use.'' FIFRA section 3(d)(1)(C), 7 U.S.C. 136a(d)(1)(C). If the classification is made because of hazards to the applicator, the pesticide may only be applied by or under the direct supervision of a certified applicator. FIFRA section 3(d)(1)(C)(i), 7 U.S.C. 136a(d)(1)(C)(i). If the classification is made because of potential unreasonable adverse effects on the environment, the pesticide may only be applied by or under the direct supervision of a certified applicator or subject to such other restrictions as the Administrator may provide by regulation. FIFRA section 3(d)(1)(C)(ii), 7 U.S.C. 136a(d)(1)(C)(ii). To be certified, an individual must be determined to be competent with respect to the use and handling of pesticides covered by the certification. FIFRA section 11(a), 7 U.S.C 136i(a).

It was the intent of Congress that persons desiring to use RUPs should be able to obtain certification under programs approved by EPA, as reflected in FIFRA sections 11 and 23. 7 U.S.C. 136i, 136u. The regulations addressing federal agency, state, and tribal development and submission of certification plans to EPA are contained at 40 CFR part 171. It is EPA's position that federal agency, state, and tribal plans are generally best suited to the needs of that particular federal agency, state, or tribe and its citizens. States and tribes, however, are not required to develop their own plans. Where EPA has not approved a state or tribal certification plan, the Agency is authorized to implement a plan administered by EPA for the federal certification of applicators of RUPs pursuant to FIFRA section 11.

In 2014, EPA announced the finalization and implementation of an EPA-administered certification plan for Indian country (2014 EPA Plan) (Ref. 2). The 2014 EPA Plan described the process by which EPA would implement a program for the certification of applicators of RUPs in Indian country based upon the certification requirements enumerated at 40 CFR part 171 at the time. The entire 2014 EPA Plan is available in Docket ID No. EPA–HQ–OPP–2011–0037 at *http://www.regulations.gov.*

In 2017, EPA published a final rule (2017 Rule) updating the regulation at 40 CFR part 171 concerning the certification of RUP applicators (Ref. 3). The 2017 Rule ensured that federal certification program standards adequately protect applicators, the public, and the environment from risks associated with use of RUPs. The 2017 Rule sought to improve the competency of certified applicators of RUPs, to increase protection for noncertified applicators using RUPs under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators, and to establish a minimum age requirement for certified and noncertified applicators using RUPs under the direct supervision of a certified applicator.

Recognizing EPA's commitment to work more closely with tribal governments to strengthen environmental protection in Indian country, the 2017 Rule provided more practical options for establishing certification programs in Indian country. The 2017 Rule offers three options for tribes to establish valid EPA-recognized/approvable certification programs in Indian country, along with a fourth ''opt-out'' option, all which are detailed in Appendix A of the ''Tribal Certification Plan Outline'' document (Ref. 4). The three options for establishing a certification mechanism are as follows:

1. *Tribal Reliance on Certifications Issued by Specified Jurisdictions (Tribal-EPA Agreement):* A tribe may establish a certification plan with the relevant EPA region(s) through a written agreement per 40 CFR 171.307(a) where the tribe specifies certain federal agencies, states, and/or tribes whose certified applicators will be authorized to use RUPs in the tribe's areas of Indian country. The nature and extent of a tribe's role in implementing a 40 CFR 171.307(a) plan will be negotiated with the appropriate EPA region and specified in the written agreement.

2. *Certifications Issued by a Tribe (Tribal Certifications):* A tribe may choose to submit its own new or revised certification plan to the appropriate EPA region for approval per 40 CFR 171.307(b). A tribal certification plan needs to demonstrate that the plan meets all requirements of 40 CFR 171.303 applicable to state certification plans, except that the tribe's plan will not be required to meet the requirements of 40 CFR 171.303(b)(6)(iii) with respect to provisions for criminal penalties, or any other requirements for assessing criminal penalties.

3. *EPA-administered Certification Plan (EPA Plan):* In any area of Indian country not covered by a certification plan established under either option 1 or 2, the Agency will implement the proposed EPA Plan once it is finalized as provided in 40 CFR 171.307(c), except where a tribe has elected to opt out. Under the EPA Plan, the Agency would be responsible for certifying private and commercial applicators to use or supervise the use of RUPs. Tribes may impose additional restrictions or requirements on use of RUPs through tribal codes, laws, regulations or other tribal procedures, but would not generally be involved in the certification process. The existing 2014 EPA Plan will remain in full effect until the

proposed EPA Plan under this option is finalized, no later than March 4, 2022. Once finalized, some components of the 2014 EPA Plan may remain in effect while EPA prepares to implement the revised EPA Plan.

A fourth option for tribes is the ability to opt out of the proposed EPA Plan for Indian country. If a tribe chooses to opt out, the Agency will not implement the proposed EPA Plan in the area of Indian country where the chairperson or equivalent elected leader of the relevant tribe provides the Agency, during the comment period initiated by this Notice, a written statement of the tribe's position that the proposed EPA Plan should not be implemented per 40 CFR 171.307(c)(2). EPA's website will have additional information on the process of opting out of the proposed EPA Plan after the comment period ends (*https://www.epa.gov/pesticide-applicator-certification-indian-country*).

Currently, most of Indian country is covered by the 2014 EPA Plan. EPA expects that most areas of Indian country will choose to continue being covered by the 2014 EPA Plan and by the proposed EPA Plan once it is finalized. Tribes that choose to continue to be covered by the EPA-administered Plan for Indian country do not need to notify EPA. Tribes that are currently covered by the 2014 EPA Plan that intend to develop either a certification plan or a tribal-EPA agreement can do so at any time and are not bound by the March 4, 2020 deadline in order to remain covered under the 2014 EPA Plan.

There are four tribal certification plans that received approval under 40 CFR 171.10(a)(2) prior to the 2017 Rule—those for the Three Affiliated Tribes of the Fort Berthold Indian Reservation, the Cheyenne River Sioux Tribe, the Rosebud Sioux Tribe, and the Shoshone-Bannock Tribes of the Fort Hall Reservation. EPA also implemented a separate federal plan for the Navajo Nation prior to the 2017 Rule. In addition, EPA is aware of three tribes, the Santee Sioux Tribe of Nebraska, the Prairie Band Potawatomi Nation, and the White Earth Band of Chippewa Indians, that entered a Memorandum of Understanding with a state pursuant to 40 CFR 171.10(a)(1) prior to the 2017 revisions to 40 CFR part 171. EPA is aware that among these tribes there are some tribes that plan to submit revised certification plans in accordance with the new regulations at 40 CFR 171.307(a) or (b). Tribes with an existing certification plan that do not submit a revised certification plan by March 4, 2020 will be covered by the 2014 EPA Plan until the proposed EPA Plan is finalized and implemented, unless a tribe decides to opt out of the proposed EPA Plan.

## V. Summary of the Proposed EPA Plan

EPA is proposing a new EPA Plan for those areas of Indian country not covered by any other EPA-approved certification plan. This proposed EPA Plan provides for the certification of applicators of RUPs, references for training noncertified applicators who use RUPs under the supervision of a certified applicator, pesticide dealer reporting and recordkeeping, and enforcement consistent with the requirements of 40 CFR part 171. EPA will administer routine maintenance activities associated with implementing this plan, including application processing, database management and recordkeeping, and will conduct inspections and take enforcement actions as appropriate. The final revisions to the proposed EPA Plan will be made after the results of the tribal consultation and public comments are taken into consideration. Once finalized and fully implemented, the revised EPA Plan will supersede all previous versions of the EPA Plan, including the version published on February 6, 2014. Implementation of the EPA Plan once finalized may be staggered based on when each section of the finalized plan is brought into compliance.

### *A. Area(s) of Indian Country To Be Covered by the Proposed Plan*

EPA intends to implement this Federal certification plan in ''Indian country,'' as defined at 40 CFR 171.3, where no other EPA-approved plan applies, and where tribes have not ''opted-out'' of coverage under the proposed EPA Plan. ''Indian country'' is defined at 40 CFR 171.3 as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The definition of *Indian country* in 40 CFR 171.3 is identical to the definition of that term in 18 U.S.C. 1151.

Consistent with the statutory definition of *Indian country,* as well as federal case law interpreting this statutory language, EPA treats lands held by the federal government in trust for Indian tribes that exist outside of formal reservations as informal reservations, and thus as Indian country.

### *B. Proposed Procedures and Requirements for Private Applicator Certification and Recertification*

EPA is proposing to continue to make available two options for private applicators seeking a federal certificate under the proposed EPA Plan.

1. *Option to submit documentation of a currently valid certificate.* Consistent with the 2014 EPA Plan, a private applicator seeking federal certification under this option must submit documentation of a currently valid certificate as a private applicator authorized to apply federally-designated RUPs through an EPA-approved certification plan for a state or tribe with a contiguous boundary to the relevant area of Indian country along with a completed Pesticide Applicator Certification Form.

The applicator may submit certificates from multiple jurisdictions, if necessary, to support a certification pursuant to the proposed EPA Plan that covers multiple areas of Indian country that are located within different states within a region. If an applicator seeking federal certification is unable to obtain certification through an adjacent state or tribal program, the applicator may submit documentation of certification from another state or tribal program. EPA will determine whether to waive further demonstration of competency based on verification that the use conditions and pest pressures in the area where the applicator is certified are similar to where the applicator intends to apply.

*a. Duration of certificate.* Federal certificates for private applicators under this option will expire at the expiration date of the underlying certificate, or on the date the certificate is suspended or revoked, whichever is earlier.

*b. Renewal/recertification.* Private applicators must complete the recertification requirements of the underlying state or tribe's certificate and submit documentation.

2. *Option to complete the EPA training course.* Private applicators seeking federal certification under this option will need to submit documentation of completion of the EPA training course along with a completed Pesticide Applicator Certification Form. While the framework of this option is consistent with the 2014 EPA Plan, identification

verification has been enhanced and the current EPA training course will be revised to be in compliance with 40 CFR part 171. Private applicators will receive a general federal certificate; however, a private applicator with a federal certificate under this option alone is not sufficient to authorize the purchase, use, or supervision of the use of the RUP in the categories of sodium cyanide predator control, sodium fluoroacetate predator control, soil fumigation, non-soil fumigation, and aerial pest control. Additional certificates will be needed for those categories. Private applicators seeking to obtain a federal certificate to apply sodium cyanide and sodium fluoroacetate in Indian country under this proposed EPA Plan should refer to Unit V.D. for more information.

*a. Duration of certificate.* Private applicator federal certification by EPA under this option expires after one year.

*b. Renewal/recertification.* For recertification, private applicators seeking a federal certificate under this option must satisfactorily complete EPA's online course during the six months preceding the expiration of their current certificate. Recertification through this option expires after one year.

### *C. Proposed Procedures and Requirements for Commercial Applicator Certification and Recertification*

EPA is keeping the option for commercial applicators to obtain a federal certificate by submitting documentation of a currently valid certification as a commercial applicator authorized to use federally designated RUPs through an EPA-approved federal agency plan, or an EPA-approved state or tribal certification plan with a contiguous boundary to the relevant areas of Indian country. EPA may issue federal certificates to persons who are certified as commercial applicators for the same categories listed in their underlying certificate, except for the sodium cyanide and sodium fluoroacetate predator control categories (see Unit V.D.).

The applicator may submit certificates from multiple jurisdictions, if necessary, to support a certification pursuant to the proposed EPA Plan that covers multiple areas of Indian country that are located within different states within a particular EPA region. If an applicator seeking federal certification is unable to obtain certification through an adjacent state or tribal program, the applicator may submit documentation of certification from another state or tribal program. EPA will determine whether to waive further demonstration of competency based on verification that the use conditions and pest pressures in the area where the applicator is certified are similar to where the applicator intends to apply.

*1. Duration of certification.* For commercial applicators, a federal certificate issued by EPA for commercial applicators under this proposed EPA Plan expires at the expiration date of the underlying certificate, or on the date the certificate is suspended or revoked, whichever is earlier.

*2. Renewal/recertification.* For recertification, commercial applicators must complete the recertification requirements of the underlying federal agency, state, or tribe's certificate and submit documentation of the currently valid certificate.

### *D. Proposed Categories for Certification*

EPA expects that most, if not all, applicators certified under the proposed EPA Plan will already be certified according to the categories and standards of a jurisdiction adjacent to the particular areas of Indian country. Where an applicator seeks certification under the proposed EPA Plan in reliance on another jurisdiction's certification that differs from the categories in 40 CFR 171.101 and 171.105, the certification will be limited to the scope of the underlying certification. Where EPA issues original certification to private applicators, the categories and standards of 40 CFR 171.105 will apply.

EPA is proposing to keep the predator control categories available: Sodium cyanide capsules used with ejector devices and sodium fluoroacetate used in livestock protection collars. A federal certificate will only include these two predator control categories if:

- The relevant Indian tribe for the area of Indian country at issue has obtained its own registrations for the products within these two categories and conducts its own monitoring and supervision, or
- A federal employee has a valid underlying state certificate for these categories.

### *E. Pesticide Dealer Reporting and Recordkeeping Requirements*

EPA proposes that each RUP retail dealer in areas of Indian country where the proposed EPA Plan will apply must keep records and submit reports to EPA as set forth in 40 CFR 171.311(f).

### *F. Proposed Arrangements for Enforcement of the EPA Plan*

EPA will, as appropriate, exercise its FIFRA authorities to enforce this EPA Plan in applicable areas of Indian country and in line with the EPA Policy for the Administration of Environmental Programs on Indian Reservations (Ref. 5), Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (Ref. 6), and Questions and Answers on the Tribal Enforcement Process (Ref. 7).

EPA will monitor compliance under this EPA Plan by conducting inspections, as appropriate, for misuse of RUPs, training and supervision of noncertified applicators, and required recordkeeping at applicators' places of business and at use sites and by investigating incidents, accidents, and complaints. EPA will also conduct inspections of RUP dealers and certified applicators in Indian country to ensure that RUP dealers are maintaining the required records in accordance with 40 CFR 171.311(f).

EPA's decisions to deny, modify, suspend, or revoke a certificate, or take other enforcement action under FIFRA, will be made in conformance with the FIFRA Enforcement Response Policy (Ref. 8). EPA's enforcement actions are conducted consistent with applicable EPA policies and guidance on enforcement-related and tribal-related matters.

## VI. Specific Comments Are Sought on the Proposed EPA Plan

EPA is seeking comments on the entire proposed EPA Plan and is particularly interested in comments on the following issues:

1. *Predator control categories.* In the proposed EPA Plan, there are two scenarios where a federal certificate will be given for sodium cyanide or sodium fluoroacetate predator control categories: (1) If the relevant Indian tribe for the area of Indian country at issue has obtained its own registration for the products and conducts its own monitoring and supervision or (2) if a federal employee has obtained a state certification for these categories. EPA is seeking comments on whether EPA should continue to provide sodium cyanide and sodium fluoroacetate as categories for federal certification to apply in Indian country.

2. *Identification verification.* The proposed EPA Plan specifies that an identification ''includes a photograph and date of birth, such as a driver's license, passport, military identification, Department of Motor Vehicle identification card, or other verifiable identification. Private applicators who do not have a verifiable photographic identification must attest their identity by providing a signed statement form a chairperson or equivalent elected leader of the relevant tribe affirming the

private applicator's age and identity.'' EPA is seeking comments on whether this is a reasonable means for tribes to ascertain identity verification, and whether there are any barriers for tribes where this identification verification would not work.

3. *Private applicator certification.* Under FIFRA section 11(a)(1), for Federal certification plans, EPA must offer a no-test option for private applicators. For more background, see Unit V.B. of this document. EPA proposes that private applicators who wish to obtain Federal certification under the no-test provision submit documentation of attendance and completion of an EPA-approved training. EPA is seeking comments on whether there are other methods or recommendations to assure private applicator competency in the absence of passing a certification exam.

## VII. Tribal Governments' Option To Not Participate in the EPA Plan for Indian Country

In any area of Indian country not covered by an EPA-approved certification plan, the Agency will finalize and implement the proposed EPA Plan under 40 CFR 171.311 for certifying private and commercial applicators to use or supervise the use of RUPs (see 40 CFR 171.307(c)). However, tribes may opt out of being covered by the proposed EPA Plan as described under 40 CFR 171.307(c)(2).

In order to opt out of coverage under the proposed EPA Plan, a tribe must notify EPA of the tribe's position by submitting a signed written statement from the chairperson or equivalent elected leader of the relevant tribe. The written statement must be addressed to the Director of the Field and External Affairs Division, Jackie Mosby, and submitted to EPA by one of the following methods:

- *Via the docket:* A tribe may submit notification via the docket of the tribe's position that the EPA Plan should not be implemented in their area of Indian country.
- *Via mail:* A tribe may submit notification via mail of the tribe's position to opt out of coverage under the proposed EPA Plan to: Jackie Mosby, Director, Field and External Affairs Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (7506P), Washington, DC 20460.
- *Via email:* A tribe may submit via email of the tribe's position to the appropriate EPA staff listed in Appendix A of the ''Tribal Certification Plan Outline'' document and cc: Emily Ryan at *ryan.emily@epa.gov.*

The opt-out statement should be submitted prior to June 1, 2020. EPA plans to establish a process for opting out of the proposed EPA Plan after this date. EPA's website will have additional information on that process at *https://www.epa.gov/pesticide-applicator-certification-indian-country.*

Should the chairperson or equivalent elected leader of the relevant tribe opt out of the proposed EPA Plan, the Agency will not implement the finalized version of this EPA Plan within the tribe's Indian country, and there will be no lawful use of RUPs in the affected areas of Indian country (except where authorized by federal agency certified applicators). The application of RUPs will remain generally prohibited in these areas of Indian country unless and until a listed tribe obtains EPA approval of a tribal certification plan under 40 CFR 171.307(a) or (b), or a tribe submits to EPA a written statement from the chairperson or equivalent elected leader requesting implementation of this EPA Plan in their area of Indian country.

Tribes that intend to be covered by the proposed EPA plan do not have to submit a written statement to receive coverage. Additionally, in areas of Indian country where this EPA Plan applies, tribes may choose to further restrict or prohibit the use of RUPs in their areas of Indian country through the implementation of tribal codes, laws, regulations, or other applicable requirements. This EPA Plan does not supersede such tribal requirements. Applicators of RUPs in Indian country must comply with any applicable tribal restrictions or prohibitions on the use of RUPs.

## VIII. Consultation With Tribal Governments

Consistent with its statutory authorities and the Federal government's trust responsibility to federally-recognized tribes, EPA has worked with the tribes on a government-to-government basis to appropriately develop a certification program that will help ensure the protection of human health and the environment in Indian country. EPA is planning to hold consultation with the tribes in February and April 2020 to ensure development of the final revised EPA Plan effectively meets their needs and those of RUP applicators in Indian country.

EPA has previously consulted with the tribes on the 2017 Rule. In April 2019, EPA conducted three early engagement sessions on the 2017 Rule to inform federally-recognized tribes on the 2017 revisions, discuss implementation of the 2017 Rule, and how this rule may affect tribes. These sessions provided an overview of new federal standards for an EPA-approved certification plan to apply RUPs and options for certification of applicators in Indian country. The 2020 outreach and consultation will perform a similar function, posing specific questions to the tribes as EPA moves towards finalizing the EPA Plan by March 4, 2022 and the implementation schedule that will be included with the final revision of the EPA Plan. EPA engages with the tribes on a variety of pesticide-related initiatives by collaborating with the Tribal Pesticide Program Council (TPPC), a tribal technical resource and program and policy development dialogue group, focused on pesticides issues and concerns.

EPA will finalize the proposed EPA Plan in consultation with tribes consistent with, among other things, the following policies, orders, and guidance:

- ''EPA Policy for the Administration of Environmental Programs on Indian Reservations,'' November 8, 1984;
- ''Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy,'' January 17, 2001;
- Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' November 6, 2000, which was reaffirmed by Presidential memorandum, ''Tribal Consultation,'' November 5, 2009; and
- ''EPA Policy on Consultation and Coordination with Indian Tribes,'' May 4, 2011.

## IX. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. DRAFT EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country. January 21, 2020.
2. EPA. Final EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country; Notice of Implementation. Notice. **Federal Register** (79 FR 7185, February 6, 2014) (FRL–9904–18).
3. EPA. Certification of Pesticide Applicators; Final Rule. **Federal Register** (82 FR 952, January 4, 2017) (FRL–9956–70).
4. EPA. Tribal Certification Plan Outline: Resource to Support Development of Tribal Plans to Certify Applicators of

Restricted use Pesticide in Indian Country. 2020.
5. EPA. EPA Policy for the Administration of Environmental programs on Indian Reservations. November 8, 1984.
6. EPA. Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy. January 17, 2001.
7. EPA. Questions and Answers on the Tribal Enforcement Process. April 17, 2007.
8. EPA. FIFRA Enforcement Response Policy. December 2009.

**Authority:** 7 U.S.C. 136–136y.

Dated: February 25, 2020.

**Alexandra Dapolito Dunn,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2020–04189 Filed 2–28–20; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 85, No. 41
Monday, March 2, 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

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2019–0083]**

### Notice of Availability of an Environmental Assessment; Cogongrass Control Efforts in Alabama, Georgia, Mississippi, and South Carolina

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

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is making available a draft programmatic environmental assessment for control of cogongrass, a noxious weed, in Alabama, Georgia, Mississippi, and South Carolina. The environmental assessment assesses the potential environmental effects of establishing an integrated management strategy to control cogongrass in coordination with the above States. We are making the draft programmatic environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before April 1, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0083.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0083, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0083* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne LeBrun, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737, Phone: 301–851–2259, Email: *anne.lebrun@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Cogongrass (*Imperata cylindrica*) is an invasive, exotic perennial grass that is naturalized throughout the southeastern United States. Cogongrass grows in both natural and disturbed areas, including around homes, on public properties, paved and unpaved roadways, forestland, stream banks, and farmland. It spreads rapidly, reducing forest productivity, harming wildlife habitat and native ecosystems, encroaching in pasture and hayfields, and impacting rights-of-way. It usually grows in warm or tropical areas and is widely distributed on all continents except Antarctica.

In 7 CFR part 360, a noxious weed is defined as ''any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.'' As a federally regulated noxious weed, Cogongrass is restricted from entry into the United States.

Due to the impact cogongrass has on the agriculture and forestry industries, Congress has provided the Animal and Plant Health Inspection Service (APHIS) with funding to partner with four States—Alabama, Georgia, Mississippi, and South Carolina—to establish a program for controlling the spread of cogongrass. While it is unlikely that cogongrass can be eliminated from the southeastern United States, we have proposed that active control and eradication of cogongrass along the edge of the naturalized distribution area may be possible through an integrated management strategy employing preventative, cultural, mechanical, biological, and chemical methods.

We are therefore announcing the availability of a draft programmatic environmental assessment (EA), entitled ''Cogongrass Control Program in the Southeastern United States—Alabama, Georgia, Mississippi and South Carolina'' (December 2019), that considers the potential environmental effects of an integrated management strategy—APHIS' preferred alternative—to control the spread of cogongrass. The EA also considers the alternative of having no Federal program and taking no action. APHIS will use this EA for cogongrass program planning and decisionmaking, in addition to informing the public about the potential environmental effects of actions considered as part of the integrated management strategy. We are making the EA available for review and comment and will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

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

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2020–04239 Filed 2–28–20; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Black Hills National Forest Advisory Board

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The committee is established consistent with and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Secretary of Agriculture through the Black Hills National Forest Supervisor on a broad range of forest issues. Board information, including the meeting agenda and the meeting summary/minutes can be found at the following website: *https://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

**DATES:** The meeting will be held on Wednesday, March 11, 2020, at 1:00 p.m.

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meeting will be held at the Forest Service Center, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead at 605–673–9200 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Scott Jacobson, Committee Coordinator, by phone at 605–440–1409 or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to provide:

(1) Orientation Topic: FY20 Forest Budget;

(2) Forest Sustainability Discussion;

(3) Timber Sustainability Working Group;

(4) Black Hills Fish Management Plan; and

(5) Trail Rangers and Trail Maintenance Program.

The meeting is open to the public. If time allows, the public may make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by March 2, 2020, to be scheduled on the agenda. Anyone who would like to bring related letters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 25, 2020.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2020–04160 Filed 2–28–20; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

### Solicitation of Input From Stakeholders on Agency Services

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Request for written stakeholder input.

**SUMMARY:** The National Institute of Food and Agriculture (NIFA) is requesting written stakeholder input on agency services.

The purpose of this Notice is to assist NIFA in optimizing delivery of services and better serve stakeholders' and partners' research, extension, and education needs. NIFA plans to consider all stakeholder input received in response to this Notice.

**DATES:** Submission of stakeholder input to the target questions will be open upon publishing of the Notice through 5 p.m. Eastern time April 03, 2020.

*Comments:* Written comments are due by 5 p.m. Eastern time April 03, 2020. Written comments must be emailed to *NIFAProjectCAFE@usda.gov* with the Subject Title, ''NIFA Service Delivery Input.'' Comments received after that date will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** William Hoffman, 202–401–1112 (phone), *NIFAProjectCAFE@usda.gov.*

**SUPPLEMENTARY INFORMATION:** As NIFA enters its second decade, the agency seeks stakeholder input on how to optimize delivery of services in order to enhance NIFA's ability to provide excellent customer service to external and internal partners. This stakeholder input opportunity informs the effectiveness and efficiency of NIFA by optimizing service delivery approaches to be aligned with current business practices and technologies in order to better meet the agency's mission of investing in and advancing agricultural research, education, and extension to solve societal challenges.

Stakeholders are asked to respond to the following questions:

(1.) How can NIFA improve delivery of capacity programs in order to best support research and extension?

(2.) What changes should NIFA consider regarding implementation of competitive programs?

(3.) How can NIFA increase transparency and effectiveness?

(4.) What steps can NIFA take to enhance customer experience?

NIFA welcomes stakeholder input from any group or individual interested in the agency's delivery of services. NIFA is eager to listen to stakeholder's comments on solutions and opportunities that will facilitate a more efficient and customer focused NIFA in the near future and beyond. This input opportunity will focus only on NIFA's delivery of services.

Done at Washington, DC, this 20th day of February 2020.

**Stephen L. Censky,**

*Deputy Secretary, U.S. Department of Agriculture.*

[FR Doc. 2020–04158 Filed 2–28–20; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

### Notice of Intent for Reinstatement, Without Change, of a Previously Approved Information Collection for Which Approval Has Expired

**AGENCY:** National Institute of Food and Agriculture, USDA

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval for the reinstatement, without change, of a previously approved information collection for which approval has expired for Children, Youth, and Families at Risk (CYFAR).

**DATES:** Written comments on this notice must be received by May 1, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: Email: *robert.martin3@usda.gov;* Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW, Washington, DC 20250–2216.

**FOR FURTHER INFORMATION CONTACT:** Robert Martin, eGovernment Program Leader; Phone: 202–445–5388; Email: *robert.martin3@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Children, Youth, and Families at Risk (CYFAR) Year End Report.

*OMB Number:* 0524–0043.

*Expiration Date of Approval:* July 31, 2019.

*Type of Request:* Intent to seek reinstatement, without change, of a previously approved information collection for which approval has expired, for three years.

*Abstract:* Funding for the Children, Youth, and Families at Risk (CYFAR) community project grants is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 341 *et seq.*), as amended, and other relevant authorizing legislation, which are jurisdictional basis for the establishment and operation of Extension educational work for benefit of youth and families in communities. CYFAR funding program supports community-programs serving children, youth, and families in at-risk environments.

CYFAR funds are intended to support the development of high quality, effective programs based on research and to document the impact of programs on intended audiences. The CYFAR Year Report collects demographic and impact data from each community site to conduct impact evaluations of the programs on its intended audience.

The collection of information serves several purposes. It allows NIFA staff to gauge if the program is reaching the target audience and make programmatic improvements. This collection also allows program staff to demonstrate the impacts and capacity that is developed in the locales where federal assistance is provided.

The evaluation processes of CYFAR are consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), the Federal Activities Inventory Reform Act (FAIR) (Pub. L. 105–207), and the Agricultural, Research, Extension and Education Reform Act (AREERA) of 1998 (Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential Management Agenda evaluation to be conducted is to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multi-state significance.

The immediate need of this information collection is to provide a means for satisfying accountability requirements. The long term objective is to provide a means to enable the evaluation and assessment of the effectiveness of programs receiving federal funds and to fully satisfy requirements of performance and accountability legislation in GPRA, the FAIR Act, and AREERA.

*Estimate of Burden:* There are currently CYFAR projects in 40 states. Each state and territory is required to submit an annual year-end report which includes demographic and impact data on each of the community projects.

NIFA estimates the burden of this collection to be 322 hours per response. There are currently 51 respondents, thus making the total annual burden of this collection an estimated 12,880 hours.

*Respondents:* Individuals, households, business or other for-profit or not-for-profit institutions.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection 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 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.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done in Washington, DC, this 20th day of February 2020.

**Stephen L. Censky,**

*Deputy Secretary, U.S. Department of Agriculture.*

[FR Doc. 2020–04156 Filed 2–28–20; 8:45 am]

**BILLING CODE 3410–22–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Idaho Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Idaho Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Mountain Time) on March 20, 2020. The purpose of the meeting is to discuss the Committee's project on Native American Voting Rights and planning upcoming community forums.

**DATES:** The meeting will be held on Friday, March 20, 2020, at 1:00 p.m. Mountain Time.

*Public Call Information:*

*Public Call Information:* 800–353–6461; Conference ID: 1770941

**FOR FURTHER INFORMATION CONTACT:** Brooke Peery (DFO) at *bpeery@usccr.gov* or (213) 894–3437.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the telephone number listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons

with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Angelica Trevino *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Committee Details'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Welcome and Roll Call
II. Review of Project Process and Timeline
III. Discussion: Community Forum on Native Americans Voting Rights
IV. Public Comments
V. Adjournment

Dated: February 25, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–04170 Filed 2–28–20; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Jersey 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 a planning meeting of the New Jersey Advisory Committee to the Commission will convene by conference call, on Friday, March 20, 2020 at 1:00 p.m. (ET). The purpose of the meeting is receive updates from the Forfeiture and Licensing Workgroups about suggestions for planning the Committee's briefing to examine its civil rights project on the collateral consequences that a criminal record has on asset forfeitures and occupational licensing.

**DATES:** Friday, March 20, 2020, at 1:00 p.m. (ET).

*Public Call-In Information:* Conference call number: 1–800–667–5617 and conference call ID number: 7386659.

**FOR FURTHER INFORMATION CONTACT:** Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–667–5617 and conference call ID number: 7386659. Please be advised that before placing them into the conference call, the conference call operator may 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 telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–800–667–5617and conference call ID number: 7386659.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

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=a10t0000001gzjVAAQ* 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 Eastern Regional Office at the above phone number, email or street address.

**Agenda**

*Friday, March 20, 2020 at 1:00 p.m. (ET)*

I. Roll Call
II. Welcome
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Public Comments
VII. Adjourn

Dated: February 25, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–04171 Filed 2–28–20; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-Year (Sunset) Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

**DATES:** Applicable (March 1, 2020).

**FOR FURTHER INFORMATION CONTACT:** Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

## Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

## Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

| DOC Case No. | ITC Case No. | Country | Product | Commerce contact |
|---|---|---|---|---|
| A–351–837 ..... | 731–TA–1024 | Brazil ..... | Prestressed Concrete Steel Wire Strand (3rd Review). | Mary Kolberg, (202) 482–1785. |
| A–570–887 ..... | 731–TA–1046 | China ..... | Tetrehydrofurfuryl Alcohol (3rd Review) ..... | Mary Kolberg, (202) 482–1785. |
| A–533–848 ..... | 731–TA–1155 | India ..... | Commodity Matchbooks (2nd Review) ..... | Mary Kolberg, (202) 482–1785. |
| C–533–849 ..... | 701–TA–459 .. | India ..... | Commodity Matchbooks (2nd Review) ..... | Jacqueline Arrowsmith, (202) 482–5255. |
| A–533–828 ..... | 731–TA–1025 | India ..... | Prestressed Concrete Steel Wire Strand (3rd Review). | Mary Kolberg, (202) 482–1785. |
| C–533–829 ..... | 701–TA–432 .. | India ..... | Prestressed Concrete Steel Wire Strand (3rd Review). | Mary Kolberg, (202) 482–1785. |
| A–588–068 ..... | AA1921–188 .. | Japan ..... | Prestressed Concrete Steel Wire Strand (5th Review). | Mary Kolberg, (202) 482–1785. |
| A–201–831 ..... | 731–TA–1027 | Mexico ..... | Prestressed Concrete Steel Wire Strand (3rd Review). | Mary Kolberg, (202) 482–1785. |
| A–580–852 ..... | 731–TA–1026 | Republic of Korea ..... | Prestressed Concrete Steel Wire Strand (3rd Review). | Mary Kolberg, (202) 482–1785. |
| A–549–820 ..... | 731–TA–1028 | Thailand ..... | Prestressed Concrete Steel Wire Strand (3rd Review). | Mary Kolberg, (202) 482–1785. |

## Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *https://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

## Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

## Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 20, 2020.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2020–04216 Filed 2–28–20; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUPPLEMENTARY INFORMATION:**

#### Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

#### Upcoming Sunset Reviews for April 2020

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in April 2020 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

| | Department contact |
|---|---|
| **Antidumping Duty Proceedings** | |
| Oil Country Tubular Goods from China (A–570–943) (2nd Review) | Jacqueline Arrowsmith, (202) 482–5255. |
| Polyvinyl Alcohol from China (A–570–879) (3rd Review) | Mary Kolberg, (202) 482–1785. |
| Polyvinyl Alcohol from Japan (A–588–861) (3rd Review) | Mary Kolberg, (202) 482–1785. |
| **Countervailing Duty Proceedings** | |
| Oil Country Tubular Goods from China (C–570–944) (2nd Review) | Mary Kolberg, (202) 482–1785. |

#### Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in April 2020.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 20, 2020.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2020–04222 Filed 2–28–20; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–351–846]**

### Hot-Rolled Steel Flat Products From Brazil: Rescission of 2018 Countervailing Duty Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on hot-rolled steel flat products from Brazil for the period of review (POR) January 1, 2018, through December 31, 2018.

**DATES:** Applicable March 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ajay Menon or Adam Simons, AD/CVD Operations, Office II, Enforcement and

[6] *See* 19 CFR 351.218(d)(1)(iii).

Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1993 or (202) 482–6172, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on hot-rolled steel flat products from Brazil for the POR.[1] On October 31, 2019, Commerce received a timely request from United States Steel Corporation, Steel Dynamics, Inc., and SSAB Enterprises, LLC (collectively, domestic interested parties), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of this CVD order for 10 companies.[2]

On December 11, 2019, Commerce published in the **Federal Register** a notice of initiation with respect to these companies.[3] On February 10, 2020, the domestic interested parties timely withdrew their request for an administrative review for all 10 companies.[4]

## Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, the domestic interested parties withdrew their request for review by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding the administrative review of the CVD order on hot-rolled steel flat products from Brazil covering the period January 1, 2018, through December 31, 2018, in its entirety.

## Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Because Commerce is rescinding this administrative review in its entirety, the entries to which this administrative review pertained 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)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register.**

## Notification Regarding Administrative Protective Orders

This notice serves as the only 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(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

## Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 26, 2020.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2020–04227 Filed 2–28–20; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 52068 (October 1, 2019).

[2] *See* Domestic Interested Parties' Letter, ''Hot-Rolled Steel Flat Products from Brazil: Request for Administrative Review of Countervailing Duty Order,'' dated October 31, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 67712 (December 11, 2019).

[4] *See* Domestic Interested Parties' Letter, ''Hot-Rolled Steel Flat Products from Brazil: Withdraw of Request for Administrative Review of Countervailing Duty Order,'' dated February 10, 2020.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–115]**

### Certain Glass Containers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain glass containers (glass containers) from the People's Republic of China (China) for the period of investigation (POI) January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable March 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Maliha Khan or Stephen Bailey, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0895 or (202) 482–0193, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on October 21, 2019.[1] On December 4, 2019, pursuant to a request from the American Glass Packaging Coalition (the petitioner),[2] Commerce published the postponement of the preliminary determination of this investigation to February 24, 2020.[3] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of

[1] *See Certain Glass Containers From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 84 FR 56168 (October 21, 2019) (*Initiation Notice*).

[2] *See* Petitioner's Letter, ''*Certain Glass Containers from the People's Republic of China:* Request to Postpone Preliminary Determination,'' dated November 19, 2019.

[3] *See Certain Glass Containers From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 84 FR 66377 (December 4, 2019).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Glass Containers from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

the Preliminary Decision Memorandum are identical in content.

**Scope of the Investigation**

The products covered by this investigation are glass containers from China. For a complete description of the scope of this investigation, *see* Appendix I.

**Scope Comments**

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*.[7] Commerce intends to issue its preliminary decision regarding comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations in the preliminary determination of the companion AD investigation.

**Methodology**

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8]

Commerce notes that, in making these findings, it relied, in part, on the facts available, including on adverse facts available. Further, at the outset of this investigation, several companies failed to respond to Commerce's quantity and value questionnaire (Q&V) questionnaire.[9] Therefore, because Commerce finds that certain respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[10] For a full description of the methodology underlying our preliminary determination, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

**All-Others Rate**

Sections 703(d)(1)(A)(i) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Commerce calculated individual estimated countervailable subsidy rates for Guangdong Huaxing Glass Co. Ltd. (Guangdong Huaxing) and Qixia Changyu Glass Co. Ltd. (Qixia Changyu) that are not zero, *de minimis,* or based entirely on section 776 of the Act. Therefore, Commerce calculated the all-others rate using a simple average of the individual estimated subsidy rates calculated for Guangdong Huaxing and Qixia Changyu using each company's values for the merchandise under consideration because publicly ranged sales data was unavailable.[11]

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate |
|---|---|
| Guangdong Huaxing Glass Co., Ltd[12] | 23.25 |
| Qixia Changyu Glass Co., Ltd | 22.60 |
| Asia Trade Connection | 315.73 |
| Built in China | 315.73 |
| Cangzhou Roter Faden Glass Products | 315.73 |
| Choicest International | 315.73 |
| East Asia Glass Limited | 315.73 |

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice.*

[7] *See* Shandong Pharmaceutical Glass Co., Ltd.'s Letter, ''Certain Glass Containers from the People's Republic of China: Shandong Pharmaceutical Glass Co., Ltd.—Comments on Scope,'' dated November 12, 2019, IKEA Supply AG's Letter, ''Antidumping and Countervailing Duty Investigations on Certain Glass Containers from the People's Republic of China—Scope Comments,'' dated November 12, 2019, Target General Merchandise, Inc.'s Letter, ''Certain Glass Containers from the People's Republic of China: Scope Comments,'' dated November 12, 2019, Zibo Glass Container Exporter Coalition's Letter, ''Certain Glass Containers from the People's Republic of China: Submission of Scope Comments,'' dated November 8, 2019, and Midwest Custom Bottling LLC's Letter, ''Certain Glass Containers from the People's Republic of China: Scope Comments,'' dated November 12, 2019.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] The companies that failed to properly respond to Commerce's quantity and value questionnaire were: Asia Trade Connection, Built in China, Cangzhou Roter Faden Glass Products, Choicest International, East Asia Glass Limited, Guangzhou Idealpak Business, Haimen Sanlong Glass Products, Hebei Anyu Glass Products Co. Ltd., Hebei Zhengi Glass Products Co. Ltd., Huazhong Glass Co. Ltd. (Changxing), Iboya Glass, Jiangmen Zhong'an Import and Export, Jining Baolin Glass Product Co. Ltd., Kisco Trading Shanghai, Lianyungang Chinamex Trade, Linlang (Shanghai) Glass Products Co. Ltd., New Westgate Glass Packaging, Ningbo Vifa International Trade Co., Qingdao Auro Pack, Qingdao Jutai International Trade Co., Rockwood & Hines (Jiaxing) Co. Ltd., SGS Bottle, Shandong Hongda Glassware Co. Ltd., Shandong Mounttai Sheng Li Yuan GLA, Shandong Qingguo Foods, Shandong Wensheng Glass Technology Co. Ltd., ShangHai Misa Glass Co. Ltd., Shanghai Vista Packaging, Suzhou Yunbo Glass, Unipack Glass, Value Chain Glass Ltd. (VCG), Wheaton Glass, Wuhan Vanjoin Packaging Co. Ltd., Xiamen Cheer Imp & Exp Co. Ltd., Xuzhou Dahua Glass Products Co. Ltd., Xuzhou Fangbao Glassware, Xuzhou Huajing Glass Products, Xuzhou Livlong Glass Products Co. Ltd., Xuzhou Pretty Glass Products, Xuzhou Wan Xuan Import and Export, Xuzhou Yanjia Glassware, Yantai NBC Glass Packaging Co. Ltd., Yuncheng Jinpeng Glass Co. Ltd., Zheijiang Industrial Minerals Foreign Trade Co Ltd., Zibo CY International Trade Co. Ltd., Zibo Regal Glassware and Zibo Rongdian Glass Co. Ltd. (collectively, the 47 non-responsive companies). We refer to these companies, collectively, as the ''non-responsive companies.''

[10] *See* sections 776(a) and (b) of the Act.

[11] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please *see* the All-Others' Rate Calculation Memorandum.

[12] Guangdong Huaxing reported the following cross-owned companies which also preliminarily will receive Guangdong Huaxing's subsidy rate: Foshan Huaxing Glass Co. Ltd., Fujian Huaxing Glass Co. Ltd., Daye Huaxing Glass Co. Ltd., Hunan Huaxing Glass Co. Ltd., Guizhou Huaxing Glass Co. Ltd., Zhejiang Huaxing Glass Co. Ltd., Foshan City San Shui Hua Xing Glass Co. Ltd., Fujian Changcheng Huaxing Glass Co. Ltd., Jiangsu Huaxing Glass Co. Ltd., Hebei Huaxing Glass Co. Ltd., Henan Huaxing Glass Co Ltd., and Xinjiang Huaxing Glass Co. Ltd.

| Company | Subsidy rate |
|---|---|
| Guangzhou Idealpak Business | 315.73 |
| Haimen Sanlong Glass Products | 315.73 |
| Hebei Anyu Glass Products Co. Ltd | 315.73 |
| Hebei Zhengi Glass Products Co. Ltd | 315.73 |
| Huazhong Glass Co. Ltd. (Changxing) | 315.73 |
| Iboya Glass | 315.73 |
| Jiangmen Zhong'an Import and Export | 315.73 |
| Jining Baolin Glass Product Co. Ltd | 315.73 |
| Kisco Trading Shanghai | 315.73 |
| Lianyungang Chinamex Trade | 315.73 |
| Linlang (Shanghai) Glass Products Co. Ltd | 315.73 |
| New Westgate Glass Packaging | 315.73 |
| Ningbo Vifa International Trade Co | 315.73 |
| Qingdao Auro Pack | 315.73 |
| Qingdao Jutai International Trade Co | 315.73 |
| Rockwood & Hines (Jiaxing) Co. Ltd | 315.73 |
| SGS Bottle | 315.73 |
| Shandong Hongda Glassware Co. Ltd | 315.73 |
| Shandong Mounttai Sheng Li Yuan GLA | 315.73 |
| Shandong Qingguo Foods | 315.73 |
| Shandong Wensheng Glass Technology Co. Ltd | 315.73 |
| ShangHai Misa Glass Co. Ltd | 315.73 |
| Shanghai Vista Packaging | 315.73 |
| Suzhou Yunbo Glass | 315.73 |
| Unipack Glass | 315.73 |
| Value Chain Glass Ltd. (VCG) | 315.73 |
| Wheaton Glass | 315.73 |
| Wuhan Vanjoin Packaging Co. Ltd | 315.73 |
| Xiamen Cheer Imp & Exp Co. Ltd | 315.73 |
| Xuzhou Dahua Glass Products Co. Ltd | 315.73 |
| Xuzhou Fangbao Glassware | 315.73 |
| Xuzhou Huajing Glass Products | 315.73 |
| Xuzhou Livlong Glass Products Co. Ltd | 315.73 |
| Xuzhou Pretty Glass Products | 315.73 |
| Xuzhou Wan Xuan Import and Export | 315.73 |
| Xuzhou Yanjia Glassware | 315.73 |
| Yantai NBC Glass Packaging Co. Ltd | 315.73 |
| Yuncheng Jinpeng Glass Co. Ltd | 315.73 |
| Zheijiang Industrial Minerals Foreign Trade Co Ltd | 315.73 |
| Zibo CY International Trade Co. Ltd | 315.73 |
| Zibo Regal Glassware | 315.73 |
| Zibo Rongdian Glass Co. Ltd | 315.73 |
| All Others | 22.93 |

**Suspension of Liquidation**

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[13] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 21 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Final Determination**

Section 705(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination, unless postponed.

### International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination, whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

### Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: February 24, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I

#### Scope of the Investigation

The merchandise covered by this investigation is certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) Glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without ''mold seams,'' ''joint marks,'' or ''parting lines;'' and (3) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure to seal the container's contents, including but not limited to a lid, cap, or cork).

Glass containers subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5005, 7010.90.5009, 7010.90.5015, 7010.90.5019, 7010.90.5025, 7010.90.5029, 7010.90.5035, 7010.90.5039, 7010.90.5045, 7010.90.5049, and 7010.90.5055. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

### Appendix II

#### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Diversification of China's Economy
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Subsidies Valuation
IX. Benchmarks and Interest Rates
X. Analysis of Programs
XI. Calculation of the All-Others Rate
XII. ITC Notification
XIII. Disclosure and Public Comment
XIV. Recommendation

[FR Doc. 2020–04223 Filed 2–28–20; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Announcement of Upcoming May 2020 Through April 2021 International Trade Administration Trade Missions

**AGENCY:** International Trade Administration, Department of Commerce.

**SUMMARY:** The United States Department of Commerce, International Trade Administration (ITA) is announcing six upcoming trade missions that will be recruited, organized, and implemented by ITA. These missions are:

- Security Mission for Economic Prosperity in El Salvador, Honduras, and Guatemala—May 10–15, 2020.
- Reconstruction Trade Mission to Southern Africa—June 15–18, 2020.
- Executive-led Trade Mission and Business Development Event in East Africa—August 31, 2020–September 3, 2020.
- The 13th Annual U.S. Industry Program at the International Atomic Energy Agency General Conference in Vienna, Austria—September 20–23, 2020.
- Cybersecurity Business Development Mission to Peru, Chile, and Uruguay, with an optional stop in Argentina—October 5–9, 2020.
- Cyber Security Business Development Mission to India—April 19–23, 2021.

A summary of each mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *http://export.gov/trademissions.*

For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

**FOR FURTHER INFORMATION CONTACT:** Gemal Brangman, Trade Promotion Programs, Industry and Analysis, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3773.

### The Following Conditions for Participation Will Be Used for Each Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may either: Reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

A trade association/organization applicant must certify to the above for all of the companies it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the export of products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;

• Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

• Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

**The Following Selection Criteria Will Be Used for Each Mission**

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services, that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

• Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;

• The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and

• Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company participants' size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

**Trade Mission Participation Fees**

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation or health risk in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

**Definition of Small and Medium Sized Enterprise**

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

*Mission List:* (additional information about each mission can be found at *https://www.trade.gov/trade-missions*).

**Security Mission for Economic Prosperity in El Salvador, Guatemala, and Honduras**

**Dates: May 10–15, 2020**

**Summary**

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Security Mission for Economic Prosperity in El Salvador, Guatemala, Honduras, May 10–15, 2020. The Trade Mission will kick off with a regional conference, Risk Management for Economic Prosperity, on May 11, 2020, which the mission participants will attend. The conference is led by the regional American Chambers of Commerce and will have participation by officials from the governments of El Salvador, Guatemala, and Honduras. By joining in the mission and conference, participants will learn about regional priorities, policy and regulatory changes, and projects throughout the region. The purpose of the mission is to leverage the regional political and economic climate and include both Deal Team 2.0 and the America Crece Initiative. Both events will initiate new opportunities to advance the interests of U.S. business in these markets with the development and announcement by the new governments of priority projects in safety & security, information and communication technology (ICT), infrastructure, smart cities, ports, and energy.

**Proposed Timetable**

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

| | |
|---|---|
| Sunday, May 10, 2020 | • Trade Mission Participants Arrive. Ice breaker reception for companies and core team members including participants and collaborators. |
| Monday, May 11, 2020 | • Regional SCO will kick off *Risk Management for Economic Prosperity conference* to which the mission participants will attend and learn about regional priorities, policy and regulatory changes, and projects throughout the region. |

| | |
|---|---|
| | • Reception in the evening at the Chief of Mission's residence for companies, government officials, and local private sector guests. |
| Tuesday, May 12, 2020 | • Matchmaking offered to mission participants in El Salvador. |
| Wednesday/Thursday, May 13–14, 2020 | • Arrival in Guatemala *or* Honduras for matchmaking and other networking. |
| Friday, May 15th | • End of Mission. |

**Participation Requirements**

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and a maximum of 15 companies and/or trade associations will be selected to participate in the mission from the applicant pool.

**Fees and Expenses**

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Security Mission for Economic Prosperity in El Salvador then Guatemala and/or Honduras will be $3,500 for small or medium-sized enterprises (SME) 1 and $4,900 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $500. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for an additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

**Timeframe for Recruitment and Application**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than March 2, 2020. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after March 20, 2020, will be considered only if space and scheduling constraints permit.

**Contacts**

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Rommel Alcantara, Commercial Specialist, U.S. Commercial Service—Honduras, U.S. Embassy Tegucigalpa, (504) 2236–9320, ext 4092, *Rommel.Alcantara@trade.gov*

Maria Rivera, Senior Commercial Specialist, U.S. Commercial Service—El Salvador, U.S. Embassy San Salvador, 503–2501–3060, *Maria.Rivera@trade.gov*

**Reconstruction Trade Mission to Southern Africa**

**Dates: June 15–18, 2020**

**Summary**

The proposed Reconstruction Trade Mission to Southern Africa will visit Maputo, Mozambique, and have optional visits to Harare, Zimbabwe and/or Lilongwe, Malawi. The purpose of the mission is to highlight the reconstruction needs of these countries to U.S. suppliers and service providers following the devastating Cyclone Idai. Cyclone Idai is regarded as one of the worst-ever natural disasters in the southern hemisphere which had a direct impact in Mozambique, Zimbabwe and Malawi. In the early hours of March 15, 2019 wind speeds of more than 100 miles/hour and a storm surge surpassing 14 feet devastated the coastline. The eye of the storm hit at and near the city of Beira, Mozambique and spread to neighboring Malawi and Zimbabwe with large-scale flooding and mudslides.

The trade mission participants would meet with the Ministries of Energy and Natural Resources, USAID partners, World Bank and African Development Bank representatives, and other relevant government and private entities in Mozambique, Zimbabwe, and Malawi to discuss opportunities surrounding the reconstruction efforts. During the mission, U.S. companies will be introduced to potential local business partners and will be able to identify projects in which there is a significant demand for their products and services. The Mission will include representatives from U.S. producers and service providers that offer critical infrastructure, energy infrastructure, construction-related products, health and IT systems infrastructure and services. Participating firms and associations will gain market insights, make industry contacts, solidify business strategies, and be better positioned to advance specific projects, with the goal of increasing U.S. exports of products and services to Mozambique, Zimbabwe, and Malawi. The mission will include customized one-on-one business appointments with pre-screened potential buyers, agents, distributors, and joint venture partners; meetings with state and local government officials and industry leaders; and networking events. The trade mission will also have the added benefit of helping contribute to the humanitarian effort, further burnishing the image of U.S. companies and strengthening U.S. relations with these countries.

**Proposed Timetable**

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

| | |
|---|---|
| Monday, June 15, 2019, Optional Stop—Harare, Zimbabwe/Lilongwe, Malawi. | Economic Briefing.<br>Government and development bank meetings.<br>Ambassador Reception. |

| | |
|---|---|
| Tuesday, June 16, 2019, Optional Stop—Harare/Lilongwe, Maputo, Mozambique. | Meetings with local private sector.<br>Travel to Maputo.<br>Networking Reception. |
| Wednesday, June 17, 2019, Maputo, Mozambique | Economic Briefing.<br>Meetings with Government.<br>Ambassador Reception. |
| Thursday, June 18, 2019, Maputo, Mozambique | Government meetings.<br>Meetings with development banks.<br>Meetings with private sector.<br>Depart. |

**Participation Requirements**

All parties interested in participating in the Reconstruction Trade Mission to Southern Africa must complete and submit an application package for consideration by DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. U.S. companies or trade associations already doing business with countries as well as U.S. companies seeking to enter to the countries' markets for the first time may apply. A minimum of 15 companies and/or trade associations will be selected for participation in this mission from the applicant pool.

**Fees and Expenses**

After a company or trade association has been selected to participate on the mission, a payment to the DOC in the form of a participation fee is required. All companies will visit Maputo, Mozambique as part of the mission. The participation fee for the main stop to Maputo, Mozambique is $3,100 for a large firm or trade association and $1,400 for a small or medium-sized enterprise (SME), which covers one representative. For additional representatives the company participation fee is $200. The company should then select which optional stop, if any, it would like to join, Lilongwe, Malawi and/or Harare, Zimbabwe. For the optional stop to Lilongwe, Malawi the participation fee is $3,100 for a large firm or trade association and $1,500 for a small or medium-sized enterprise (SME), which covers one representative with the fee for an additional representative at $100. To participate in the optional stop in Harare, Zimbabwe, the participation fee for the optional stop to Harare is $1,750 for a large firm or trade association and $800 for a small or medium-sized enterprise (SME), which covers one representative. The minimum number of firms required for the Zimbabwe stop is three, and a company must pay $200 for an additional representative. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

**Timeframe for Recruitment and Application**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the U.S. Department of Commerce trade mission calendar (*www.export.gov/trademissions*) and other internet websites, press releases to general and trade media, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than March 13, 2020. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the minimum of fifteen participants is reached. We will inform all applicants of selection decisions as soon as possible after the applications are reviewed. Applications received after March 13th will be considered only if space and scheduling constraints permit.

**How To Apply**

Applications can be downloaded from the trade mission website or can be obtained by contacting Tamarind Murrietta or Ashley Bubna at the U.S. Department of Commerce (see contact details below). Completed applications should be submitted to Tamarind Murrietta or Ashley Bubna.

**Contacts**

U.S. Commercial Service Mozambique, Tamarind Murrietta, U.S. Commercial Counselor, *Tamarind.Murrietta@trade.gov,* +258–2135–5475

U.S. Commercial Service Office of Africa, Ashley Bubna, Desk Officer, *Ashley.bubna@trade.gov,* +1–202–482–5205

**Executive-Led Mission and Business Development Event in East Africa**

**Date: August 31–September 3, 2020**

**Summary**

The United States Department of Commerce (USDOC), International Trade Administration (ITA), is organizing a two-part program consisting of an Executive-led Trade Mission (TM) and a Commercial Service (CS)-supported Business Development Event in Nairobi, Kenya.

The TM will be Executive-led with an emphasis on Business-to-Government (B2G) meetings for U.S. companies interested in competing for government projects that are a part of the Government of Kenya's (GOK) Big Four agenda. Following the TM meetings, a larger group of U.S. companies will join the delegation to take part in a CS-supported event, the American Chamber of Commerce Summit 2020 (Summit). The Summit will have a regional focus and provide U.S. companies with opportunities to gain exposure to companies and officials from markets across East Africa (*i.e.,* Ethiopia, Kenya, Rwanda, Tanzania, and Uganda).

In addition to the two-part program in Kenya, interested companies are able to select optional spin-offs for tailored business meetings in Uganda and/or Tanzania before and after the Kenyan program, respectively.

**Schedule**

**Proposed Timetable ***

* *Note:* The final schedule of meetings, events, and site visits will depend on the availability of host government and business officials, specific goals of mission participants, and flight availability and ground transportation options.

| | |
|---|---|
| Thursday, August 27 | • (OPTIONAL) B2B/B2G Meetings in Kampala, Uganda. |
| Friday–Sunday, August 28–30 | • Weekend Travel.<br>• Trade Mission Participants Arrive in Kenya. |

| | |
|---|---|
| Monday, August 31 | • Country Briefing.<br>• Trade Mission B2G/B2B Meetings.<br>• Official Luncheon. |
| Tuesday, September 1 | • Trade Mission B2G/B2B Meetings.<br>• Trade Mission B2G/B2B Meetings.<br>• Official Reception at Ambassador's Residence. |
| Wednesday–Thursday, September 2–3 | • AmCham Summit 2020.<br>• Panel Sessions.<br>• Industry breakouts.<br>• B2B Summit Meetings.<br>• Summit Reception. |
| Friday–Sunday, September 4–6 | • (OPTIONAL) Weekend Travel.<br>• Trade Mission Participants Arrive.<br>• Country Briefing. |
| Monday, September 7 | • (OPTIONAL) B2B/B2G Meetings in Dar es Salaam, Tanzania. |

**Participation Requirements**

All parties interested in participating in the executive-led trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of six and maximum of ten firms and/or trade associations will be selected to participate in the mission from the applicant pool.

**Fees and Expenses**

After a firm or trade association has been selected to participate on the mission, a payment to the USDOC in the form of a participation fee is required. The participation fee for the Executive-Led Mission will be $2,300 for small or medium-sized enterprises (SME) 1; and $3,400 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $500.

Fees for optional spinoffs to Uganda and/or Tanzania will follow the Gold Key Service fee structure at an additional $950 per small, $2,300 per medium-sized, and $3,400 per large firm and trade association/organization, plus any direct costs.[1]

**Timeline for Recruitment**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the USDOC trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than July 31, 2020. The USDOC will review applications and inform applicants of selection decisions on a comparative basis. Applications received after July 31, 2020 will be considered only if space and scheduling constraints permit.

**Contacts**

U.S. & Foreign Commercial Service—Nairobi Team:

Leone Mutoka, Commercial Assistant, +254–20–363–6438, *Leone.Mutoka@trade.gov*

Judy Magondu, Commercial Assistant, +254 (20) 363–6400, *Judy.Magondu@trade.gov*

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U.S. & Foreign Commercial Service—Dar es Salaam Team:

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Mary Msemwa, Commercial Specialist, + 255–22–229–4340, *Mary.Msemwa@trade.gov*

State Department Partner Post—Kampala Team:

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Mark R. Krumm, Econ Officer, *KrummMR@state.gov,* +256 (0) 414–306–239

**13th Annual U.S. Industry Program at the International Atomic Energy Agency (IAEA) General Conference in Vienna, Austria**

**Date: September 20–23, 2020**

**Summary**

The United States Department of Commerce's (DOC) International Trade Administration (ITA), with participation from the U.S. Departments of Energy and State, is organizing the 13th Annual U.S. Industry Program at the International Atomic Energy Agency (IAEA) General Conference, to be held September 20–23, 2020, in Vienna, Austria. The IAEA General Conference is the premier global meeting of civil nuclear policymakers and typically attracts senior officials and industry representatives from all 170 Member States. The U.S. Industry Program is part of the U.S. Department of Commerce's (DOC) Civil Nuclear Trade Initiative, a U.S. Government effort to help U.S. civil nuclear companies identify and capitalize on commercial civil nuclear opportunities around the world. The purpose of the program is to help the U.S. nuclear industry promote its services and technologies to an international audience, including senior energy policymakers from current and emerging markets as well as IAEA staff.

Representatives of U.S. companies from across the U.S. civil nuclear supply chain are eligible to participate. In addition, organizations providing related services to the industry, such as universities, research institutions, and U.S. civil nuclear trade associations, are eligible for participation. The mission will help U.S. participants gain market insights, make industry contacts, solidify business strategies, and identify or advance specific projects with the goal of increasing U.S. civil nuclear exports to a wide variety of countries interested in nuclear energy.

The schedule includes: Meetings with foreign delegations and discussions with senior U.S. Government officials on important civil nuclear topics including regulations, technology and standards, liability, public acceptance, export controls, financing, infrastructure development, and R&D cooperation. Past U.S. Industry Programs have included participation by the U.S. Secretary of Energy, the Chairman of the U.S. Nuclear Regulatory Commission (NRC), and senior U.S. Government officials from the Departments of Commerce, Energy, State, the Export-

[1] See *https://www.export.gov/article?id=CS-User-Fees* for the U.S. Commercial Service user fee schedule for Gold Key Service.

Import Bank of the United States, and the National Security Council.

There are significant opportunities for U.S. businesses in the global civil nuclear energy market. With 55 reactors currently under construction in 15 countries and 160 nuclear plant projects planned in 27 countries over the next 8–10 years, this translates to a market demand for equipment and services totaling $500–740 billion over the next ten years.

**Proposed Timetable**

**** Note that specific events and meeting times have yet to be confirmed ****

*Sunday, September 20*

3:00 p.m.–5:00 p.m.—1–1 Showtime Meetings with visiting ITA Staff
6:00 p.m.–8:00 p.m.—U.S. Industry Welcome Reception

*Monday, September 21*

7:00 a.m.—Industry Program Breakfast Begins
8:00 a.m.–9:45 a.m.—U.S. Policymakers Roundtable
9:45 a.m.–10:00 a.m.—Break
10:00 a.m.–11:00 a.m.—USG Dialogue with Industry
11:00 a.m.–6:00 p.m.—IAEA Side Events
11:00 a.m.–12:30 p.m.—Break
12:30–6:00 p.m.—Country Briefings for Industry Delegation (presented by foreign delegates)
7:30–9:30 p.m.—U.S. Mission to the IAEA Reception

*Tuesday, September 22*

9:00 a.m.–6:00 p.m.—Country Briefings for Industry (presented by foreign delegates)
10:00 a.m.–6:00 p.m.—IAEA Side Event Meetings

*Wednesday, September 23*

9:00 a.m.–6:00 p.m.—Country Briefings for Industry (presented by foreign delegates)
10:00 a.m.–6:00 p.m.—IAEA Side Event Meetings

**Participation Requirements**

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and maximum of 50 companies and/or trade associations and/or U.S. academic and research institutions will be selected to participate in the mission from the applicant pool. The first ten applicants will be permitted to send two representatives per organization (if desired). After the first ten applicants, additional representatives will be permitted only if space is available. Participating companies may send more than two participants if space permits. The Department of Commerce will evaluate applications and inform applicants of selection decisions beginning three weeks after publication in the **Federal Register** and on a rolling basis thereafter until the maximum number of participants has been selected.

**Fees and Expenses**

After a company or organization has been selected to participate on the mission, a payment to the DOC in the form of a participation fee is required. The fee covers ITA support to register U.S. industry participants for the IAEA General Conference. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Participants will be able to take advantage of discounted rates for hotel rooms.

The fee to participate in the event is $5,200 for a large company and $4,400 for a small or medium-sized company (SME)2, a trade association, or a U.S. university or research institution. The fee for each additional representative (large company, trade association, university/research institution, or SME) is $2,000.

**Timeframe for Recruitment and Application**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*), and notices by industry trade associations and other multiplier groups. Recruitment for the mission will begin immediately and conclude no later than July 17, 2020. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after July 20, 2020, will be considered only if space and scheduling constraints permit.

**Contacts**

Jonathan Chesebro, Industry & Analysis, Office of Energy and Environmental Industries, Washington, DC, Tel: (202) 482–1297, Email: *jonathan.chesebro@trade.gov*

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**Cyber-Security Business Development Mission to Peru, Chile, and Uruguay With Optional Stop in Argentina**

**Dates: October 5–9, 2020**

**Summary**

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Cybersecurity Business Development Mission to Peru, Chile, and Uruguay, October 5–9, 2020, with an optional stop in Argentina on October 13, 2020.

This mission aims to introduce U.S. firms and trade associations to some of South America's most rapidly growing information and communication technology (ICT), security, and critical infrastructure protection markets. It will assist U.S. companies in finding business partners to which they may export their products and services to the region. Target participants are U.S. companies and U.S. trade associations with members that provide cybersecurity and critical infrastructure protection products and services. The mission will visit Santiago, Chile; Montevideo, Uruguay; and Lima, Peru, along with an optional stop in Buenos Aires, Argentina. Participating firms will have the opportunity to gain market insights, make industry contacts, solidify business strategies, and advance their own specific projects, all with the goal of increasing U.S. cyber security product and service exports to the region. This mission will include customized, one-on-one, business appointments with pre-screened potential buyers, agents, distributors, and joint venture partners. It will also allow for meetings with industry leaders as well as state and local government officials, along with other networking events.

**Proposed Timetable**

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

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| Sunday, October 4, 2020 | • Trade Mission Participants Arrive in Lima, Peru. |

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| Monday, October 5, 2020 | • Welcome and Country Briefing (Peru).<br>• Presentations and/or cabinet/ministry meetings.<br>• Networking Lunch.<br>• One-on-One business matchmaking appointments.<br>• Networking Reception at Ambassador's residence (TBC). |
| Tuesday, October 6, 2020 | • Travel to Santiago, Chile.<br>• Welcome and Country Briefing (Chile).<br>• Presentations. |
| Wednesday, October 7, 2020 | • One-on-One business matchmaking appointments.<br>• Networking Lunch.<br>• Cabinet/ministry meetings.<br>• Networking Reception at Ambassador's residence (TBC). |
| Thursday, October 8, 2020 | • (Morning) Travel to Montevideo, Uruguay.<br>• (Afternoon)Welcome and briefing.<br>• Presentations by Uruguayan government entities. |
| Friday, October 9, 2020 | • (Morning) Business matchmaking.<br>• Closing Ambassador's reception (TBC).<br>• (Afternoon) Trade mission participants depart for optional Argentina stop or return home. |
| Saturday–Monday, October 10–12, 2020 | • Travel day or free time for Argentina optional stop participants.<br>• National Holiday (Argentina) on Monday, October 12th. |
| Tuesday, October 13, 2020 (Optional) | • Welcome and Country Briefing (Argentina).<br>• One-on-One business matchmaking appointments. |

**Participation Requirements**

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 12 and maximum of 15 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

**Fees and Expenses**

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the business development mission will be $5,700 for small or medium-sized enterprises (SME); and $7,750 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $1,000. The cost for the optional stop in Argentina is not included and is charged as a full Gold Key Service fee at an additional $950 per small, $2,300 per medium-sized, and $3,400 per large firm and trade association/organization, plus any direct costs.[2] Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

[2] See *https://www.export.gov/article?id=CS-User-Fees* for the U.S. Commercial Service user fee schedule for Gold Key Service.

**Timeframe for Recruitment and Application**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than July 17, 2020. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants is selected. Applications received after July 17, 2020, will be considered only if space and scheduling constraints permit.

**Contacts**

*USA*

Gemal Brangman, Senior Advisor, Trade Missions, Trade Events Management Task Force, Washington, DC, 202–482–3773, *Gemal.Brangman@trade.gov*

Paul Matino, Senior International Trade Specialist, Baltimore, MD—USEAC, 410–962–4539, *Paul.Matino@trade.gov*

Pompeya Lambrecht, Senior International Trade Specialist, Northern Virginia—USEAC, 703–235–0102, *Pompeya.Lambrecht@trade.gov*

*Peru*

Leon Skarshinski, Commercial Officer, U.S. Embassy—Lima, Peru, *Leon.Skarshinski@trade.gov*

*Chile*

Joshua Leibowitz, Commercial Officer, U.S. Embassy—Santiago, Chile, *Joshua.Leibowitz@trade.gov*

*Uruguay*

Matthew Poole, Senior Commercial Officer, U.S. Embassy—Montevideo, Uruguay, *Matthew.Poole@trade.gov*

*Argentina*

Karen Ballard, Commercial Officer, U.S. Embassy—Santiago, Chile, *Karen.Ballard@trade.gov*

**Cyber Security Business Development Mission to India**

**Dates: April 19–23, 2021**

**Summary**

The United States Department of Commerce, International Trade Administration (ITA), is organizing an Executive-led Cyber Security Business Development Mission to India.

The purpose of the mission is to introduce U.S. firms and trade associations to India's information and communication technology (ICT) security and critical infrastructure protection markets and to assist U.S. companies to find business partners and export their products and services to the region. The mission is intended to include representatives from U.S. companies and U.S. trade associations with members that provide cyber security, data protection, critical infrastructure protection, and other cyber security related equipment and services. The mission will visit India where U.S. firms will have access to business development opportunities

across India. Participating firms will gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports of products and services to India. The mission will include customized one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with state and local government officials and industry leaders; and networking events.

**Proposed Timetable**

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

| | |
|---|---|
| Sunday, April 18 | • Trade Mission Participants Arrive in New Delhi. |
| Monday, April 19 | • Welcome and Country Briefing.<br>• One-on-One business matchmaking appointments.<br>• Networking Lunch (No-Host).<br>• One-on-One business matchmaking appointments.<br>• Networking Reception at Deputy Chief of Mission residence (TBC). |
| Tuesday, April 20 | • Breakfast roundtable with Indian industry groups and associations (TBC).<br>• Cyber Security event to share best practices and promote participants.<br>• Networking Lunch (No-Host).<br>• Ministry and other Indian Government Briefings and Meetings.<br>• Transportation from Hotel to Airport Included<br>• Travel to Mumbai. |
| Wednesday, April 21 | • Welcome Briefing, Mumbai and Maharashtra State.<br>• One-on-One business matchmaking appointments.<br>• Networking Lunch (No-Host).<br>• One-on-One business matchmaking appointments.<br>• Networking Reception at Consul General residence (TBC). |
| Thursday, April 22 | • Breakfast roundtable with Indian industry groups and associations (TBC).<br>• Cyber Security event to share best practices and promote participants.<br>• Networking Lunch (No-Host).<br>• Indian Government Briefings and Meetings.<br>• Travel to Airport (NOT INCLUDED). |
| Friday, April 23 | • OPTIONAL STOP—Bangalore or Hyderabad.<br>• One-on-One business matchmaking appointments.<br>• Networking Lunch (No-Host).<br>• One-on-One business matchmaking appointments. |

**Participation Requirements**

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 12 and maximum of 20 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

**Fees and Expenses**

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Cyber Security Business Development Mission will be $3,200 for small or medium-sized enterprises (SME); and $6,000 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $1,000. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members may be able to take advantage of preferential rates for hotel rooms.

**Timeframe for Recruitment and Application**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than February 1, 2021. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after February 1, 2021 will be considered only if space and scheduling constraints permit.

**CONTACTS**

*USA*

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*Office of South Asia*

Noor Sclafani, India, Pakistan, Afghanistan Desk, International Trade Administration, U.S. Department of Commerce, Tel: 202–482–1421, *Noor.Sclafani@trade.gov*

Carla Menéndez McManus, Commercial Officer, U.S. Consulate General, Mumbai, U.S. Commercial Service, International Trade Administration | U.S. Department of Commerce, Tel: + 91–22–672–4000, *Carla.Menendez@trade.gov*

In India, until July 2020:

Erick Kish, Commercial Officer, U.S. Embassy New Delhi, U.S. Commercial Service, International Trade Administration | U.S. Department of

Commerce, Tel: +91–11–2347–2347, *Erick.Kish@trade.gov*.

In India, from August 2020 onwards:

Brenda VanHorn, Principal Commercial Officer, U.S. Consulate Mumbai, U.S. Commercial Service, International Trade Administration | U.S. Department of Commerce, Tel: + 91–22–672–4215, *Brenda.VanHorn@trade.gov*.

**Gemal Brangman,**

*Senior Advisor for Trade Missions.*

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**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

**SUPPLEMENTARY INFORMATION:**

#### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

#### Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

#### Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

#### Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

*Opportunity to Request a Review:* Not later than the last day of March 2020,[2] interested parties may request administrative review of the following orders, findings, or suspended

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

investigations, with anniversary dates in March for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceedings** | |
| AUSTRALIA: Certain Uncoated Paper, A–602–807 | 3/1/19–2/29/20 |
| BRAZIL: Certain Uncoated Paper, A–351–842 | 3/1/19–2/29/20 |
| CANADA: Iron Construction Castings, A–122–503 | 3/1/19–2/29/20 |
| FRANCE: Brass Sheet & Strip, A–427–602 | 3/1/19–2/29/20 |
| GERMANY: Brass Sheet & Strip, A–428–602 | 3/1/19–2/29/20 |
| INDIA: | |
| Large Diameter Welded Pipe, A–533–881 | 8/27/18–2/29/20 |
| Off-The-Road Tires, A–533–869 | 3/1/19–2/29/20 |
| Sulfanilic Acid, A–533–806 | 3/1/19–2/29/20 |
| INDONESIA: Certain Uncoated Paper, A–560–828 | 3/1/19–2/29/20 |
| ITALY: Brass Sheet & Strip, A–475–601 | 3/1/19–2/29/20 |
| PORTUGAL: Certain Uncoated Paper, A–471–807 | 3/1/19–2/29/20 |
| RUSSIA: Silicon Metal, A–821–817 | 3/1/19–2/29/20 |
| SOUTH AFRICA: Carbon and Alloy Steel Wire Rod, A–791–823 | 3/1/19–2/29/20 |
| TAIWAN: Light-Walled Rectangular Welded Carbon Steel Pipe and Tube, A–583–803 | 3/1/19–2/29/20 |
| THAILAND: Circular Welded Carbon Steel Pipes and Tubes, A–549–502 | 3/1/19–2/29/20 |
| THE PEOPLE'S REPUBLIC OF CHINA: | |
| Ammonium Sulfate, A–570–049 | 3/1/19–2/29/20 |
| Amorphous Silica Fabric, A–570–038 | 3/1/19–2/29/20 |
| Biaxial Integral Geogrid Products, A–570–036 | 3/1/19–2/29/20 |
| Carbon and Alloy Steel Cut-To-Length Plate, A–570–047 | 3/1/19–2/29/20 |
| Certain Plastic Decorative Ribbon, A–570–075 | 8/8/18–2/29/20 |
| Chloropicrin, A–570–002 | 3/1/19–2/29/20 |
| Circular Welded Austenitic Stainless Pressure Pipe, A–570–930 | 3/1/19–2/29/20 |
| Glycine, A–570–836 | 3/1/19–2/29/20 |
| Large Diameter Welded Carbon and Alloy Steel Line, And Structural Pipe, A–570–077 | 8/27/2018–2/29/20 |
| Sodium Hexametaphosphate, A–570–908 | 3/1/19–2/29/20 |
| Tissue Paper Products, A–570–894 | 3/1/19–2/29/20 |
| Certain Uncoated Paper, A–570–022 | 3/1/19–2/29/20 |
| UKRAINE: Carbon and Alloy Steel Wire Rod, A–823–816 | 3/1/19–2/29/20 |
| **Countervailing Duty Proceedings** | |
| INDIA: | |
| Fine Denier Polyester Staple Fiber, C–533–876 | 1/1/19–12/31/19 |
| Large Diameter Welded Pipe, C–533–882 | 6/29/18–12/31/19 |
| Off-The-Road Tires, C–533–870 | 1/1/19–12/31/19 |
| Sulfanilic Acid, C–533–807 | 1/1/19–12/31/19 |
| INDONESIA: Certain Uncoated Paper, C–560–829 | 1/1/19–12/31/19 |
| IRAN: In-Shell Pistachios, C–507–501 | 1/1/19–12/31/19 |
| THE PEOPLE'S REPUBLIC OF CHINA: | |
| Ammonium Sulfate, C–570–050 | 1/1/19–12/31/19 |
| Amorphous Silica Fabric, C–570–039 | 1/1/19–12/31/19 |
| Biaxial Integral Geogrid Products, C–570–037 | 1/1/19–12/31/19 |
| Carbon and Alloy Steel Cut-To-Length Plate, C–570–048 | 1/1/19–12/31/19 |
| Certain Plastic Decorative Ribbon, C–570–076 | 6/22/18–12/31/19 |
| Circular Welded Austenitic Stainless Pressure Pipe, C–570–931 | 1/1/19–12/31/19 |
| Fine Denier Polyester Staple Fiber, C–570–061 | 1/1/19–12/31/19 |
| Large Diameter Welded Pipe, C–570–078 | 6/29/18–12/31/19 |
| Certain Uncoated Paper, C–570–023 | 1/1/19–12/31/19 |
| TURKEY: Circular Welded Carbon Steel Pipes and Tubes, C–489–502 | 1/1/19–12/31/19 |

**Suspension Agreements**

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its

request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2020. If Commerce does not receive, by the last day of March 2020, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 20, 2020.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2020–04213 Filed 2–28–20; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA045]**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice; issuance of one renewed U.S. Endangered Species Act (ESA) Section 10(a)(1)(A) scientific enhancement permit (permit 14159–2R).

**SUMMARY:** Notice is hereby given that NMFS has issued a renewed ESA Section 10(a)(1)(A) scientific enhancement permit (permit 14159–2R) to NMFS' California Coastal Office in Long Beach, California. Authorized activities under this permit are expected to enhance the survival of the endangered Southern California Distinct Population Segment of steelhead (*Oncorhynchus mykiss*) through rescue and relocation of at-risk steelhead, ecological research, and invasive species management.

**ADDRESSES:** The application for permit 14159–2R and the issued permit are available for review, by appointment, at the foregoing address: California Coastal Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802 (phone: 562–980–4026, fax: 562–980–4027, email at: *Matthew.McGoogan@noaa.gov).* The permit application is also available for review online at the Authorizations and Permits for Protected Species website: *https://apps.nmfs.noaa.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Matt McGoogan (phone: 562–980–4026 or email: *matthew.mcgoogan@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

#### Species Covered in This Notice

Endangered Southern California Distinct Population Segment of steelhead (*Oncorhynchus mykiss*).

#### Authority

Scientific enhancement permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR part 222–227). NMFS may issue a scientific enhancement permit only when such a permit is determined (1) to be applied for in good faith, (2) will not operate to the disadvantage of the listed species which are the subject of the permit, and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permit.

Pursuant to Section 10(c) of the ESA, a notice of receipt for permit 14159–2R's application was published in the **Federal Register** on February 7, 2019 (84 FR 2492), providing 30 days for public comment prior to permit processing. No comment was received on this permit application.

[3] *See* the Enforcement and Compliance website at *https://legacy.trade.gov/enforcement/.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

**Permit Issued**

*Permit 14159–2R*

On July 30, 2019, the renewed Section 10(a)(1)(A) scientific enhancement permit 14159–2R was issued to NMFS' California Coastal Office in Long Beach, California. This permit authorizes activities that are expected to enhance the survival of the endangered Southern California (SC) Distinct Population Segment (DPS) of steelhead (*Oncorhynchus mykiss*) through (1) rescue and relocation of at-risk steelhead, (2) ecological research, and (3) invasive species management. Activities associated with these three primary components could occur anywhere within the range for the SC DPS of steelhead. A summary of these components is provided as follows.

1. Rescue and Relocation

This component involves rescuing and relocating steelhead from stream sections experiencing natural dewatering during the dry season or prolonged periods of below average rainfall. Specific staff listed on the permit from both NMFS and the California Department of Fish and Wildlife (CDFW) are authorized to conduct relocation activities and will follow a predetermined communication and documentation protocol while implementing these relocation efforts. Standard scientific methods and equipment (*e.g.,* backpack-electrofishing, nets, seines, portable air pumps, transport containers, water chillers, etc.) are authorized for the capture and relocation of steelhead. Captured steelhead will be transported for release into habitats within the same watershed (when possible) that are determined likely to maintain adequate water and habitat quality through the remainder of the dry season. Because this is an endangered population with low abundance, relocating steelhead from sections of stream where they will likely perish is expected to benefit the survival of this species.

2. Ecological Research

Basic information regarding the ecology of endangered SC steelhead is extremely limited, yet such information is critical for guiding science-based decisions regarding the conservation of this species. Field-based investigations authorized under permit 14159–2R are expected to produce much-needed empirical data, particularly data concerning the ecology of endangered steelhead. The empirical data would benefit endangered steelhead through informing species-management and protection efforts, including enforcement of certain ESA provisions. Specific NMFS' staff listed on the permit are authorized to implement this research. Ecological research elements authorized under permit 14159–2R involve the following: (1) Salvaging steelhead carcasses to assess age, growth, and toxicology; (2) trapping emergent fry to assess spawning ecology; (3) capturing juvenile steelhead to assess the effectiveness of steelhead relocation; (4) collecting and maintaining steelhead to improve species management and protection; and (5) developing a predictive model for the maximum size of juvenile steelhead in streams. Permit 14159–2R authorizes standard scientific methods and procedures (*e.g.,* Passive Integrated Transponder-tagging, fin-clip/DNA analysis, scale sampling, otolith analysis, anesthesia etc.) to conduct these research elements.

3. Invasive Species Management

NMFS' recovery plan for endangered SC steelhead highlights non-native aquatic plant and animal species as a threat to steelhead in many watersheds across the SC DPS of steelhead. Non-native fish, crustaceans, and amphibians can harm steelhead indirectly through competition for resources (*e.g.,* food, living space) or degradation of habitat quality and directly through predation on steelhead. As such, removing these non-native species is expected to be highly beneficial for steelhead. Specific NMFS and CDFW staff listed on the permit are authorized to implement standard methods for capture and removal of invasive species (*e.g.,* backpack-electrofishing, seining, hand-nets, traps, hook-and-line angling, and spearfishing). Invasive species management methods will target capture and removal of non-native species; however, these activities may also result in the capture of steelhead in the process. Steelhead captured during invasive species management will be (1) measured for length and weight, (2) potentially have a tissue sample (*i.e.,* fin clip, scale) taken, and (3) returned unharmed to the stream. Any non-native species captured will be humanely euthanized and disposed.

Field activities for the various enhancement components authorized under permit 14159–2R can occur year-round between July 30, 2019 and December 31, 2029. The annual sum of take authorized with permit 14159–2R is as follows: (1) Non-lethal capture and release of up to 4,000 juvenile steelhead while electrofishing, (2) non-lethal capture and release of up to 200 juvenile steelhead while seining, (3) non-lethal capture and release of up to 100 adult steelhead using hand net or seine, (4) collection and retention of up to 110 adult and 300 juvenile steelhead carcasses, (5) non-lethal capture and release of up to 5 adult and 600 juvenile steelhead for the purpose of applying Passive Integrated Transponder-tags, (6) non-lethal capture and release up to 2,000 fry during emergent trapping, (7) non-lethal capture of up to 5 juvenile steelhead while hook-and-line angling, and (8) non-lethal observation of up to 2,000 juvenile and 50 adult steelhead during instream snorkel surveys. The annual unintentional lethal steelhead take authorized under permit 14159–2R is up to 241 juvenile, 100 fry, and 2 adult. The annual intentional (directed) lethal take authorized under permit 14159–2R is up to 200 steelhead fry.

The activities authorized under permit 14159–2R are expected to enhance survival and support steelhead recovery across the entire SC DPS of steelhead and are consistent with recommendations and objectives outlined in NMFS' Endangered Southern California Steelhead Recovery Plan. See the application for permit 14159–2R and issued permit for greater details on the various components of this scientific enhancement effort including the specific scientific methods and take allotments authorized for each.

Dated: February 25, 2020.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2020–04215 Filed 2–28–20; 8:45 am]

**BILLING CODE 3510–22–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Guidance Document Portal

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to Executive Order 13891 and OMB Memorandum M–20–02, the Corporation for National and Community Service (CNCS) is notifying the public of the February 28, 2020 launch of a single, searchable, indexed database containing all CNCS guidance documents currently in effect.

**DATES:** February 28, 2020.

**ADDRESSES:** *www.nationalservice.com/guidance.*

**FOR FURTHER INFORMATION CONTACT:** Amy Borgstrom, Associate Director of Policy, *aborgstrom@cns.gov,* (202) 606–6930.

**SUPPLEMENTARY INFORMATION:** Section 3 of Executive Order 13891 requires federal agencies to ''establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from such agency or component.'' Executive Order 13891, 84 FR 55,235 (October 9, 2019).

Question 1 of OMB Memorandum M–20–02 further requires agencies to ''send to the **Federal Register** a notice announcing the existence of the new guidance portal and explaining that all guidance documents remaining in effect are contained on the new guidance portal.'' OMB Memorandum M–20–02 (October 31, 2019).

In compliance with the above, CNCS gives notice of the availability of a single, searchable, indexed database containing all CNCS guidance documents currently in effect, which may be accessed at *www.nationalservice.gov/guidance* on or after February 28, 2020.

(Authority: E.O. 13891, 84 FR 55,235; OMB Memorandum M–20–02)

Dated: February 24, 2020.

**Amy Borgstrom,**

*Associate Director of Policy.*

[FR Doc. 2020–04226 Filed 2–28–20; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 19–55]**

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of an arms sales notification.

**FOR FURTHER INFORMATION CONTACT:** Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–55, Policy Justification and Sensitivity of Technology.

Dated: February 25, 2020.

**Aaron T. Siegel,**

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

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

FEB 0 7 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-55, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of India for defense articles and services estimated to cost $1.867 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 19-55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of India

(ii) *Total Estimated Value*:

| | |
|---|---|
| Major Defense Equipment * .. | $ 0.492 billion |
| Other ..... | $ 1.375 billion |
| Total ..... | $ 1.867 billion |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*: India has requested a possible sale of an Integrated Air Defense Weapon System comprised of:

*Major Defense Equipment (MDE):*

Five (5) AN/MPQ-64Fl Sentinel Radar Systems
One hundred eighteen (118) AMRAAM AIM-120C-7/C-8 Missiles
Three (3) AMRAAM Guidance Sections
Four (4) AMRAAM Control Sections
One hundred thirty-four (134) Stinger FIM-92L Missiles

*Non-MDE:*

Also included are thirty-two (32) M4A1 rifles; forty thousand three hundred twenty (40,320) M855 5.56mm cartridges; Fire Distribution Centers (FDC); Handheld Remote Terminals; Electrical Optical/Infrared (EO/IR) Sensor Systems; AMRAAM Non-Developmental Item-Airborne

Instrumentation Units (NDIAIU); Multi-spectral Targeting System-Model A (MTS-A); Canister Launchers (CN); High Mobility Launchers (HML); Dual Mount Stinger (DMS) Air Defense Systems; Vehicle Mounted Stinger Rapid Ranger Air Defense Systems; communications equipment; tool kits; test equipment; range and test programs; support equipment; prime movers; generators; technical documentation; computer based training equipment; training equipment; training towers; ammunition storage; training and maintenance facilities; infrastructure improvements; U.S. Government and contractor technical support, engineering and logistics support services; warranty services; Systems and Integration Checkout (SICO); field office support; and other related elements of logistics and program support.

(iv) *Military Department*: Army (IN-B-UAP) and Air Force (IN-D-YAC)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex.

(viii) *Date Report Delivered to Congress*: February 7, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*India—Integrated Air Defense Weapon System (IADWS) and Related Equipment and Support*

The Government of India has requested to buy an Integrated Air Defense Weapon System (IADWS) comprised of: five (5) AN/MPQ-64Fl Sentinel radar systems; one hundred eighteen (118) AMRAAM AIM-120C-7/C-8 missiles; three (3) AMRAAM Guidance Sections; four (4) AMRAAM Control Sections; and one hundred thirty-four (134) Stinger FIM-92L missiles. Also included are thirty-two (32) M4A1 rifles; forty thousand three hundred twenty (40,320) M855 5.56mm cartridges; Fire Distribution Centers (FDC); Handheld Remote Terminals; Electrical Optical/Infrared (EO/IR) Sensor Systems; AMRAAM Non-Developmental Item-Airborne Instrumentation Units (NDIAIU); Multi-spectral Targeting System-Model A (MTS-A); Canister Launchers (CN); High Mobility Launchers (HML); Dual Mount Stinger (DMS) Air Defense Systems; Vehicle Mounted Stinger Rapid Ranger Air Defense Systems; communications equipment; tool kits; test equipment; range and test programs; support equipment; prime movers; generators; technical documentation; computer based training equipment; training equipment; training towers; ammunition storage; training and maintenance facilities; infrastructure improvements; U.S. Government and contractor technical support, engineering and logistics support services; warranty services; Systems and Integration Checkout (SICO); field office support; and other related elements of logistics and program support. The total estimated cost is $1.867 billion.

This proposed sale will support the foreign policy and national security of the United States by helping to strengthen the U.S.-Indian strategic relationship and to improve the security of a major defensive partner, which continues to be an important force for political stability, peace, and economic progress in the Indo-Pacific and South Asia region.

India intends to use these defense articles and services to modernize its armed forces, and to expand its existing air defense architecture to counter threats posed by air attack. This will contribute to India's military goal to update its capability while further enhancing greater interoperability between India, the U.S., and other allies. India will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors involved in this program are The Raytheon Corporation and Kongsberg Defense and Aerospace. There are no known offset agreements proposed in conjunction with this proposed sale; however, the purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the Purchaser and the prime contractor(s).

Implementation of this proposed sale will require 60 U.S. Government or contractor representatives to travel to India for a period of six weeks (non-concurrent). Activities will include de-processing/fielding, training, and technical/logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The Integrated Air Defense Weapon System (IADWS) is a System of Systems (SOS) consisting of the National Advanced Surface-to-Air Missile System (NASAMS), a Very Short Range Air Defense (VSHORAD) capability consisting of the Stinger FIM-92 Reprogrammable Micro-Processor (RMP) Block I missile, and small arms. The IADWS is designed for mid-range air defense and can be deployed to engage fixed wing and rotary wing aircraft, cruise missiles, and unmanned aerial vehicles (UAVs). The IADWS is not a Program of Record (POR) for the U.S. Department of Defense, but the SOS architecture does consist of four PORs: The U.S. Army's AN/MPQ-64 Sentinel radar, the U.S. Army's FIM-92L Stinger Missile, U.S. Air Force's Multi-Spectral Targeting System-A (MTS-A), and the U.S. Air Force's AIM-120 Advanced Medium Range Air-to-Air Missile (AMRAAM). The NASAMS is comprised of U.S. and Norwegian manufactured components. Norwegian components will be procured by the Raytheon Company. Norwegian involvement will be managed by Raytheon using export authorizations received from the U.S. Department of State.

2. The NASAMS Fire Unit (FU) consists of one fire distribution center (FDC), one AN/MPQ-64F1 surveillance, acquisition, and tracking radar, 3 truck-mounted Canister Launchers (LCHR) and the High Mobility Launcher (HML) with 6 AMRAAM missiles each, and one truck-mounted Electrical Optical/Infrared (EO/IR) Sensor System, the MTS-A, for visual target identification and raid size assessment.

3. The command and control entity, FDC, is the major operator interface in NASAMS. It provides all command and control functionality necessary to effectively conduct Air Defense missions, both in a stand-alone (autonomous) configuration as well as in a netted configuration integrated to other units. The FDC interfaces and controls the MPQ-64F1 Sentinel radar, the MTS-A EO/IR Sensor and the Canister and High Mobility-Launchers. In addition, it interfaces and sends commands to any connected Very Short Range Air Defense (VSHORAD) Stinger platforms. The FDC also interfaces (voice and data) to the national command and control structure.

4. The AN/MPQ-64F1 Sentinel Radar is the organic mobile Air Defense acquisition and tracking sensor for the United States Army. Sentinel provides persistent air surveillance and fire control quality data through command and control systems to defeat Unmanned Aerial System (UAS), cruise missiles, and fixed-wind and rotary-wing aircraft threats.

5. The purpose of the Canister Launcher (LCHR) and the High Mobility Launcher (HML) is to transport, aim, and fire the AMRAAM missiles. Under the remote control of the Fire Distribution Center (FDC), the LCHR/HML permits rapid launching of one or more missiles against single or multiple targets. The LCHR/HML provides 360-degree, all weather, day and night, missile launch capability.

6. The AN/AAS-52 and AN/AAS-44C(V) Multi-Spectral Targeting System-A (MTS-A) is a multi-use infrared (IR), electro optical (EO), and laser detecting ranging-tracking set originally developed and produced for use by airborne platforms. This advanced EO and IR system provides long-range surveillance, target acquisition, target tracking, range finding, and laser designation. It has been adapted for towers, aerostats, and ground based applications.

7. The AIM-120C-7/C-8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics that is also able to operate as a ground-based air defense missile capable in all-weather against multiple targets in a sophisticated electronic attack resistance to electronic countermeasure, and interception of high- and low-flying maneuvering targets. The AIM-120C-8 is a form, fit, function refresh of the AIM-120C-7 and is the next generation to be produced.

8. The VSHORAD system consists of the four Dual Mount Stinger (DMS) systems, two Rapid Ranger (RR) Stinger Mobile Integrated Defense Systems, and the Stinger 92L Reprogrammable Micro-Processor (RMP) Block I missile.

9. The Stinger 92L Reprogrammable Micro-Processor (RMP) Block I missile is an infrared homing surface-to-air missile that can be adapted to fire from a wide variety of ground vehicles.

10. The DMS System provides a man-transportable pedestal system that can be used day or night in any environment. The DMS fires two Stinger missiles, and includes fully integrated day/night sights with optical zoom capability. Included as part of the DMS is a ruggedized tablet from which video output from the visible band day-sight, IR scene from the night-sight, and target cueing data are integrated. Slew-to-cue-information provides guidance to the gunner for target selection. The DMS can interface with the NASAMS FDC for Target Designation and Target Engagement Authorization as well as autonomous operation.

11. The Rapid Ranger (RR) consists of a High Mobility Vehicle operated by a crew of three. The RR is integrated by Raytheon with two Stinger Vehicle Universal Launchers (SVULs), a Fire Control System (FCS), and a Command, Control and Communications (C3) System. The RR can interface with NASAMS FDC for Target Designation and Target Engagement Authorization as well as autonomous operation.

12. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

13. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of India.

[FR Doc. 2020–04167 Filed 2–28–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of Intent To Prepare an Environmental Impact Statement for Construction and Demonstration of a Prototype Advanced Mobile Nuclear Microreactor

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

**ACTION:** Notice of intent.

**SUMMARY:** The DoD, Office of the Secretary of Defense, acting through the Strategic Capabilities Office (SCO), and in partnership with the U.S. Department of Energy, Office of Nuclear Energy (DOE), proposes to construct and demonstrate a prototype advanced mobile nuclear microreactor (prototype microreactor) to support DoD domestic energy demands and DoD operational energy demands (Proposed Action).

SCO, as lead agency, in partnership with DOE, as a cooperating agency, intends to prepare an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) and applicable implementing regulations for the Proposed Action. The EIS also will cover the planned disposition of the prototype microreactor following operation and demonstration. Through this EIS process, SCO will identify measures to avoid, minimize, or mitigate any negative impacts to human health or the environment associated with the Proposed Action.

**DATES:** SCO invites public comment on the scope of this EIS during a 30-day public scoping period commencing March 2, 2020, and ending on April 1, 2020. Public comment may also be made at the public scoping meeting on March 18, 2020, in Fort Hall, Idaho (see ''Public Scoping Meeting,'' in the **SUPPLEMENTARY INFORMATION** section). In defining the scope of the EIS, SCO will consider all comments received or postmarked by the end of the scoping period. Comments received or postmarked after the scoping period end date will be considered to the extent practicable.

**ADDRESSES:** Written comments regarding the scope of the EIS and comments or questions on the scoping process may be sent by any of the following methods:

- *Email: PELE_NEPA@sco.mil.* Include ''Prototype Microreactor EIS Comments'' in the subject line.
- *Mail:* OSD Strategic Capabilities Office, ATTN: Prototype Microreactor EIS Comments, 675 N Randolph Street, Arlington, Virginia 22203–2114.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeff Waksman, Program Manager; address: SCO, 675 N Randolph St, Arlington, Virginia 22203–2114; email: *PELE_NEPA@sco.mil.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Need for Agency Action

The purpose of the Proposed Action is to construct and demonstrate a prototype microreactor that would be capable of producing 1–10 megawatts of electrical power. Pursuant to the National Defense Authorization Act for Fiscal Year 2018, Public Law 115–91, 131 Stat. 1283, 1857, section 2831, codified in 10 U.S.C. 2911, the Secretary of Defense has the authority to ''ensure the readiness of the armed forces for their military missions by pursuing energy security and energy resilience.'' Further, pursuant to the Consolidated Appropriations Act, 2020, Public Law 116–93, section 4, and the Act's accompanying congressional explanatory statement, 165 Congressional Record H10613, H10886 (daily edition December 17, 2019), SCO received an appropriation for this prototype microreactor.

The DoD is one of the largest users of energy in the world, and projections for future military operations predict energy demand will increase significantly in coming years. DoD installations need the capability to reduce their present reliance on local electric grids, which are highly vulnerable to prolonged outages from a variety of threats, placing critical missions at unacceptably high risk of extended disruption. Backup power is often based on diesel generators that have limited on-site fuel storage, are undersized for new homeland defense missions, are not prioritized to critical loads, and are inadequate in duration and reliability. Advanced nuclear power is capable of meeting the DoD's need to increase energy security and resilience, but must demonstrate its technical and safety specifications at full size and power.

The microreactor must keep radiation exposure during power operation, abnormal operations, or upset conditions, as low as reasonably achievable. SCO seeks to produce a prototype that will minimize consequences to the nearby environment and population in case of kinetic or non-kinetic action affecting structural integrity or release of contamination. Further, SCO seeks to utilize nuclear materials in the construction of a prototype microreactor that, if damaged, do not generate and impose excessive training and equipping burdens on forward area first responders, site medical facilities, or supported military personnel and the civilian population.

**Proposed Action**

The prototype microreactor is expected to be a small advanced gas reactor (AGR) using high-assay low enriched uranium (HALEU) tristructural isotropic (TRISO) fuel and air cooling. TRISO fuel is encapsulated and has been demonstrated in the laboratory to be able to withstand temperatures up to 1,800 degrees Celsius, allowing for an inherently safe prototype microreactor. The Proposed Action includes construction of the prototype microreactor and demonstration activities. The demonstration activities may include testing of project materials, startup and transient testing and evaluation of the constructed prototype microreactor, transportation and operational testing of the prototype microreactor or its components within the boundaries of the selected site to test and evaluate prototype microreactor mobility, and post-irradiation testing of project materials. The EIS also will cover the planned disposition of the prototype microreactor following operation and demonstration.

Additionally, there are expected to be ancillary activities necessary to support the Proposed Action. These include the fabrication of reactor fuel, the assembly of test/experimental modules at existing, modified, or newly constructed test/experiment assembly facilities, and the management of waste and spent nuclear fuel. After irradiation of the prototype microreactor, test/experimental cartridges would be transferred to post-irradiation examination facilities. SCO would make use of existing post-irradiation facilities to the extent possible, but existing post-irradiation examination facilities may require expansion or modification.

Two locations are required for the prototype construction and demonstration. One would be inside an existing structure, and the second would be outside. The potential indoor location would utilize existing infrastructure for initial deployment in a containment structure. The second location would be an outdoor site and would also utilize existing facilities and infrastructure.

The joint effort between SCO and DOE established by interagency agreement will make use of DOE expertise, material, laboratories, and authority to construct and demonstrate this prototype microreactor. DOE will provide SCO regulatory oversight and expertise on technical, safety, environmental, and health requirements applicable to the construction and demonstration of the prototype microreactor. DoD plans to request authorization from the DOE pursuant to its authority under the Atomic Energy Act (42 U.S.C. 2121(b), 2140) and National Security Decision Directive 282, September 30, 1987, for the acquisition and operation of a prototype reactor. The Nuclear Regulatory Commission (NRC), consistent with its role as an independent safety and security regulator, is participating in this project to provide SCO with accurate, current information on the NRC's regulations and licensing processes in connection with construction and demonstration of a prototype advanced mobile nuclear microreactor. Consistent with an authorization by the Secretary of Energy, the prototype microreactor does not require a NRC license.

**Alternatives**

SCO will evaluate a range of reasonable alternatives for the Proposed Action in the EIS. As required by NEPA, the alternatives will include a No Action Alternative to serve as a basis for comparison with the action alternatives. Under the No Action Alternative, SCO would not pursue the construction or demonstration of a prototype microreactor. The following site features are considered necessary for the Proposed Action and will be used as screening criteria to identify a range of reasonable action alternatives:

- A site that has been previously used for nuclear activities that has sufficient infrastructure to support nuclear operations, including the planned disposition of the prototype microreactor following operation and demonstration.
- Access to an electrical grid and a grid independent from the commercial grid capable of performing research.
- An established control zone (to facilitate emergency planning for reactors with safety features not previously demonstrated).
- Adjacent nuclear facilities available for examination and characterization of radioactive components and materials (*e.g.,* hot cells, analytical chemistry).
- Ability to manufacture and test shielding for the prototype microreactor.
- Variable climate conditions that are suitable demonstration conditions.
- Sufficient space for transportation and operational testing and evaluation of the mobility of the prototype microreactor or its components within the boundaries of the site, including both indoor and outdoor testing facilities.
- A site that is or can be subject to DOE authority or control.

The range of action alternatives may consider multiple sites or multiple locations within one site. SCO has identified the following potential sites as locations for the Proposed Action: Idaho National Laboratory (INL), and Oak Ridge National Laboratory (ORNL). Within the INL site, the following specific options for indoor and outdoor facilities have been identified for inclusion in the range of alternatives to be considered:

The following indoor locations at INL will be considered:

(a) Chemical Processing Plant 691 (CPP–691) situated within the Idaho Nuclear Technology and Engineering Center (INTEC);

(b) Experimental Breeder Reactor II (EBR II) situated within the Materials and Fuels Complex (MFC);

(c) Power Burst Facility 613, situated within the Critical Infrastructure Test Range Complex (CITRC); or

(d) Alternate facilities and infrastructure identified during the scoping process.

The following outdoor locations at INL will be considered:

(a) Near the Materials and Fuels Complex (MFC);

(b) Within the Critical Infrastructure Test Range Complex (CITRC); or

(c) Alternate facilities and infrastructure identified during the scoping process.

The indoor and outdoor locations at INL were identified during preliminary planning for the preparation of this notice. If multiple indoor or outdoor locations at ORNL prove suitable as action alternatives during the EIS process, SCO will analyze those locations individually in the same manner.

Through the EIS process, the required site features will be used to identify a range of reasonable action alternatives to be considered in the EIS. SCO will consider any scoping comments on alternative sites, and plans to evaluate multiple locations to ensure specific facilities and infrastructure are recommended that minimize environmental impacts.

**Impacts Analysis**

The EIS will include an analysis of potential impacts to the quality of the human environment from the range of reasonable Action Alternatives, and the No Action Alternative. Because the specific design of the prototype will be unknown during the preparation of the EIS, SCO will consider potential environmental impacts from all reasonable designs that are under consideration. The EIS will analyze impacts of the Proposed Action to natural and cultural resources, to include Native American resources and concerns; to public health from potential exposure to radionuclides under routine and credible accident or emergency scenarios including natural disasters such as floods, hurricanes, tornadoes, or seismic events; any disproportionately high and adverse effects on minority and low-income populations (*i.e.,* environmental justice impacts); and potential impacts of intentional destructive acts, including sabotage and terrorism, as well as other issues that may emerge during the scoping process.

**Public Scoping Process**

SCO invites Federal agencies, state, local, and tribal governments, and the general public to comment on the scope of the EIS. This includes any comments on the identification of reasonable alternatives and specific environmental issues to be addressed. Analysis of written and oral public comments provided during the scoping period will help further identify concerns and potential issues to be considered in the Draft EIS.

**Public Scoping Meeting**

SCO, acting on behalf of DoD, will host a public scoping meeting to provide the public with information about the NEPA process and to invite public comments on the scope of this EIS. The public meeting will begin with a presentation on the NEPA process and then a presentation on the Proposed Action and the alternatives. Following the presentations, there will be a moderated session during which members of the public can provide oral comments on the scope of the EIS analysis. Commenters will be allowed three minutes to provide comments, which will be recorded.

The public meeting will be held on March 18, 2020, at 5:00 p.m. Mountain Daylight Time at: Shoshone-Bannock Event Center, Fort Hall Indian Reservation, 777 Bannock Trail, Fort Hall, Idaho 83203.

For those who cannot attend the public meeting in-person but are interested in watching the presentations, there will be two options for viewing. The first option is a live webcast of the public meeting. The second option is viewing a recording of the public meeting. The internet address for the live webcast and rebroadcast of the public meeting presentations is *https://www.cto.mil/pele_eis/.*

**EIS Preparation and Schedule**

Following the scoping period announced in this Notice of Intent, and after consideration of all comments received during scoping, SCO will prepare a Draft EIS for the construction and demonstration of the prototype microreactor. Once the Draft EIS is completed, it will be made available for a 45-day public review and comment period. SCO will announce the availability of the Draft EIS in the **Federal Register** and local media outlets. SCO expects the Draft EIS will be available for public review and comment in 2021. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the Draft EIS circulation.

Dated: February 20, 2020.

**Aaron T. Siegel,**

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

[FR Doc. 2020–03809 Filed 2–28–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DELAWARE RIVER BASIN COMMISSION

**[Docket D–2017–009–2]**

### Adjudicatory Hearing and Additional Written Comment Period

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** The Delaware River Basin Commission will hold an adjudicatory hearing (a trial-like proceeding) commencing April 15, 2020 on Docket D–2017–009–2, issued by the Commission on June 12, 2019, to Delaware River Partners, LLC for the project known as Gibbstown Logistics Center Dock 2. The purpose of the hearing is to afford objectors an opportunity to show that the Commission's docket approval should be changed. The Commission will accept additional written comment on this matter during the pendency of the hearing, through April 24, 2020.

**DATES:** The hearing commencing on April 15, 2020 will run from 9 a.m. until no later than 4 p.m. and will continue on successive business days until complete. The start time on successive days will be determined by the Hearing Officer at the close of each day's proceedings and will be posted on the DRBC website, *www.drbc.gov* (see link under ''Recent Postings'') each day after 4 p.m. Additional written comments on Docket D–2017–009–2 will be accepted through 5 p.m. on April 24, 2020.

**ADDRESSES:** The hearing will take place at the State of New Jersey Office of Administrative Law, Quakerbridge Plaza Building 9, Mercerville (Hamilton), NJ 08619, Hearing Room 1. Additional written comments on Docket D–2017–009–2 may be submitted through the Commission's web-based comment system, a link to which is provided at *www.drbc.gov.* Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628–0360. For assistance, please contact Giselle Hernandez at *giselle.hernandez@drbc.gov.*

**SUPPLEMENTARY INFORMATION:** The Commission on June 6, 2019 held a duly noticed public hearing on a draft of Docket D–2017–009–2 for the Gibbstown Logistics Center Dock 2. The Commission accepted written comment on the draft docket through 5 p.m. on

June 7, 2019. Pursuant to Section 3.8 of the Delaware River Basin Compact, Public Law 87–328, 75 Stat. 688, the Commission by unanimous vote at its regularly scheduled quarterly business meeting on June 12, 2019 approved the final docket, incorporating changes made in response to comments received on the draft. In accordance with Article 6 (Subpart F) of the Commission's *Rules of Practice and Procedure,* The Delaware Riverkeeper and The Delaware Riverkeeper Network (collectively, ''DRN'') by letter dated July 11, 2019 requested an adjudicatory hearing on the docket approval, and during its business meeting of September 11, 2019, the Commission granted DRN's request. Copies of Docket D–2017–009–2 as approved, staff's memo responding to comments received on the draft docket, DRN's request for an administrative hearing on the approval, and Minutes of the Commission's meetings of June 12 and September 11, 2019 are available on the Commission's website at drbc.gov (see link under ''Recent Postings'').

*Hearing Procedure.* The adjudicatory hearing, a trial-like proceeding, will be conducted pursuant to Article 6 (Subpart F) of the *Rules of Practice and Procedure*—Sections 2.6.1 through 2.6.10 (18 CFR 401.71—401.90). Participants are limited to those interested parties who have been identified pursuant to Section 2.6.4(a) (18 CFR 401.84(a)), consisting of docket holder Delaware River Partners, LLC; objector DRN; and members of the Commission staff.

*To attend the Adjudicatory Hearing.* Limited seating—an estimated 40 places—will be available for the general public on a first-come first-served basis. Doors open at 8 a.m. Members of the public will not be afforded an opportunity to speak during the hearing.

*Accommodations for Special Needs.* Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the adjudicatory hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

*Updates.* Because the daily start time and the duration of the adjudicatory hearing in its entirety cannot be pre-determined, between April 15, 2020 and the close of the hearing, the next day's start time will be posted after 4 p.m. on the DRBC website, *www.drbc.gov* (see link under ''Recent Postings'').

*Additional Information, Contacts.* Additional public records relating to Docket D–2017–009–2 may be obtained through a request in accordance with Article 8 (Subpart H) of the Rules of Practice and Procedure. *See https://www.state.nj.us/drbc/about/public/records-access.html* for details, and/or contact Denise McHugh at 609–883–9500, ext. 240.

Dated: February 14, 2020.

**Pamela M. Bush,**

*Commission Secretary and Assistant General Counsel.*

[FR Doc. 2020–03516 Filed 2–28–20; 8:45 am]

**BILLING CODE 6360–01–P**

## DEPARTMENT OF EDUCATION

### Peer Review Opportunities With the U.S. Department of Education's Office of Elementary and Secondary Education, Office of Postsecondary Education, and Office of Special Education and Rehabilitative Services

**AGENCY:** Office of Elementary and Secondary Education, Office of Postsecondary Education, and Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Announcement.

**SUMMARY:** The U.S. Department of Education (Department) announces opportunities for individuals to participate in its peer review process by reviewing applications for competitive grant funding.

**DATES:** Requests to serve as a peer reviewer will be accepted on an ongoing basis aligned with this year's grant competition schedule. The Department's peer review began in January 2020 and will continue through the end of the calendar year. A list of grant programs with expected competitions during this timeframe is posted on the Department's website under ''Forecast of Funding Opportunities'' at *https://www2.ed.gov/fund/grant/find/edlite-forecast.html.* Although the list in this link is inclusive of all Department grant competitions for which peer reviewers are needed, this notice highlights the specific needs of the Office of Elementary and Secondary Education (OESE—Chart 2), the Office of Postsecondary Education (OPE—Chart 3), and the Office of Special Education and Rehabilitative Services (OSERS—Charts 4 and 4b). The Department will accept submissions throughout the year on a rolling basis. Requests to serve as a peer reviewer should be submitted four weeks prior to the program's application deadline noted on the forecast page.

**ADDRESSES:** An individual interested in serving as a peer reviewer must register and upload his or her resume in the Department's grants management system known as ''G5'' at *www.g5.gov.* Additionally, individuals interested in serving as peer reviewers for an OESE competition should also submit their resumes by electronic mail to the following email address: *OESEPeerReviewRecruitment@ed.gov* with the subject line ''Prospective 2020 Peer Reviewer.''

**FOR FURTHER INFORMATION CONTACT:** OESE: State and Grantee Relations, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–7240. Telephone: (202) 453–5563. Email: *OESEPeerReviewRecruitment@ed.gov.* OPE: Tonya Hardin, U.S. Department of Education, 400 Maryland Avenue SW, Room 278–12, Washington, DC 20202. Telephone: (202) 453–7694. Email: *Tonya.Hardin@ed.gov.* OSERS: Michael Gross, U.S. Department of Education, 400 Maryland Avenue SW, Room 5103, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6718. Email: *Michael.Gross@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The mission of the Department is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. The Department pursues its mission by funding programs that will improve access to high-quality educational opportunities and programs that pursue innovations in teaching and learning. Grant funds are awarded to State educational agencies, local educational agencies (*i.e.,* school districts), nonprofit organizations, institutions of higher education (IHEs), and other entities through a competitive process referred to as a grant competition.

Each year, typically beginning in January, the Department convenes panels of external education professionals and practitioners to serve as peer reviewers. Peer reviewers evaluate and score submitted applications against program-specific criteria. Application scores are then used to inform the Secretary's funding decisions.

This year, OESE plans to manage over 20 grant competitions to fund a range of projects that support community schools, early learning, education innovation and research, educator development, charter and magnet schools, literacy, private school vouchers, school improvement, school

safety, and American Indian/Alaska Native education.

Similarly, OPE expects to conduct nearly 20 grant competitions to fund a wide range of projects, including: Projects to support improvements in educational quality, management, and financial stability at colleges that enroll high numbers of minority and financially disadvantaged students; projects to provide high-quality support services to improve retention and graduation rates of low-income and first generation college students; projects designed to strengthen foreign language instruction, area and international studies teaching and research, professional development for educators, and curriculum development at the K–12, graduate, and postsecondary levels; and other innovative projects designed to improve postsecondary education.

OSERS expects to conduct approximately 24 grant competitions to fund a wide range of projects, which will take place between April 2020 and September 2020. Specifically, the competitions in OSERS' Office of Special Education Programs (OSEP) will include State Personnel Development Grants (SPDG), Personnel Development (PD), Technical Assistance and Dissemination (TA&D), Educational Technology, Media, and Materials (ETechM2), Parent Training and Information, and Technical Assistance on State Data Collection. The competitions in OSERS' Rehabilitation Services Administration (RSA) will include Rehabilitation Long-Term Training, Demonstration and Training Programs, Innovative Rehabilitation Training, Parent Training and Information, American Indian Vocational Rehabilitation Services (AIVRS), Vocational Rehabilitation Technical Assistance Centers, Capacity Building, and Independent Living Services for Older Individuals Who Are Blind (OIB).

The Department seeks to expand its pool of peer reviewers to ensure that applications are evaluated by individuals with up-to-date and relevant knowledge of educational interventions and practices across the learning continuum, from early education to college and career, and a variety of learning settings, including early learning centers, charter schools, public schools, Tribally-operated schools, and private schools. Department peer reviewers are education professionals who have gained subject matter expertise through their education and work, for example, as teachers, professors, principals, administrators, school counselors, researchers, evaluators, content developers, and advocates. Peer reviewers can be active education professionals, in any educational level or sector, or those who are retired but stay informed of current educational content and issues. No prior experience as a peer reviewer is required.

Peer reviewers for each competition will be selected based on several factors, including each reviewer's program-specific expertise; the number of applications to be reviewed; and the availability of prospective reviewers. Individuals selected to serve as peer reviewers are expected to participate in training; independently read, score, and provide written evaluative comments on assigned applications; and participate in facilitated panel discussions. Panel discussions are held in person in the Washington, DC area or via conference calls. The time commitment for peer reviewers can range from a few to several hours a day over a period of one to four weeks. Peer reviewers receive an honorarium payment as monetary compensation for successfully reviewing applications and are compensated for travel and per diem for panel discussions that take place in person in the Washington, DC area.

If you are interested in serving as a peer reviewer for the Department, you should first review the program web pages of the grant programs that match your area of expertise. You can access information on each grant program from the link provided on the Department's grants forecast page at *https://www2.ed.gov/fund/grant/find/edlite-forecast.html.* If you have documented experience that you believe qualifies you to serve as a peer reviewer for one or more specific grant programs, please register in G5, at *www.g5.gov,* which allows the Department to manage and assign potential peer reviewers to competitions that may draw upon their professional backgrounds and expertise. A toolkit that includes helpful information on how to be considered as a peer reviewer for programs administered by the Department can be found at *https://www2.ed.gov/documents/peer-review/peer-reviewer-toolkit.pptx.*

If you have interest in serving as a reviewer specifically for OESE competitions (Chart 2) also send your resume to *OESEPeerReview Recruitment@ed.gov*. The subject line of the email should read ''Prospective 2020 Peer Reviewer.'' In the body of the email list all programs for which you would like to be considered to serve as a peer reviewer. Neither the submission of a resume nor registration in G5 guarantees you will be selected to be a peer reviewer.

Requests to serve as a peer reviewer should be submitted four weeks prior to the program's application deadline, noted on the forecast page, to provide program offices with sufficient time to review resumes and determine an individual's suitability to serve as a peer reviewer for a specific competition. If you are selected to serve as a peer reviewer, the program office will contact you.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

*Program Authority:* Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 *et seq.*), Higher Education Act of 1965, as amended (20 U.S.C. 1001 *et seq.*), Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (29 U.S.C. 701 *et seq.*).

Dated: February 25, 2020.

**Frank T. Brogan,**

*Assistant Secretary for Elementary and Secondary Education.*

**Robert L. King,**

*Assistant Secretary for Postsecondary Education.*

**Mark Schultz,**

*Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2020–04148 Filed 2–28–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Indian Education Formula Grants to Local Educational Agencies

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice; correction.

**SUMMARY:** On February 7, 2020, the U.S. Department of Education (Department) published in the **Federal Register** (85 FR 7298) a notice inviting applications (NIA) for new awards for fiscal year (FY) 2020 for the Indian Education Formula Grants to Local Educational Agencies (Formula Grants) program, Catalog of Federal Domestic Assistance (CFDA) number 84.060A. We are correcting the deadline for transmittal of Part I of Electronic Application System for Indian Education (EASIE) applications and correcting the Formula Grants program contact.

**DATES:** Deadline for Transmittal of EASIE Part I: March 12, 2020.

**FOR FURTHER INFORMATION CONTACT:** Dr. Crystal C. Moore, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W236, Washington, DC 20202–5970. Telephone: (202) 453–5593. Email: *crystal.moore@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On February 7, 2020, we published in the **Federal Register** (85 FR 7298) an NIA for new awards for FY 2020 for the Formula Grants program. In the NIA, we incorrectly stated the deadline for transmittal of Part I of EASIE applications. The correct application deadline date is March 12, 2020. Applicants must submit their applications by 8:00 p.m., Eastern Time, on such date. Additionally, we are correcting the program contact to: Dr. Crystal C. Moore, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W236, Washington, DC 20202–6335. Telephone: (202) 453–5593. Email: *crystal.moore@ed.gov.*

All other requirements and conditions stated in the NIA remain the same.

#### Corrections

In FR Document 2020–02476 appearing on page 7298 in the **Federal Register** on February 7, 2020, the following corrections are made:

1. On page 7299, in the left column, under **DATES**, we are revising the date following ''Deadline for Transmittal of EASIE Part I'' to: March 12, 2020.

2. On page 7299, in the left column, under **FOR FURTHER INFORMATION CONTACT**, we are revising the contact for questions about the Formula Grants program to: ''Dr. Crystal C. Moore, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W236, Washington, DC 20202–6335. Telephone: (202) 453–5593. Email: *crystal.moore@ed.gov.*''

3. On page 7300, in the left column, under the heading ''IV. Application and Submission Information,'' in the sixth line of paragraph (a)(i) of section 2 ''Content and Form of Application Submission,'' we are revising the date to: March 12, 2020.

4. On page 7300, in the middle column, under the heading ''IV. Application and Submission Information,'' in paragraph (a)(ii) of section 2 ''Content and Form of Application Submission,'' we are revising the date beginning on the second line of the middle column to: March 12, 2020.

5. On page 7300, under the heading ''IV. Application and Submission Information,'' in section 3 ''Submission Dates and Times,'' we are revising the date following ''Deadline for Transmittal of EASIE Part I'' to: March 12, 2020.

*Program Authority:* 20 U.S.C. 7421, *et seq.*

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 26, 2020.

**Frank T. Brogan,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2020–04255 Filed 2–28–20; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Biomass Research and Development Technical Advisory Committee

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee. The Federal Advisory Committee Act requires that agencies publish these notices in the **Federal Register** to allow for public participation.

**DATES:** March 24, 2020; 8:00 a.m.–5:00 p.m.

March 25, 2020; 1:00 p.m.–4:30 p.m.

**ADDRESSES:** DoubleTree by Hilton Washington DC—Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ian Rowe, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; at (202) 586–7720 or email: *Ian.Rowe@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To develop advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

*Tentative Agenda:*

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Presentations from government and industry that provide insights on sustainable aviation fuels.

*Public Participation:* In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Dr. Ian Rowe at (202) 586–7720 or email: *Ian.Rowe@ee.doe.gov at least 5 business days* prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the

meeting to facilitate the orderly conduct of business.

*Minutes:* The summary of the meeting will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html.*

Signed in Washington, DC, on February 25, 2020.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2020–04206 Filed 2–28–20; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP20–37–000]**

## Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Lily Expansion Project and Request for Comments on Environmental Issue

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Lily Expansion Project involving construction and operation of facilities by Texas Eastern Transmission LP (Texas Eastern) in Cambria County, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March 26, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on January 22, 2020, you will need to file those comments in Docket No. CP20–37–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled An Interstate Natural Gas Facility On My Land? What Do I Need To Know? This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

### Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP20–37–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

### Summary of the Proposed Project

Texas Eastern proposes to remove from service and replace four existing compressor units at its Lily Compressor Station (CS) in Cambria County, Pennsylvania with two new, more efficient, units to comply with future air emission reduction requirements of the Commonwealth of Pennsylvania. A new compressor building to house the two new units, and a new stormwater management retention basin would also be constructed as part of the Project.

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

**Land Requirements for Construction**

Construction of the Project would disturb about 31.8 acres of land within Texas Eastern's existing property. Of that, approximately 15.6 acres are within the existing fenceline of the Lily CS, and approximately 16.0 acres of additional temporary workspace are outside of the station fenceline, the majority of which is actively maintained pipeline transmission right-of-way. No additional land outside of Texas Eastern property would be acquired or maintained to construct and operate the Project.

**The EA Process**

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Consultation Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP20–37). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 25, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–04221 Filed 2–28–20; 8:45 am]

**BILLING CODE 6717–01–P**

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC20–9–000]**

## Commission Information Collection Activities (FERC–549D); 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 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–549D (Quarterly Transportation and Storage Report for Intrastate Natural Gas and Hinshaw Pipelines).

**DATES:** Comments on the collection of information are due May 1, 2020.

**ADDRESSES:** You may submit comments (identified by Docket No. IC20–9–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC–549D, Quarterly Transportation and Storage Report for Intrastate Natural Gas and Hinshaw Pipelines.

*OMB Control No.:* 1902–0253.

*Type of Request:* Three-year extension of the FERC–549D information collection requirements with no changes to the current reporting requirements.

*Abstract:* The reporting requirements under FERC–549D are required to carry out the Commission's policies in accordance with the general authority in Sections 1(c) of the Natural Gas Act (NGA) [1] and Sections 311 of the Natural Gas Policy Act of 1978 (NGPA).[2] This collection promotes transparency by collecting and making available intrastate and Hinshaw pipeline transactional information. The Commission collects the data upon a standardized form with all requirements outlined in 18 CFR 284.126.

The FERC–549D collects the following information:

- Full legal name and identification number of the shipper receiving service, including whether the pipeline and the shipper are affiliated;
- Type of service performed;
- The rate charged under each contract;
- The primary receipt and delivery points for each contract;
- The quantity of natural gas the shipper is entitled to transport, store, or deliver for each transaction;
- The duration of the contract, specifying the beginning and (for firm contracts only) ending month and year of current agreement;
- Total volumes transported, stored, injected or withdrawn for the shipper; and
- Annual revenues received for each shipper, excluding revenues from storage services.

Filers submit the Form-549D on a quarterly basis.

*Type of Respondents:* Intrastate natural gas under NGPA Section 311 authority and Hinshaw pipelines.

*Estimate of Annual Burden:* [3] The Commission estimates the annual public reporting burden and cost for the information collection as follows:

FERC–549D—QUARTERLY TRANSPORTATION AND STORAGE REPORT FOR INTRASTATE NATURAL GAS AND HINSHAW PIPELINES

| | Average annual number of respondents (1) | Average annual number of responses per respondent (2) | Average annual total number of responses (1) * (2) = (3) | Average burden hours & cost ($) per response (4) | Total annual burden hours & total annual cost ($) (rounded) (3) * (4) = (5) | Cost per respondent ($) (5) ÷ (1) |
|---|---|---|---|---|---|---|
| PDF filings | 120 | 4 | 480 | 12.5 hrs.; $1,133 | 6,000 hrs.; $543,840 | $4,532 |
| Total | | | 480 | | 6,000 hrs.; $543,840. | |

*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: February 25, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–04219 Filed 2–28–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2814–025]**

## Great Falls Hydroelectric Company, City of Paterson, New Jersey; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2814–025.

c. *Date Filed:* February 28, 2019.

[1] 15 U.S.C. 717–817–w.

[2] 15 U.S.C. 3301–3432.

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

d. *Applicant:* Great Falls Hydroelectric Company and the City of Paterson, New Jersey, as co-licensees.

e. *Name of Project:* Great Falls Hydroelectric Project (Great Falls Project or project).

f. *Location:* On the Passaic River, near the City of Paterson, Passaic County, New Jersey. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Gates, Senior Vice President of Operations, Eagle Creek Renewable Energy, 65 Madison Avenue, Suite 500, Morristown, NJ 07960; (973) 998–8400; email—*bob.gates@eaglecreekre.com* and/or Ben-David Seligman, 2nd Assistant Corp. Counsel, City of Paterson, 155 Market Street, Paterson, NJ; (973) 321–1366; email—*bseligman@patersonnj.gov*.

i. *FERC Contact:* Christopher Millard at (202) 502–8256; or email at *christopher.millard@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2814–025.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing but is not ready for environmental analysis at this time.

l. *The existing project works consist of:* (1) The Society for the Establishment of Useful Manufactures (S.U.M.) dam, an overflow granite stone gravity structure about 315 feet long, with a maximum height of 15 feet and having a crest elevation of 114.6 feet mean sea level (msl); (2) a reservoir with a surface area of 202 acres and a storage capacity of 1,415 acre-feet at elevation 114.6 feet msl; (3) a forebay inlet structure; (4) a headgate control structure containing three trashracks and three steel gates; (5) three penstocks, each 8.5 feet in diameter and approximately 55 feet long; (6) a powerhouse containing three turbine-generator units with a total rated capacity of 10.95 megawatts; (7) a 37-foot-long, 4.16-kilovolt (kV) underground transmission line connecting the powerhouse to a 4.16/26.4-kV step-up transformer which in turn is connected to a 26.4-kV transmission grid via an approximately 30-foot-long 26.4-kV underground transmission line; (8) and appurtenant facilities.

The Great Falls Project is operated in a run-of-river mode. For the period 2010 through 2018, the average annual generation at the Great Falls Project was 17,484 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the addresses in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

*All filings must:* (1) Bear in all capital letters the title PROTEST or MOTION TO INTERVENE; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

*Filing of motions to intervene and protests:* April 2020.

*Issue notice of ready for environmental analysis:* May 2020.

*Deadline for filing of recommendations, terms and conditions, and prescriptions:*July 2020.

*Reply comments due:* September 2020.

*Commission issues EA:* November 2020.

*Comments on EA:* December 2020.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: February 25, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–04218 Filed 2–28–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–2059–004; ER10–3097–009.

*Applicants:* Puget Sound Energy, Inc., Bruce Power Inc.

*Description:* Second Supplement to July 1, 2019 Updated Market Power Analysis in the Northwest Region for Puget Sound Energy, Inc., et al.

*Filed Date:* 2/24/20.

*Accession Number:* 20200224–5156.

*Comments Due:* 5 p.m. ET 3/16/20.

*Docket Numbers:* ER19–1958–002.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance filing: Compliance filing per Commission's 12/19/19 order re: Order No. 845 in ER19–1958 to be effective 12/31/9998.

*Filed Date:* 2/21/20.

*Accession Number:* 20200221–5143.

*Comments Due:* 5 p.m. ET 3/13/20.

*Docket Numbers:* ER20–495–001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Tariff Amendment: 2020–02–24_SA 3380 Deficiency

Response for J639 GIA to be effective 11/15/2019.

*Filed Date:* 2/24/20.

*Accession Number:* 20200224–5096.

*Comments Due:* 5 p.m. ET 3/16/20.

*Docket Numbers:* ER20–612–001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Tariff Amendment: 2020–02–24_SA 3392 Deficiency Response for J944 GIA to be effective 12/3/2019.

*Filed Date:* 2/24/20.

*Accession Number:* 20200224–5098.

*Comments Due:* 5 p.m. ET 3/16/20.

*Docket Numbers:* ER20–886–000.

*Applicants:* Orsted US Trading LLC.

*Description:* Errata to January 28, 2020 Orsted US Trading LLC tariff filing.

*Filed Date:* 2/21/20.

*Accession Number:* 20200221–5071.

*Comments Due:* 5 p.m. ET 3/13/20.

*Docket Numbers:* ER20–1068–000.

*Applicants:* The Dayton Power and Light Company.

*Description:* Application to Establish Incentive Rate Treatment for Qualifying for Transmission Projects, et al. of The Dayton Power and Light Company.

*Filed Date:* 2/25/20.

*Accession Number:* 20200225–5081.

*Comments Due:* 5 p.m. ET 3/17/20.

*Docket Numbers:* ER20–1069–000.

*Applicants:* Duke Energy Carolinas, LLC.

*Description:* § 205(d) Rate Filing: Revised DEC–CEPCI NITSA (SA No. 447) to be effective 2/1/2020.

*Filed Date:* 2/25/20.

*Accession Number:* 20200225–5090.

*Comments Due:* 5 p.m. ET 3/17/20.

*Docket Numbers:* ER20–1070–000.

*Applicants:* Rodan Energy Solutions (USA) Inc.

*Description:* Baseline eTariff Filing: RODAN ENERGY SOLUTIONS (USA) INC INITIAL MBR Tariff to be effective 4/1/2020.

*Filed Date:* 2/25/20.

*Accession Number:* 20200225–5095.

*Comments Due:* 5 p.m. ET 3/17/20.

*Docket Numbers:* ER20–1071–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: Revisions to Attachment AN to be effective 4/26/2020.

*Filed Date:* 2/25/20.

*Accession Number:* 20200225–5122.

*Comments Due:* 5 p.m. ET 3/17/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 25, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–04231 Filed 2–28–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2413–124; Georgia]**

### Georgia Power Company; Notice of Teleconference for Tribal Consultation Meeting

On December 3, 2019, Mr. Turner W. Hunt, Archaeological Technician of the Muscogee (Creek) Nation sent an email requesting consultation regarding the relicensing of the Wallace Hydroelectric Project. Commission Staff will hold a teleconference with representatives of the Muscogee (Creek) Nation to learn more about the tribe's concerns. The teleconference will take place at 2:00 p.m. Eastern Standard Time on Thursday, March 12, 2020.

This teleconference is limited to members of the invited tribe and Commission staff. Interested parties may attend the teleconference as observers only. A summary of the meeting will be prepared and posted in the above-referenced docket on the Commission's eLibrary system.

To receive specific instructions on how to participate, please contact Dustin Wilson at *dustin.wilson@ferc.gov,* or (202) 502–6528 by March 10, 2020.

Dated: February 25, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–04217 Filed 2–28–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP20–543–000.

*Applicants:* Transcontinental Gas Pipe Line Company, LLC.

*Description:* § 4(d) Rate Filing: Rate Schedules LSS and SS–2 Tracker Filing effective February 1, 2020 to be effective 2/1/2020.

*Filed Date:* 2/24/20.

*Accession Number:* 20200224–5112.

*Comments Due:* 5 p.m. ET 3/9/20.

*Docket Numbers:* RP20–544–000.

*Applicants:* Equitrans, L.P.

*Description:* § 4(d) Rate Filing: Negotiated Rate Agreement—Arsenal Amendment to be effective 3/1/2020.

*Filed Date:* 2/25/20.

*Accession Number:* 20200225–5002.

*Comments Due:* 5 p.m. ET 3/9/20.

*Docket Numbers:* RP20–545–000.

*Applicants:* Lucid Energy Delaware, LLC, Devon Gas Services, L.P.

*Description:* Joint Petition for Limited Waivers, et al. of Lucid Energy Delaware, LLC, et al. under RP20–545.

*Filed Date:* 2/24/20.

*Accession Number:* 20200224–5154.

*Comments Due:* 5 p.m. ET 3/2/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 25, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–04232 Filed 2–28–20; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2019–0040; FRL–10004–58]**

## Pesticide Experimental Use Permit; Receipt of Application; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of application 89850–EUP–R from SemiosBio Technologies, Inc., requesting an experimental use permit (EUP) for lavandulyl senecioate. EPA has determined that the permit may be of regional or national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

**DATES:** Comments must be received on or before April 1, 2020.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0721, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, EPA has not attempted to describe all the specific entities that may be affected by this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, EPA seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on more than 10 acres of land or more than one surface acre of water.

Pursuant to 40 CFR 172.11(a), EPA has determined that the following EUP application may be of regional or national significance, and therefore is seeking public comment on the EUP application:

*Submitter:* SemiosBio Technologies, Inc., 101–887 Great Northern Way, Vancouver, BC V5T 4T5, Canada, (c/o Killoren Regulatory Consulting, LLC, 316 Highland Ave., Hartford, WI 53027).

*Pesticide Chemical:* Lavandulyl senecioate.

*Summary of Request:* SemiosBio Technologies, Inc. submitted a request for an EUP to dispense a pheromone via an end-use product (EP) (Semios VMB Eco DS) containing 23.54% lavandulyl senecioate as the active ingredient in order to disrupt the mating cycle of vine mealybug. The EP is proposed to be used from March 1, 2020, through November 31, 2021, across 740 acres of grapes in the state of California. The total amount of EP and active ingredient to be used during the EUP is 530 pounds and 131 pounds, respectively. Major objectives of the EUP include the following: (1) Optimizing dispensing window, *i.e.,* how many hours during the day and which hours; (2) optimizing dispensing intervals, *i.e.,* how many actuations per minute; and (3) comparing efficacy against commercial products and/or grower standards. A tolerance exemption already exists for the active ingredient as long as the pheromone does not exceed 150 grams of active ingredient per acre; a tolerance exemption petition has not been submitted with this EUP application because the applicant believes the aforementioned limitation will not be exceeded with the proposed testing.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: January 24, 2020.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2020–04211 Filed 2–28–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2019–0045; FRL–10004–59]**

## Pesticide Product Registration; Receipt of Applications for New Uses (December 2019)

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

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before April 1, 2020.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number and the File Symbol or the EPA Registration Number of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

### *B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

## II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *EPA Registration Numbers:* 100–759, 100–953 and 100–1454. *Docket ID number:* EPA–HQ–OPP–2019–0659. *Applicant:* Syngenta Crop Protection, 410 Swing Road, Greensboro, NC 27409. *Active ingredient:* Fludioxonil. *Product type:* Fungicide. *Proposed use:* Brassica leafy greens subgroup 4–16B, vegetable, head and stem brassica, group 5–16, and kohlrabi. *Contact:* RD.

2. *EPA Registration Number:* 100–1469. *Docket ID number:* EPA–HQ–OPP–2019–0691. *Applicant:* Syngenta Crop Protection, LLC, 410 South Swing Rd., Greensboro, NC 27409. *Active ingredient: Aspergillus flavus* strain NRRL 21882. *Product type:* Fungicide. *Proposed use:* Almond and pistachio. *Contact:* BPPD.

3. *EPA Registration Numbers:* 100–1609 and 100–1648. *Docket ID number:* EPA–HQ–OPP–2019–0608. *Applicant:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Pydiflumetofen. *Product type:* Fungicide. *Proposed uses:* Seed treatment for barley, corn, cotton crop subgroup 20C, dried shelled pea and bean crop subgroup 6C, oat, peanut, rye, sorghum, triticale, and wheat. *Contact:* RD.

4. *EPA Registration Numbers:* 432–RARE, 264–824. *Docket ID number:* EPA–HQ–OPP–2019–0671. *Applicant:* Bayer CropScience LP, Environmental Science Division, 5000 Centre Green Way, Suite 400, Cary, NC 27513. *Active ingredient:* Prothioconazole. *Product type:* Fungicide. *Proposed uses:* Golf course turf. *Contact:* RD.

5. *EPA Registration Number:* 7969–275. *Docket ID number:* EPA–HQ–OPP–2019–0388. *Applicant:* Interregional Research Project #4 (IR–4), 500 College Rd. East, Suite 201, Princeton, NJ 08540. *Active ingredient:* Saflufenacil. *Product type:* Herbicide. *Proposed use:* Manufacturing products for use on fig trees, caneberry subgroup 13–07A, and chia. *Contact:* RD.

6. *EPA Registration Number:* 7969–276. *Docket ID number:* EPA–HQ–OPP–2019–0388. *Applicant:* Interregional Research Project #4 (IR–4), 500 College Rd. East, Suite 201, Princeton, NJ 08540. *Active ingredient:* Saflufenacil. *Product type:* Herbicide. *Proposed use:* Fig trees, Caneberry subgroup 13–07A. *Contact:* RD.

7. *EPA Registration Number:* 7969–278. *Docket ID number:* EPA–HQ–OPP–2019–0388. *Applicant:* Interregional Research Project #4 (IR–4), 500 College Rd. East, Suite 201, Princeton, NJ 08540. *Active ingredient:* Saflufenacil. *Product type:* Herbicide. *Proposed use:* Chia. *Contact:* RD.

8. *EPA Registration Numbers:* 62719–144, 62719–659. *Docket ID number:* EPA–HQ–OPP–2019–0070. *Applicant:* Dow AgroSciences LLC., 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Isoxaben. *Product type:* Herbicide. *Proposed use:* Hop, dried cones, and caneberry subgroup 13–07. *Contact:* RD.

*9. EPA Registration Number:* 92960–R. *Docket ID number:* EPA–HQ–OPP–2019–0672. *Applicant:* Germains Seed Technology, Inc., 8333 Swanston Lane, Gilroy, CA 95020. *Active ingredient:* Copper hydroxide. *Product type:* Fungicide. *Proposed Uses:* Seed treatment on corn (field, sweet, popcorn); oats; peanuts; soybeans; succulent and dry broad bean (fava bean); succulent and dry chickpea (garbanzo bean); succulent and dry guar bean; succulent and dry jackbean; succulent and dry lablab bean (hyacinth bean); succulent and dry *Lupinus* spp. (includes grain lupin, sweet lupin, white lupin, and white sweet lupin); succulent and dry peas (including dwarf pea, edible pod pea, English pea, field pea, garden pea, green pea, snow pea, sugar snap pea); succulent and dry *Phaseolus* spp. (includes field bean, kidney bean, lima bean, navy bean, pinto bean, runner bean, snap bean, tepary bean, wax bean); succulent and dry *Vigna* spp. (includes adzuki bean, asparagus bean, blackeyed pea, catjang, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, yardlong bean). *Contact:* RD.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: January 24, 2020.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2020–04209 Filed 2–28–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2019–0039; FRL–10004–57]**

## Pesticide Product Registration; Receipt of Applications for a New Active Ingredient (December 2019)

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

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register pesticide products containing an active ingredient not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before April 1, 2020.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
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**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. What should I consider as I prepare my comments for EPA?*

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2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

### II. Registration Applications

EPA has received applications to register pesticide products containing an active ingredient not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

*New Active Ingredients*

*1. File Symbol:* 71637–E. *Docket ID number:* EPA–HQ–OPP–2019–0410. *Applicant:* Kwizda Agro GmbH (Val d'Izé), ZA du Bourgneuf, Route de Dourdain, 35450 Val d'Izé, France (c/o Compliance Services International, 7501 Bridgeport Way West, Lakewood, WA 98499). *Product name:* Trico. *Active ingredient:* Repellent—Sheep fat at 6.4%. *Proposed use:* For preventing browsing, rubbing, and bark stripping damage to certain plants (*e.g.,* ornamentals, shrubs, and garden plants before food commodities are present) caused by deer, rabbits, elk, and moose.

*2. File Symbol:* 71637–R. *Docket ID number:* EPA–HQ–OPP–2019–0410. *Applicant:* Kwizda Agro GmbH (Val d'Izé), ZA du Bourgneuf, Route de Dourdain, 35450 Val d'Izé, France (c/o Compliance Services International, 7501 Bridgeport Way West, Lakewood, WA 98499). *Product name:* Sheep Fat Technical. *Active ingredient:* Repellent—Sheep fat at 99.94%. *Proposed use:* For manufacturing use.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: January 24, 2020.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2020–04214 Filed 2–28–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R07–OW–2020–0061; FRL–10005–74–Region 7]**

### Notice of Approval of the Primacy Revision Application for the Public Water Supply Supervision Program From the State of Missouri

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

**ACTION:** Notice of approval and solicitation of requests for a public hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is hereby giving notice that the state of Missouri is revising its approved Public Water Supply Supervision Program delegated to the Missouri Department of Natural Resources (MDNR). EPA has reviewed the application and intends to approve these program revisions.

**DATES:** This determination to approve the Missouri program revision is made pursuant to 40 CFR 142.12(d)(3). This determination shall become final on April 1, 2020, unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on his own motion. Any interested person, other than Federal Agencies, may request a public hearing.

A request for a public hearing must be submitted to the Regional Administrator at the address shown below by April 1, 2020. If a request for a public hearing is made within the requested thirty-day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination will become final on April 1, 2020.

All interested parties may request a public hearing on the approval to the Regional Administrator at the EPA Region 7 address shown below.

**ADDRESSES:** Requests for public hearing shall be addressed to: Regional Administrator, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

**FOR FURTHER INFORMATION CONTACT:** Samantha Harden, Environmental Protection Agency, Region 7, Groundwater and Drinking Water Branch, (913) 551–7723, or by email at *harden.samantha@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The EPA is hereby giving notice that the state of Missouri is revising its approved Public Water Supply Supervision Program. MDNR revised their program by incorporating the following EPA National Primary Drinking Water Regulations: Lead and Copper: Short-Term Regulatory Revisions and Clarifications (72 FR 57781, October 10, 2007) and Revised Total Coliform Rule (78 FR 10269, February 13, 2013). The EPA has determined that MDNR's program revisions are consistent with and no less stringent than Federal regulations. Therefore, EPA intends to approve these program revisions.

**Public Hearing Requests**

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. Requests for public hearing shall be addressed to: Regional Administrator, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday at the following offices: (1) Environmental Protection Agency, Region 7, Groundwater and Drinking Water Branch, Water Division, 11201 Renner Boulevard, Lenexa, Kansas 66219 and (2) the Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102.

**Authority:** Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10, 142.12(d) and 142.13.

Dated: February 25, 2020.

**James Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 2020–04228 Filed 2–28–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2019–0372; FRL–10005–82–OW]**

### National Pollutant Discharge Elimination System (NPDES) 2020 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** All ten of the Environmental Protection Agency's (EPA) Regions are proposing for public comment the 2020 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with industrial activity, also referred to as the ''2020 Multi-Sector General Permit (MSGP)'' or the ''proposed permit.'' The proposed permit, once finalized, will replace the EPA's existing MSGP that will expire on June 4, 2020. The EPA proposes to issue this permit for five (5) years, and to provide permit coverage to eligible operators in all areas of the country where the EPA is the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. The EPA seeks comment on the proposed permit and on the accompanying fact sheet, which contains supporting documentation. This **Federal Register** document describes the proposed permit and includes specific topics on which the EPA is particularly seeking comment. Where the EPA proposes a new or modified provision, the Agency also solicits comment on alternatives to the proposal and/or not moving forward with the proposal in the final permit. The EPA encourages the public to read the fact sheet to better understand the proposed permit. The proposed permit and fact sheet can be found at *https://www.epa.gov/npdes/stormwater-discharges-industrial-activities.*

**DATES:** Comments must be received on or before May 1, 2020. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before April 1, 2020.

**ADDRESSES:** You may send comments, identified by Docket ID No EPA–HQ–OW–2019–0372, by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

• Electronic versions of this proposed permit and fact sheet are available on the EPA's NPDES website at *https://www.epa.gov/npdes/stormwater-discharges-industrial-activities.* Follow the online instructions for submitting comments.

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2019–0372 to the Federal eRulemaking Portal: *https://www.regulations.gov.* All submissions received must include the Docket ID No. for this proposed permit. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For further information on the proposed permit, contact the appropriate EPA Regional office listed in Section I.F of this action, or Emily Halter, EPA Headquarters, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–3324; email address: *halter.emily@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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IV. Paperwork Reduction Act (PRA)
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VI. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
VII. Compliance With the National Environmental Policy Act (NEPA)
VIII. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
IX. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

## I. General Information

### *A. Does this action apply to me?*

The proposed permit covers stormwater discharges from industrial facilities in the 30 sectors shown below:

Sector A—Timber Products.
Sector B—Paper and Allied Products Manufacturing.
Sector C—Chemical and Allied Products Manufacturing.
Sector D—Asphalt Paving and Roofing Materials Manufactures and Lubricant Manufacturers.
Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing.
Sector F—Primary Metals.
Sector G—Metal Mining (Ore Mining and Dressing).
Sector H—Coal Mines and Coal Mining-Related Facilities.
Sector I—Oil and Gas Extraction.
Sector J—Mineral Mining and Dressing.
Sector K—Hazardous Waste Treatment Storage or Disposal.
Sector L—Landfills and Land Application Sites.
Sector M—Automobile Salvage Yards.
Sector N—Scrap Recycling Facilities.
Sector O—Steam Electric Generating Facilities.
Sector P—Land Transportation.
Sector Q—Water Transportation.
Sector R—Ship and Boat Building or Repairing Yards.
Sector S—Air Transportation Facilities.
Sector T—Treatment Works.
Sector U—Food and Kindred Products.
Sector V—Textile Mills, Apparel, and other Fabric Products Manufacturing.
Sector W—Furniture and Fixtures.
Sector X—Printing and Publishing.
Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.
Sector Z—Leather Tanning and Finishing.
Sector AA—Fabricated Metal Products.
Sector AB—Transportation Equipment, Industrial or Commercial Machinery.
Sector AC—Electronic, Electrical, Photographic and Optical Goods.
Sector AD—Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director.

Coverage under the proposed 2020 MSGP is available to operators of eligible facilities located in areas where the EPA is the permitting authority. A list of eligible areas is included in Appendix C of the proposed 2020 MSGP.

### *B. How do I submit written comments?*

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2019–0372, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. 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://www.epa.gov/dockets/commenting-epa-dockets.*

### *C. Will public hearings be held on this action?*

The EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period and must state the nature of the issue the requester would like raised in the hearing. Pursuant to 40 CFR 124.12, the EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If the EPA decides to hold a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

### *D. What process will the EPA follow to finalize the proposed permit?*

After the close of the public comment period, the EPA intends to issue a final permit. This permit will not be issued until all significant comments have been considered and appropriate changes have been made to the proposed permit. The EPA's responses to public comments received will be included in the docket as part of the final issuance. Once the final permit becomes effective, eligible operators of industrial facilities may seek authorization under the 2020 MSGP.

*E. Who are the EPA regional contacts for the proposed permit?*

For the EPA Region 1, contact David Gray at: (617) 918–1577 or *gray.davidj@epa.gov.*

For the EPA Region 2, contact Stephen Venezia at: (212) 637–3856 or *venezia.stephen@epa.gov,* or for Puerto Rico contact Sergio Bosques at: (787) 977–5838 or *bosques.sergio@epa.gov.*

For the EPA Region 3, contact Carissa Moncavage at: (215) 814–5798 or *moncavage.carissa@epa.gov.*

For the EPA Region 4, contact Sam Sampath at: (404) 562–9229 or *sampath.sam@epa.gov.*

For the EPA Region 5, contact Matthew Gluckman at: (312) 886–6089 or *gluckman.matthew@epa.gov.*

For the EPA Region 6, contact Nasim Jahan at: (214) 665–7522 or *jahan.nasim@epa.gov.*

For the EPA Region 7, contact Mark Matthews at: (913) 551–7635 or *matthews.mark@epa.gov.*

For the EPA Region 8, contact Amy Clark at: (303) 312–7014 or *clark.amy@epa.gov.*

For the EPA Region 9, contact Eugene Bromley at: (415) 972–3510 or *bromley.eugene@epa.gov.*

For the EPA Region 10, contact Margaret McCauley at: (206) 553–1772 or *mccauley.margaret@epa.gov.*

## II. Background of Permit

Section 405 of the Water Quality Act of 1987 added section 402(p) of the Clean Water Act (CWA), which directed the EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. The EPA published a final regulation on the first phase on this program on November 16, 1990, establishing permit application requirements for ''stormwater discharges associated with industrial activity.'' See 55 FR 48063. The EPA defined the term ''stormwater discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14). The EPA proposes to issue the MSGP under this statutory and regulatory authority.

## III. Summary of Proposed Permit

The proposed 2020 MSGP, once finalized, will replace the existing MSGP, which was issued for a five-year term on June 4, 2015 (see 80 FR 34403). The 2020 MSGP will cover stormwater discharges from industrial facilities in areas where the EPA is the NPDES permitting authority in the EPA's Regions 1, 2, 3, 5, 6, 7, 8, 9 and 10, and will also now provide coverage for industrial facilities where the EPA is the NPDES permitting authority in the EPA's Region 4. As proposed, this permit will cover facilities in the state of Idaho; the schedule for the transfer of NPDES Permitting Authority to Idaho for stormwater general permits is July 1, 2021. The geographic coverage of this permit is listed in Appendix C of the proposed permit. This permit will authorize stormwater discharges from industrial facilities in 30 sectors, as shown in section I.A. of this document.

The proposed permit is similar to the existing permit and is structured in nine (9) parts: General requirements that apply to all facilities (*e.g.,* eligibility requirements, effluent limitations, inspection and monitoring requirements, Stormwater Pollution Prevention Plan (SWPPP) requirements, and reporting and recordkeeping requirements) (Parts 1–7); industrial sector-specific conditions (Part 8); and state and Tribal-specific requirements applicable to facilities located within individual states or Indian Country (Part 9). Additionally, the appendices provide proposed forms for the Notice of Intent (NOI), the Notice of Termination (NOT), the Conditional No Exposure Exclusion, the Discharge Monitoring Report (DMR), and the annual report, as well as step-by-step procedures for determining eligibility with respect to protecting historic properties and endangered species, and for calculating site-specific, hardness-dependent benchmarks.

### *A. 2015 MSGP Litigation and National Academies Study*

After the EPA issued the 2015 MSGP, numerous environmental non-governmental organizations (NGOs) [1] challenged the permit, two industry groups [2] intervened, and a Settlement Agreement was signed in 2016 with all parties. The settlement agreement did not affect the 2015 MSGP but stipulated several terms and conditions that the EPA agreed to address in the proposed 2020 MSGP. One key term from the settlement agreement stipulated that the EPA fund a study conducted by the National Academies of Sciences, Engineering, and Medicine's National Research Council (NRC) on potential permit improvements, focused primarily on monitoring requirements, for consideration in the next MSGP. In the settlement agreement, the EPA agreed that, when drafting the proposed 2020 MSGP, it will consider recommendations suggested in the completed NRC Study.

The NRC delivered the results of their study, *Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges,* in February of 2019. The NRC study can be found at the following website: *https://www.nap.edu/catalog/25355/improving-the-epa-multi-sector-general-permit-for-industrial-stormwater-discharges.*

The NRC study's overarching recommendation is that the MSGP is too static and should continuously improve based on best available science, new data, and technological advances. The following is a high-level summary of the NRC study's recommendations the EPA addressed in the proposed 2020 MSGP, organized by category. The proposed Fact Sheet provides further discussion of the NRC study's recommendations and the settlement agreement terms and how they were addressed in the proposed permit.

Where the EPA proposes a new or modified provision, the EPA also solicits comment on alternatives to the proposal and/or not moving forward with the proposal in the final permit. A more comprehensive discussion of the NRC study recommendations can be found in Part III of the fact sheet.

- *Recommendations for MSGP pollutant monitoring requirements and benchmark thresholds:*
  - *Industry-wide monitoring for pH, total suspended solids (TSS), and chemical oxygen demand (COD) as basic indicators of the effectiveness of stormwater controls employed on site.* To address this recommendation, the EPA proposes to require ''universal benchmark monitoring'' for pH, TSS, and COD for all facilities. See Part 4.2.1 of the proposed permit and fact sheet.
  - *A process to periodically review and update sector-specific benchmark monitoring requirements to incorporate new scientific information.* To address this recommendation, the EPA proposes revisions to the MSGP's sector-specific fact sheets, and proposes specific benchmark monitoring for Sectors I, P, and R. See Parts 4.2.1.1 and 8, and Appendix Q of the proposed permit and fact sheet.
  - *Benchmark levels based on the criteria designed to protect aquatic ecosystems from adverse impacts from short term or intermittent exposures, which to date have generally been acute criteria.* To address this recommendation, the EPA proposes to update and/or requests comment on benchmark thresholds for aluminum,

[1] Environmental NGOs included Waterkeeper Alliance, Apalachicola Riverkeeper, Galveston Baykeeper, Raritan Baykeeper, Inc. d/b/a NY/NJ Baykeeper, Snake River Waterkeeper, Ecological Rights Foundation, Our Children's Earth Foundation, Puget Soundkeeper, Lake Pend Oreille Waterkeeper, and Conservation Law Foundation (collectively, ''Petitioners'').

[2] Industry intervenors included Federal Water Quality Coalition and Federal Storm Water Association. i

selenium, arsenic, cadmium, magnesium, iron, and copper based on the latest toxicity information. See Parts 4.2.1.2 and 8 of the proposed fact sheet.

- *Recommendations for sampling and data collection:*
  - *Allowance and promotion of the use of composite sampling for benchmark monitoring for all pollutants except those affected by storage time.* To address this recommendation, the EPA proposes an explicit clarification that composite sampling is allowed for benchmark monitoring. See Part 4.1.4 of the proposed permit and fact sheet.
  - *For permittees with average results that meet the benchmark, a minimum of continued annual sampling to ensure appropriate stormwater management throughout the remainder of the permit term.* To address this recommendation, as part of proposed ''universal benchmark monitoring'' for pH, TSS, and COD for all facilities in Part 4.2.1.1, the EPA proposes that facilities monitor and report for these three parameters on a quarterly basis for the entire permit term, regardless of any benchmark threshold exceedances, to ensure facilities have current indicators of the effectiveness of their stormwater control measures throughout the permit term. See Part 4.2.1.2 of the proposed permit and fact sheet.
  - *A tiered approach to monitoring that recognizes the varying levels of risk among different industrial activities and that balances the overall burden to industry and permitting agencies.* To address this recommendation, the EPA proposes to have the following tiered approach to monitoring: (1) A possible ''inspection-only'' option available to low-risk facilities (see Part 4.2.1.1 of the proposed permit and fact sheet and associated request for comment in that Part); (2) require new ''universal benchmark monitoring'' for pH, TSS, and COD; (3) continue existing benchmark monitoring requirements from the 2015 MSGP; and (4) require continued benchmark monitoring as part of the proposed Additional Implementation Measures (AIM) protocol for repeated benchmark exceedances. See Parts 4.2. and 5.2 in the proposed permit and fact sheet.
- *Recommendations for stormwater retention to minimize pollutant loads:*
  - *Incentives to encourage industrial stormwater infiltration or capture and use where appropriate.* The EPA acknowledges the importance of protecting groundwater during the use of stormwater infiltration systems. To address this recommendation, the EPA proposes infiltration, where the operator can demonstrate to the EPA that it is appropriate and feasible for site-specific conditions, as an alternative or adjunct to structural source controls and/or treatment controls required in proposed Tier 3 AIM responses. See Part 5.2.3.2.b of the proposed permit and fact sheet.

In addition to the NRC study, the following are other key terms from the 2016 Settlement Agreement and how and where the EPA addressed those terms in the proposed permit:

- *Comparative analysis.* The EPA agreed to review examples of numeric and non-numeric effluent limitations (including complete prohibitions, if any) applicable to the discharge of industrial stormwater that have been set in other jurisdictions and evaluate the bases for those limitations. The EPA includes this analysis, titled ''MSGP Effluent Limit Comparative Analysis,'' in the docket for this proposed permit (Docket ID No EPA–HQ–OW–2019–0372).
- *Preventing recontamination of federal Comprehensive Environmental Response, Compensation, and Liability Act* (*CERCLA) sites.* The EPA agreed to propose for comment an expansion to all the EPA Regions of the existing eligibility criterion regarding operators discharging to federal CERCLA sites that currently applies to operators in Region 10 in the 2015 MSGP. See Part 1.1.7 of the proposed permit and fact sheet.
- *Eligibility criterion regarding coal-tar sealcoat.* The EPA agreed to propose for comment a new eligibility condition for operators who, during their coverage under the next MSGP, will use coal-tar sealcoat to initially seal or to re-seal pavement and thereby discharge polycyclic aromatic hydrocarbons (PAHs) in stormwater. The EPA agreed to propose that those operators are not eligible for coverage under the MSGP and must either eliminate such discharge or apply for an individual permit. See Part 1.1.8 of the proposed permit and fact sheet.
- *Permit authorization relating to a pending enforcement action.* The EPA agreed to solicit comment on a provision covering the situation where a facility not covered under the 2015 MSGP submits an NOI for permit coverage while there is a related pending enforcement stormwater related action by the EPA, a state, or a citizen (to include both notices of violations (NOVs) by the EPA or the state and notices of intent to bring a citizen suit). In this situation, the EPA agreed to solicit comment on holding the facility's NOI for an additional 30 days to allow the EPA an opportunity to (a) review the facility's control measures expressed in its SWPPP, (b) identify any additional control measures that the EPA deems necessary to control site discharges in order to ensure that discharges meet technology-based and water quality-based effluent limitations, and/or (c) to conduct further inquiry regarding the site's eligibility for general permit coverage. See Part 1.3.3 and Table 1–2 of the proposed permit and fact sheet.
- *Additional Implementation Measures (AIM).* The EPA agreed to include in the benchmark monitoring section of the proposed MSGP ''Additional Implementation Measures'' (AIM) requirements for operators for responding to benchmark exceedances. See Part 5.2 of the proposed permit and fact sheet.
- *Facilities required to monitor for discharges to impaired waters without an EPA-approved or established Total Maximum Daily Load (TMDL).* The EPA agreed to propose for comment specific edits regarding monitoring for impaired waters. See Part 4.2.4.1 of the proposed permit and fact sheet.
- *Revision of Industrial Stormwater Fact Sheets.* The EPA agreed to review and revise the MSGP's sector-specific fact sheets associated with the permit. See Appendix Q of the proposed permit.

### *B. Summary of Proposed Permit Changes*

The proposed MSGP includes several new or modified requirements from the 2015 MSGP, many of which were discussed in the previous section and are being proposed to address terms in the 2016 Settlement Agreement and the NRC study's recommendations. The EPA requests comment on these and all parts of the proposed permit.

1. *Streamlining of permit.* The EPA proposes to streamline and simplify language throughout the permit to present the requirements in a generally more clear and readable manner. Regarding structure of the proposed permit, proposed Part 4 (Monitoring) was previously Part 6 in the 2015 MSGP; proposed Part 5 (Corrective Actions and AIM) was previously Part 4 in the 2015 MSGP; and proposed Part 6 (SWPPP) was previously Part 5 in the 2015 MSGP. In the EPA's view, formatting the permit in this new order (Monitoring, followed by Corrective Actions and AIM, then SWPPP requirements) makes more sequential sense as the latter parts often refer back to requirements in previous parts of the permit. This new structure should enhance understanding of and compliance with the permit's requirements. The EPA also made a few additional edits to improve permit readability and clarity. The EPA revised the wording of many eligibility requirements to be an affirmative expression of the requirement instead of

assumed ineligibility unless a condition was met. For example, proposed Part 1.1.6.2 reads ''If you discharge to an 'impaired water'. . .you must do one of the following:'' In comparison, the 2015 MSGP reads ''If you are a new discharger or a new source. . .you are ineligible for coverage under this permit to discharge to an 'impaired water' . . . unless you do one of the following.'' The EPA also numbered proposed permit conditions that were previously in bullet form to make it easier to follow and reference the permit conditions. Finally, the language of the proposed permit was changed from passive to active voice where appropriate (*e.g.,* ''Samples must be collected . . .'' now reads ''You must collect samples . . .'').

2. Permit eligibility and authorization-related changes.

• *Eligibility for stormwater discharges to a federal CERCLA site.* The 2015 MSGP requires facilities in the EPA Region 10 that discharge stormwater to certain CERCLA or Superfund sites (as defined in MSGP Appendix A and listed in MSGP Appendix P) to notify the EPA Regional Office in advance and requires the EPA Regional Office to determine whether the facility is eligible for permit coverage. In determining eligibility for coverage, the EPA Regional Office may evaluate whether the facility has included appropriate controls and implementation procedures designed to ensure that the discharge will not lead to recontamination of aquatic media at the CERCLA site. While the 2015 MSGP permit cycle was limited to discharges to certain CERLCA sites in EPA Region 10, the Agency is concerned that CERCLA site recontamination from MSGP authorized discharges may be an issue in all EPA Regions. In the proposed permit, the EPA requests comment on whether this current eligibility criterion should be applied in all the EPA Regions for facilities that discharge to Federal CERCLA sites that may be of concern for recontamination from stormwater discharges. The EPA is interested in information from the public that would assist the Agency in identifying such sites. The EPA also requests comment on requiring such facilities to notify the EPA Regional Office a minimum of 30 days in advance of submitting the NOI form. See Part 1.1.7 in the proposed permit and fact sheet, and request for comment 1.

• *Eligibility related to application of coal-tar sealcoat.* The EPA proposes in Part 1.1.8 to include aa new eligibility criterion related to stormwater discharges from pavement where there is coal-tar sealcoat. Operators who will use coal-tar sealcoat to initially seal or to re-seal their paved surfaces where industrial activities are located and thereby discharge polycyclic aromatic hydrocarbons (PAHs) in stormwater, would be eligible for coverage under the 2020 MSGP only if they eliminate such discharge(s). This would reduce the amount of PAHs in industrial stormwater discharges. Alternatively, operators who wish to pave their surfaces where industrial activities are located with coal-tar sealcoat may apply for an individual permit. See Part 1.1.8 of the proposed permit and fact sheet, and request for comment 2.

• *Discharge authorization related to enforcement action.* The EPA proposes to establish a discharge authorization wait period of 60 calendar days after NOI submission for any operators whose discharges were not previously covered under the 2015 MSGP and who have a pending stormwater-related enforcement action by the EPA, a state, or a citizen (to include both NOVs by the EPA or a state and notices of intent to bring a citizen suit). EPA is proposing this new requirement because the Agency is aware of some instances where a facility with a pending enforcement action will quickly submit an NOI without adequately developing their SWPPP or stormwater control measures (SCMs) in order to avoid further enforcement action. This additional review time would allow EPA to (a) review the facility's SCMs detailed in the NOI and SWPPP to make sure they are appropriate for the facility which may already have stormwater pollution issues, (b) identify any additional SCMs that EPA deems necessary to control site discharges in order to ensure that discharges meet technology-based and water quality-based effluent limitations, and/or (c) conduct further inquiry regarding the site's eligibility for permit coverage. See Part 1.3.3, Table 1–2 of the proposed permit and fact sheet, and request for comment 4.

3. *Public sign of permit coverage.* The EPA proposes that the 2020 MSGP include a requirement that MSGP operators must post a sign of permit coverage at a safe, publicly accessible location in close proximity to the facility. The EPA proposes that this notice must also include information that informs the public on how to contact the EPA if stormwater pollution is observed in the discharge. This addition will make the protocol for requesting a SWPPP easily understandable by the public and improve transparency of the process to report possible violations. The EPA requests comment on this proposal and what information could be included on any sign or other notice. See Part 1.3.6 of the proposed permit and fact sheet, and request for comment 6.

4. *Consideration of major storm control measure enhancements.* The EPA proposes that operators would be required to consider implementing enhanced measures for facilities located in areas that could be impacted by stormwater discharges from major storm events that cause extreme flooding conditions. The purpose of this proposed requirement is to encourage industrial site operators to consider the risks to their industrial activities and the potential impact of pollutant discharges caused by stormwater discharges from major storm events and extreme flooding conditions. The EPA also requests comment on how the permit might identify facilities that are at the highest risk for stormwater impacts from major storms that cause extreme flooding conditions. See Part 2.1.1.8 of the proposed permit and fact sheet, and request for comment 8.

5. Monitoring changes.

• *Universal benchmark monitoring for all sectors.* The EPA proposes to require all facilities to conduct benchmark monitoring for three indicator parameters of pH, TSS, and COD, called universal benchmark monitoring. This proposed requirement would apply to all sectors/subsectors, including those facilities that previously did not have any chemical-specific benchmark monitoring requirements and those that previously did not have these three specific benchmark parameters under the 2015 MSGP. These three parameters would provide a baseline and comparable understanding of industrial stormwater risk, broader water quality problems, and stormwater control effectiveness across all sectors. See Part 4.2.1 of the proposed permit and fact sheet, and requests for comment 10 and 13.

• *Impaired waters monitoring.* Under the 2015 MSGP, operators discharging to impaired waters must monitor once per year for pollutants for which the waterbody is impaired and can discontinue monitoring if these pollutants are not detected or not expected in the discharge. The EPA proposes to require operators discharging to impaired waters to monitor only for those pollutants that are both causing impairments and associated with the industrial activity and/or benchmarks. The proposal specifies that, if the monitored pollutant is not detected in your discharge for three consecutive years, or it is detected but you have determined that its presence is caused solely by natural background sources, operators may discontinue monitoring for that

pollutant. This proposed requirements potentially narrows scope of pollutants for which the operator must monitor and improves protections for impaired waters. See Part 4.2.4.1 of the proposed permit and fact sheet.

• *Benchmark values.* The EPA proposes to modify and/or requests comment on benchmark thresholds for selenium, arsenic, cadmium, magnesium, iron, and copper based on the latest toxicity information. See Parts 4.2.1 and 8 of the proposed fact sheet and fact sheet, and requests for comment 14, 15, 16, 17, 18, and 19.

• *Sectors with new benchmarks.* The 2015 MSGP does not require sector-specific benchmark monitoring for Sector I (Oil and Gas Extraction), Sector P (Land Transportation and Warehousing), or Sector R (Ship and Boat Building and Repair Yards). Based on the NRC study recommendation which identified potential sources of stormwater pollution from these sectors, the EPA proposes to add benchmark monitoring requirements for these three sectors. See Part 8 of the proposed permit, Parts 4.2.1.1 and 8 of the proposed fact sheet, and request for comment 12.

*6. Additional implementation measures.* The EPA proposes revisions to the 2015 MSGP's provisions regarding benchmark monitoring exceedances. The corrective action conditions, subsequent action deadlines, and documentation requirements in proposed Part 5.1 remain unchanged from the 2015 MSGP. In proposed Part 5.2, the EPA proposes new tiered Additional Implementation Measures (AIM), that are triggered by benchmark monitoring exceedances. The proposed AIM requirements would replace corresponding sections regarding benchmark exceedances in the 2015 MSGP (''Data exceeding benchmarks'' in Part 6.2.1.2 in the 2015 MSGP). There are three AIM levels: AIM Tier 1, Tier 2, and Tier 3. Operators would be required to respond to different AIM levels with increasingly robust control measures depending on the nature and magnitude of the benchmark threshold exceedance. The EPA proposes to retain exceptions to AIM triggers based on natural background sources or run-on for all AIM levels. The EPA also proposes an exception in AIM Tier 2 for a one-time aberrant event, and an exception in AIM Tier 3 for operators who are able to demonstrate that the benchmark exceedance does not result in any exceedance of applicable water quality standards. Proposed AIM requirements will increase regulatory certainty while ensuring that discharges are sufficiently controlled to protect water quality. See Part 5.2 of the proposed permit and fact sheet, and requests for comment 21, 22, 23, and 26.

*7. Revisions to sector-specific fact sheets.* The EPA proposes updates to the existing sector-specific fact sheets that include information about control measures and stormwater pollution prevention for each sector to incorporate emerging stormwater control measures. These fact sheets are also proposed to be used when implementing Tier 2 AIM. See Part 5.2.2.2 and Appendix Q of the proposed permit and fact sheet.

### C. Other Requests for Comment

In addition to the specific proposed changes discussed previously on which the EPA seeks comment, the Agency also requests comment on the following:

1. *Eligibility related to use of cationic chemicals.* The EPA requests comment on adding an eligibility requirement to the MSGP for operators who may elect to use cationic treatment chemicals to comply with the MSGP, similar to that eligibility requirement in the EPA's Construction General Permit (CGP). See Part 1 of the proposed permit and fact sheet, and request for comment 3.

2. *Change NOI form.* The EPA requests comment on whether a separate paper Change NOI form would be useful for facilities for submitting modifications to a paper NOI form. See Part 1.3.4 of the proposed permit and fact sheet, and request for comment 5.

3. *New acronym for the No Exposure Certification (NOE).* The EPA requests comment on changing the acronym for the No Exposure Certification from ''NOE'' to ''NEC'' to more accurately represent what the acronym stands for. See Part 1.5 of the proposed permit and fact sheet, and request for comment 7.

*4. Alternative approaches to benchmark monitoring.* The EPA requests comment on viable alternative approaches to benchmark monitoring for characterizing industrial sites' stormwater discharges, quantifying pollutant concentrations, and assessing stormwater control measure effectiveness. See Part 4.2.1 of the proposed permit and fact sheet, and request for comment 9.

5. *Inspection-only option in lieu of benchmark monitoring.* The EPA requests comment on whether the permit should include an inspection-only option for ''low-risk'' facilities in lieu of conducting benchmark monitoring. See Part 4.2.1.1 of the proposed permit and fact sheet, and request for comment 11.

6. *Information about polycyclic aromatic hydrocarbons (PAHs).* The EPA requests comment on information and data related to pollutant sources under all industrial sectors with petroleum hydrocarbon exposure that can release polycyclic aromatic hydrocarbons (PAHs) via stormwater discharges, any concentrations of individual PAHs and/or total PAHs at industrial sites, the correlation of PAHs and COD, and appropriate pollution prevention/source control methods and stormwater control measures that could be used to address PAHs. See Part 4.2.1.2 of the proposed permit and fact sheet, and request for comment 20.

7. *Modifying the method for determining natural background pollutant contributions.* The EPA requests comment on changing the threshold for the natural background exception throughout the permit from the 2015 MSGP, which required no net facility contributions, to the proposed 2020 MSGP method of subtracting natural background concentrations from the total benchmark exceedance to determine if natural background levels are solely responsible for the exceedance. EPA requests comment on implications of this change and other factors the Agency should consider in proposing this change to the exception. EPA also requests comment on other appropriate methods to characterize natural background pollutant concentrations. See Part 5.2.4 of the proposed permit and fact sheet, and requests for comment 24 and 25.

8. *Clarifications to Sector G monitoring requirements.* The EPA requests comment on whether the newly proposed language in Part 8.G.8.3 clarifies the monitoring requirements for that part and if the proposed monitoring frequency is appropriate. Given the overlap in parameters the operator is required to monitor for in Parts 8.G.8.2 and 8.G.8.3 and the potential confusion about the monitoring schedules for the same parameter, EPA proposes to align the monitoring schedule for Part 8.G.8.3 to that of Part 8.G.8.2. The EPA also requests comment on suspending the analytical monitoring currently required for radium and uranium in Part 8.G.8.3 until a relevant water quality criterion and possible benchmark value can be developed. The EPA requests comment on any alternative or additional clarifications to the monitoring frequencies the Agency should consider for this Part. See Part 8.G.8.3 of the proposed permit and fact sheet, and request for comment 27.

## IV. Paperwork Reduction Act (PRA)

The information collection activities in this proposed permit have been submitted for approval to the OMB under the PRA. The Information

Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2040–NEW. You can find a copy of the ICR in the docket for this permit (Docket ID No EPA–HQ–OW–2019–0372), and it is briefly summarized here.

CWA section 402 and the NPDES regulations require collection of information primarily used by permitting authorities, permittees (operators), and the EPA to make NPDES permitting decisions. The burden and costs associated with the entire NPDES program are accounted in an approved ICR (EPA ICR number 0229.23, OMB control no. 2040–0004). Certain changes in this proposed permit would require revisions to the ICR to reflect changes to the forms and other information collection requirements. The EPA is reflecting the paperwork burden and costs associated with this permit in a separate ICR instead of revising the existing ICR for the entire program for administrative reasons. Eventually, the EPA plans to consolidate the burden and costs in this ICR into that master ICR for the entire NPDES program and discontinue this separate collection.

*Respondents/affected entities:* Industrial facilities in the 30 sectors shown in section I.A of this notice in the areas where the EPA is the NPDES permitting authority.

*Respondent's obligation to respond:* Compliance with the MSGP's information collection and reporting requirements is mandatory for MSGP operators.

*Estimated number of respondents:* The EPA estimates that approximately 2,400 operators will receive coverage under the 2020 MSGP.

*Frequency of response:* Response frequencies in the proposed 2020 MSGP vary from once per permit term to quarterly.

*Total estimated burden:* The EPA estimates that the proposed information collection burden of the proposed permit is 68,857 hours per year. Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* The EPA estimates that the proposed information collection cost of the proposed permit is $2,374,891.73 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed permit (Docket ID No EPA–HQ–OW–2019–0372). You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than April 1, 2020. The EPA will respond to any ICR-related comments in the final permit.

## V. Cost Analysis

The EPA expects the incremental cost impact on entities that will be covered under this permit, including small businesses, to be minimal. The EPA anticipates the incremental cost for new or modified permit requirements will be $472.75 per facility per year; or $2,363.74 per facility over the 5-year permit term. A copy of the EPA's cost analysis for the proposed permit, titled ''Cost Impact Analysis for the Proposed 2020 Multi-Sector General Permit (MSGP),'' is available in the docket (Docket ID No EPA–HQ–OW–2019–0372). The economic impact analysis indicates that while there will be an incremental increase in the costs of complying with the new proposed permit, these costs will not have a significant economic impact on a substantial number of small entities.

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations will be documented in the docket for this action (Docket ID No EPA–HQ–OW–2019–0372).

## VII. Compliance With the National Environmental Policy Act (NEPA)

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4307h), the Council on Environmental Quality's NEPA regulations (40 CFR part 15), and the EPA's regulations for implementing NEPA (40 CFR part 6), the EPA has determined that the reissuance of the MSGP is eligible for a categorical exclusion requiring documentation under 40 CFR 6.204(a)(1)(iv). This category includes ''actions involving reissuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid, there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.'' The EPA completed an Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the existing 2015 MSGP. The analysis and conclusions regarding the potential environmental impacts, reasonable alternatives, and potential mitigation included in the EA/FONSI are still valid for the reissuance of the MSGP because the proposed permit conditions are either the same or in some cases are more environmentally protective. Actions may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances. The EPA has reviewed the proposed action and determined that the reissuance of the MSGP does not involve any extraordinary circumstances listed in 6.204(b)(1) through (b)(10). Prior to the issuance of the final MSGP, the EPA Responsible Official will document the application of the categorical exclusion and will make it available to the public on the EPA's website at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/nepa/*search. If new information or changes in the proposed permit involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the permit may not meet the criteria for categorical exclusion, the EPA will prepare an EA or Environmental Impact Statement (EIS).

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that the proposed permit will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the requirements in the permit apply equally to industrial facilities in areas where the EPA is the permitting authority, and the proposed provisions increase the level of environmental protection for all affected populations.

**IX. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. With limited exceptions, the EPA directly implements the NPDES program in Indian country as no tribe has yet obtained EPA authorization to administer the NPDES program. As a result, almost all eligible facilities with stormwater discharges associated with industrial activities in Indian country fall under the EPA MSGP or may be covered under an individual NPDES permit issued by the EPA.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this permit to have meaningful and timely input into its development to gain an understanding of and, where necessary, to address the tribal implications of the proposed permit. A summary of that consultation and coordination follows.

The EPA initiated a tribal consultation and coordination process for this action by sending a ''Notice of Consultation and Coordination'' letter on June 26, 2019, to all 573 federally recognized tribes. The letter invited tribal leaders and designated consultation representative(s) to participate in the tribal consultation and coordination process. The EPA held an informational webinar for tribal representatives on August 1, 2019. A total of 19 tribal representatives participated in the webinar. The EPA also presented an overview of the current 2015 MSGP and potential changes for the reissuance of the MSGP to the National Tribal Water Council during a July 10, 2019 call with EPA staff.

The EPA solicited comment from federally recognized tribes early in the reissuance process. Tribes and tribal organizations submitted one letter and three emails to the EPA. Records of the tribal informational webinar and a consultation summary summarizing the written comments submitted by tribes are included in the docket for this proposed action (Docket ID No EPA–HQ–OW–2019–0372).

The EPA incorporated the feedback it received from tribal representatives in the proposal. The Agency specifically solicits additional comment on this proposed permit from tribal officials.

The EPA also notes that as part of the finalization of this proposed permit, the Agency will complete the Clean Water Act section 401 certification procedures with all authorized tribes where this permit will apply.

(Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*)

Dated: February 12, 2020.

**Dennis Deziel,**

*Regional Administrator, EPA Region 1.*

**Javier Laureano,**

*Director, Water Division, EPA Region 2.*

**Carmen R. Guerrero-Pérez,**

*Director, Caribbean Environmental Protection Division, EPA Region 2.*

**Catherine A. Libertz,**

*Director, Water Division, EPA Region 3.*

**Jeaneanne M. Gettle,**

*Director, Water Division, EPA Region 4.*

**Thomas R. Short Jr.,**

*Acting Director, Water Division, EPA Region 5.*

**Brent E. Larsen,**

*Acting Director, Water Division, EPA Region 6.*

**Jeffrey Robichaud,**

*Director, Water Division, EPA Region 7.*

**Humberto L. Garcia, Jr.,**

*Acting Director, Water Division, EPA Region 8.*

**Tomás Torres,**

*Director, Water Division, EPA Region 9.*

**Daniel D. Opalski,**

*Director, Water Division, EPA Region 10.*

[FR Doc. 2020–04254 Filed 2–28–20; 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than March 16, 2020.

*A. Federal Reserve Bank of Atlanta* (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street, NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *S3 Dynamics, L.P., and S3 Management, L.L.C. (the managing members of which are John Charles Simpson, New Orleans, Louisiana; John Charles Simpson, Jr., Fenton, Missouri; and Simeon A. Thibeaux, Alexandria, Louisiana), as general partner, both of Alexandria, Louisiana;* to become members of the Simpson Family Control Group and to acquire voting shares of Red River Bancshares, Inc., and thereby indirectly acquire voting shares of Red River Bank, both of Alexandria, Louisiana.

*B. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Rex R. Weaver, Granger, Iowa, Steven L. Afdahl, Temecula, California, and Daniel L. Stockdale, Iowa Falls, Iowa, as co-trustees of the Rex R. Weaver Revocable Trust II Agreement, and Christopher W. Weaver, Iowa Falls, Iowa, each individually and together as a group acting in concert;* to retain voting shares of Green Belt Bancorporation and thereby indirectly acquire voting shares of Green Belt Bank & Trust, both of Iowa Falls, Iowa.

Board of Governors of the Federal Reserve System, February 25, 2020.

**Yao-Chin Chao**

*Assistant Secretary of the Board.*

[FR Doc. 2020–04161 Filed 2–28–20; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting Requirements Associated with Regulation A (FR A; OMB No. 7100–0373).

**DATES:** Comments must be submitted on or before May 1, 2020.

**ADDRESSES:** You may submit comments, identified by *FRA,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number 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 are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

**FOR FURTHER INFORMATION CONTACT:** A copy of the Paperwork Reduction Act (PRA) OMB submission, including any reporting form and instructions, the supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the 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 below.

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.

**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. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection**

*Report title:* Reporting Requirements Associated with Regulation A.

*Agency form number:* FR A.

*OMB control number:* 7100–0373.

*Frequency:* Event-generated.

*Respondents:* Entities or persons borrowing under an emergency lending program or facility established pursuant to section 13(3) of the Federal Reserve Act.[1]

*Estimated number of respondents:* 5.

*Estimated average hours per response:* 8.

*Estimated annual burden hours:* 40.

*General description of report:* The Board has established, by regulation, policies and procedures with respect to emergency lending under section 13(3) of the Federal Reserve Act, as amended by sections 1101 and 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). With the FR A information collection, the Federal Reserve complies with the requirements of the Federal Reserve Act, as amended by section 1101(a)(6) of the Dodd-Frank Act.

Section 1101 of the Dodd-Frank Act amended section 13(3) to provide that a Federal Reserve Bank may rely on a written certification from the person or from the chief executive officer or other authorized officer of the entity, at the time the person or entity initially borrows under the program or facility, that the person or entity is not insolvent. The amendments provide that a borrower is considered insolvent if the borrower is in bankruptcy, resolution under Title II of Public Law 111–203 (12 U.S.C. 5381 *et seq.*) or any other Federal or State insolvency proceeding.

*Legal authorization and confidentiality:* The FR A is authorized pursuant to section 13(3) of the Federal Reserve Act, which allows for the written certification. A Federal Reserve Bank may not lend to an entity that is insolvent. The obligation to respond, therefore, is required to obtain a benefit.

The information collected under FR A may be kept confidential under exemption 4 of the Freedom of Information Act, which protects commercial or financial information obtained from a person that is privileged or confidential.[2]

Board of Governors of the Federal Reserve System, February 25, 2020.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2020–04196 Filed 2–28–20; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for

[1] 12 U.S.C. 343(3).

[2] 5 U.S.C. 552(b)(4).

three years, with revision, the Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (FR 2100; OMB No. 7100–0368).

**DATES:** Comments must be submitted on or before May 1, 2020.

**ADDRESSES:** You may submit comments, identified by *FR 2100,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number 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 are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

**FOR FURTHER INFORMATION CONTACT:** A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

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. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the PRA to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection**

*Report title:* Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Policy Statement).

*Agency form number:* FR 2100.

*OMB control number:* 7100–0368.

*Frequency:* Annual.

*Respondents:* All financial institutions regulated by the Board.

*Estimated number of respondents:* 125.

*Estimated average hours per response:* Reporting: 7 hours; Disclosure: 1 hour.

*Estimated annual burden hours:* 1,000 hours.

*General description of report:* Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) requires the Office of the Comptroller of the Currency (OCC), Board, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Bureau of Consumer Financial Protection (CFPB), and Securities and Exchange Commission (SEC) (the Agencies) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. Section 342 requires each OMWI director to develop standards for ''assessing the diversity policies and practices of entities regulated by the agency.'' The Policy Statement, published jointly by the Agencies in June 2015, contains those standards.

*Proposed revisions:* With respect to the reporting template, the Board proposes to clarify the confidentiality language in the ''Use of Information'' section by stating that if a regulated entity submits confidential commercial information that is both customarily and actually treated as private by the entity, the entity should separately designate such information as ''confidential commercial information,'' as appropriate, and that the Board will treat such designated information as confidential to the extent permitted by law, including the Freedom of Information Act.[1] The Board also proposes to delete the Yes/No boxes in Section 5 (''Institution's Self-Assessment'') and to ask the institution to describe its practices during the assessment year. The Yes/No boxes are not necessary as Section 5 of the reporting template already requests a description of the programs that are proving successful as well as the challenges institutions are facing with their diversity programs. Additionally, the FR 2100 includes a disclosure provision for respondent institutions. The Board has revised the FR 2100

[1] 5 U.S.C. 552.

information collection to account for this disclosure provision.

*Legal authorization and confidentiality:* The information collections contained within the Policy Statement, as well as the self-assessment reporting template, are authorized by section 342 of the Dodd-Frank Act,[2] which requires the Board's OMWI director to develop standards for assessing regulated entities' diversity policies and practices. The information collections associated with the Policy Statement are voluntary, as is the use of the self-assessment reporting template. The Transparency Standard, and a portion of the Self-Assessment Standard, call for regulated entities to provide information to the public, so confidentiality is not an issue with respect to those aspects of the Policy Statement. A regulated entity may provide self-assessment material to the Board (including through use of the reporting template) containing confidential commercial information that is protectable under exemption 4 of the Freedom of Information Act.[3] If a regulated entity submits confidential commercial information that is both customarily and actually treated as private by the entity, the entity should separately designate such information as ''confidential commercial information,'' as appropriate, and the Board will treat such designated information as confidential to the extent permitted by law, including the Freedom of Information Act.[4] As noted in the Policy Statement, an entity's primary federal regulator may share information obtained from regulated entities with other Agencies, but the Agencies will only publish information disclosed to them in a form that does not identify a particular entity or individual or disclose confidential business information.

*Consultation outside the agency:* The Agencies worked together to develop standards for assessing the diversity policies and practices of their regulated entities. The Board will continue to reach out to the regulated entities and other interested parties to discuss diversity and inclusion in the financial services industry and share leading practices. The primary federal financial regulator will share information with other agencies, when appropriate, to support coordination of efforts and to avoid duplication.

[2] 12 U.S.C. 5452.

[3] 5 U.S.C. 552(b)(4).

[4] 5 U.S.C. 552.

Board of Governors of the Federal Reserve System, February 25, 2020.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2020–04197 Filed 2–28–20; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 1, 2020.

A. *Federal Reserve Bank of Atlanta* (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Business First Bancshares, Inc., Baton Rouge, Louisiana;* to merge with Pedestal Bancshares, Inc., thereby indirectly acquire Pedestal Bank, both of Houma, Louisiana.

Board of Governors of the Federal Reserve System, February 26, 2020.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2020–04205 Filed 2–28–20; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Survey of Small Business and Farm Lending (SSBFL) (FR 2028; OMB No. 7100–0061).

**DATES:** Comments must be submitted on or before May 1, 2020.

**ADDRESSES:** You may submit comments, identified by FR 2028, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number 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 are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

**FOR FURTHER INFORMATION CONTACT:** 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, if approved. These documents will also be made available on the 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 below.

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.

**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. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection**

*Report title:* Survey of Small Business and Farm Lending.

*Agency form number:* FR 2028.

*OMB control number:* 7100–0061.

*Frequency:* Quarterly.

*Respondents:* Domestically chartered commercial banks.

*Estimated number of respondents:* FR 2028B—250, FR 2028S—250, FR 2028D—398.

*Estimated average hours per response:* FR 2028B—1.4, FR 2028S—0.1, FR 2028D—3.0.

*Estimated annual burden hours:* FR 2028B—1,400, FR 2028S—100, FR 2028D—4,776.

*General description of report:* The SSBFL (previously the Survey of Terms of Lending) collects unique information concerning price and certain nonprice terms of loans made to businesses and farmers each quarter (February, May, August, and November). The FR 2028B collects detailed data on individual loans funded during the first full business week of the mid-month of each quarter and the FR 2028S collects the prime interest rate for each day of the survey week from FR 2028B respondents. The FR 2028D provides focused and enhanced information on small business lending including rates, terms, credit availability, and reasons for their changes. The FR 2028D collects quarterly average quantitative data on terms of small business loans and qualitative information on changes and the reasons for changes in the terms of lending. From these sample SSBFL data, estimates of the terms of business loans and farm loans extended are constructed. The aggregate estimates for business loans are published in the Federal Reserve Bank of Kansas City's quarterly release, *Small Business Lending Survey,* and aggregate estimates for farm loans are published in the statistical release, *Agricultural Finance Databook.*

*Proposed revisions:* The Federal Reserve proposes to implement revisions to the FR 2028D reporting requirements, forms and instructions, to be effective with the reports as of August 1, 2020. Most of the revisions are proposed to minimize burden on respondents. These changes include removing items related to base lending rates, secured loans and loan guarantees. Additionally, questions related to low and moderate income (LMI) tracts have been removed from the survey as have two qualitative questions ranking the relative weight of certain survey responses. A question related to credit card loans has been added to the survey for those respondents with an asset size of greater than $10 billion. Changes to the instructions are clarifying in nature or address changes to the form. One change broadens the definition of small business lending to allow institutions that do not track borrowers' organization revenue to participate in the survey. Additionally, revisions have been made to the Frequently Asked Questions section to increase clarity of form definitions.

*Small Business Lending Survey Form Deletions*

Questions determined to provide lower value, in comparison to the burden imposed on respondents required to track and respond, would be removed from the survey. Survey questions related to weighted average base rates and the number and dollar amount of secured loans would be removed, eliminating 12 questions each for fixed rate and variable rate small business commercial and industrial (C&I) loans. Questions related to loan guarantees, including those referencing Small Business Administration loans, would also be removed, a reduction of 22 questions for fixed rate loans and 16 questions for variable rate loans. Four questions each were removed for fixed rate and variable rate loans regarding number of loans at the interest rate floor, and five questions related to LMI tracts for Community Reinvestment Act purposes would be removed. Finally, two questions ranking the relative weight of certain survey responses would be eliminated.

*Small Business Lending Survey Form Additions*

For institutions with an asset size greater than $10 billion, questions related to credit card lending would be added to the survey. Six questions, each for fixed and variable rate lending, would be added for the purpose of improving clarity in small business C&I lending and to identify situations where interest rates on credit card loans may skew data on weighted average interest rates. Additionally, an option to choose the secured overnight financing rate (SOFR) as an institution's base rate for C&I small business lending would be added to questions 1 and 2 of the survey.

*Survey Period*

The Federal Reserve proposes a change to begin the transmission period two weeks earlier to extend the

transmission time for respondents to 28 calendar days, allowing additional time for reporters to prepare and transmit data.

*Legal authorization and confidentiality:* The FR 2028 is authorized by section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)), which authorizes the Board to require any depository institution to make such reports of its assets and liabilities as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibilities to monitor and control monetary and credit aggregates. The FR 2028 survey submissions are voluntary.

Individual respondents may request that information submitted to the Board through a survey under FR 2028 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. The Board will consider whether information collected through these surveys may be kept confidential under exemption 4 for the Freedom of Information Act (FOIA), which protects privileged or confidential commercial or financial information (5 U.S.C. 552(b)(4)), or any other applicable FOIA exemption.

Board of Governors of the Federal Reserve System, February 25, 2020.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2020–04195 Filed 2–28–20; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 191 0087]**

### FXI Holdings and Innocor; Analysis of Agreement Containing Consent Order 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 methods of competition. The attached Analysis of Agreement Containing Consent Order 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 April 1, 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. Please write: ''FXI Holdings and Innocor; File No. 191 0087'' 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, please 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:** Llewellyn Davis (202–326–3394), Bureau of Competition, 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 of Agreement Containing Consent Order 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 February 21, 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 April 1, 2020. Write ''FXI Holdings and Innocor; File No. 191 0087'' 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.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''FXI Holdings and Innocor; File No. 191 0087'' 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; 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. If possible, submit your paper comment to the Commission by courier or 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 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 your comment does not include any 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 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 April 1, 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 Agreement Containing Consent Order To Aid Public Comment**

**I. Introduction**

The Federal Trade Commission (''Commission'') has accepted from One Rock Capital Partners II, LP (''One Rock Capital''), FXI Holdings, Inc. (''FXI''), Bain Capital Fund XI, LP (''Bain''), and Innocor Inc. (''Innocor''), subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') designed to remedy the anticompetitive effects that would likely result from FXI's proposed acquisition of Innocor. The proposed Decision and Order (''Order'') contained in the Consent Agreement requires FXI and Innocor to divest three polyurethane foam pouring plants to Future Foam, Inc. (''Future Foam'').

The proposed Consent Agreement has been placed on the public record for thirty 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 review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

On March 4, 2019, FXI and Innocor signed an Agreement and Plan of Merger by which FXI's parent company, One Rock Capital, would acquire 100% of the voting securities of Innocor for approximately $850 million (the ''Acquisition''). The proposed Acquisition would combine two leading producers of polyurethane foam in the United States. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, by substantially lessening competition in several regional markets across the United States for low-density conventional polyurethane foam (''Low-Density Foam''). The proposed Consent Agreement would remedy the alleged violations by preserving the competition that otherwise would be lost in this market as a result of the proposed Acquisition.

**II. The Parties**

Headquartered in Media, Pennsylvania, FXI is a polyurethane foam producer, providing a full range of polyurethane foam products including conventional, visco, and high resiliency foam. Polyurethane foam is used in a variety of end-uses, including home furnishing, packaging, and automotive applications. FXI operates foam-pouring facilities across the United States, including in the Pacific Northwest, the Midwest States, and Mississippi.

Innocor, headquartered in Red Bank, New Jersey, also produces a full range of polyurethane foam products including conventional, visco, and high resiliency foam for home furnishing, packaging, and other end uses. Like FXI, Innocor operates foam-pouring facilities across the United States, including in the Pacific Northwest, the Midwest States, and Mississippi.

**III. The Relevant Product and Market Structure**

The relevant product market in which to assess the competitive effects of the proposed acquisition is Low-Density Foam for home furnishing uses. Polyurethane foam consists of various grades and densities with different properties and end uses. Both FXI and Innocor sell Low-Density Foam, commonly referred to as ''light and white,'' to furniture manufacturers directly or through third party fabricators. When used in home furnishing products, such as mattresses, mattress toppers, pet beds, pillows, chairs, and couches, Low-Density Foam serves as padding or cushioning. There are no reasonably interchangeable substitutes for Low-Density Foam in home furnishing applications.

Regional geographic markets are appropriate to assess the competitive effects of the proposed Acquisition because of the importance of proximity to producers. Low-Density Foam is bulky, and involves shipping a large volume of air, so the cost of shipping is high relative to the value of the product. These high shipping costs limit the ability of distant producers to compete against local suppliers and result in regional competition. Foam producers like FXI and Innocor operate regional pouring facilities that service customers in the surrounding areas. In this matter, there are three relevant geographic markets for Low-Density Foam: The Pacific Northwest, the Midwest States, and Mississippi. The Pacific Northwest includes Oregon, Washington. The Midwest States include Indiana, Michigan, and Ohio.

The combination of FXI and Innocor would create the largest supplier of Low-Density Foam in the United States. The combined firm would have a market share above 50% in each of the Pacific Northwest, Midwest States, and Mississippi markets. FXI and Innocor face varying levels of competition in these regional markets. FXI and Innocor are the only firms that pour foam in the Pacific Northwest. In the Midwest States, FXI, Innocor, and Carpenter each have foam-pouring facilities, while in Mississippi FXI, Innocor, Carpenter and Elite each operate foam-pouring facilities. Future Foam does not currently pour foam in any of these markets.

The proposed FXI/Innocor combination would result in highly concentrated markets for Low-Density Foam to become even more concentrated, increasing the Herfindahl-Hirschman Index (''HHI'') by more than 1500 in three regional markets—the Pacific Northwest, the Midwest States, and Mississippi. This increase in concentration far exceeds the thresholds set out in the Horizontal Merger Guidelines for raising a presumption that the Acquisition would create or enhance market power.

**IV. Effects of the Acquisition**

Absent a divestiture, the proposed acquisition is likely to harm customers of Low-Density Foam in the Pacific Northwest, Midwest States, and Mississippi markets. FXI and Innocor compete directly against each other for Low-Density Foam sales in each of the relevant markets, and customers have benefited from that competition. By eliminating head-to-head competition between FXI and Innocor, the proposed Acquisition likely would lead to unilateral effects in the form of higher prices and reduced innovation.

The proposed acquisition is also likely to increase the likelihood of coordination and parallel accommodating conduct among the remaining competitors in the relevant markets. There is a history of alleged anticompetitive conduct within the polyurethane foam industry, raising heightened concerns about further consolidation. The industry also shows an existing vulnerability to coordination, including significant awareness of interdependence among the suppliers, actions taken in recognition of that interdependence, and sufficient transparency among the producers to support coordination. Further consolidation is likely to

increase the incentives and ability of the remaining firms to coordinate.

**V. Entry**

Entry into the Low-Density Foam markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed Acquisition. A new entrant with a single pouring plant would face significant barriers to entry, such as higher procurement costs for critical inputs, including the various chemicals, which make up a substantial portion of the cost of polyurethane foam. No new polyurethane foam pouring plants have opened in the Pacific Northwest, the Midwest States or Mississippi for many years. In fact, the number of plants in these regions has steadily decreased as industry participants have consolidated and closed numerous overlapping plants.

**VI. The Consent Agreement**

The Consent Agreement eliminates the competitive concerns raised by the proposed Acquisition by requiring the merging parties to divest foam-pouring plants located in Kent, Washington; Elkhart, Indiana; and Tupelo, Mississippi to Future Foam, a privately held competitor based in Council Bluffs, Iowa. Future Foam is a leading producer of low-density conventional foam but currently has a limited presence in the Pacific Northwest, Mississippi, and the Midwest States. The divestiture package consists of the following assets and rights: FXI's Kent, Washington polyurethane foam plant, Innocor's Elkhart, Indiana plant, and Innocor's Tupelo, Mississippi plant, including each plant's production facilities, warehouses, storage facilities, equipment, offices, fabricating operations, transportation assets, and all other related businesses, operations and assets; formulas, technologies and other intangible rights and property relating to the facilities; and licenses to shared intellectual property. Additionally, the Order requires that, at the request of Future Foam, FXI must provide transitional assistance for up to twelve months following the divestiture date. These services include logistical and administrative support. The Order also includes other standard terms designed to ensure the viability of the divested business. The provisions of the proposed Consent Agreement positions Future Foam to become an effective competitor in the markets for Low-Density Foam in the Pacific Northwest, the Midwest States, and Mississippi in order to maintain the competition that currently exists.

Under the Order, FXI is required to divest the three plants no later than 10 days from the close of its acquisition of Innocor. If the Commission determines that Future Foam is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the Order requires FXI to either unwind the sale of rights and assets to Future Foam and then divest the assets to a Commission-approved acquirer within 120 days of the date the Order becomes final, or modify the divestiture to Future Foam in the manner the Commission determines is necessary to satisfy the requirements of the Order.

The Order also requires a monitor to oversee FXI's compliance with the obligations set forth in the Order. If FXI does not fully comply with the divestiture and other requirements of the Order, the Commission may appoint a Divestiture Trustee to divest the three facilities and perform FXI's other obligations consistent with the Order. The Order also requires that FXI and One Rock Capital shall not, without providing advance written notification to the Commission, acquire any polyurethane foam production plant in the states of Indiana, Michigan, Mississippi, Ohio, Oregon, and Washington for a period of ten years from the date the Order is issued.

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

By direction of the Commission.

**April J. Tabor,**

*Acting Secretary.*

[FR Doc. 2020–04182 Filed 2–28–20; 8:45 am]

**BILLING CODE 6750–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–PBS–2020–02; Docket No. 2020–0002; Sequence No. 7]**

### Notice of Availability of a Record of Decision for the Construction of a New U.S. Land Port of Entry in Madawaska, Maine, and a New Madawaska-Edmundston International Bridge

**AGENCY:** Public Buildings Service (PBS), General Services Administration (GSA); Federal Highway Administration (FHWA); Maine Department of Transportation (MaineDOT).

**ACTION:** Notice of availability of a Record of Decision.

**SUMMARY:** Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, GSA Order ADM 1095.1F Environmental Considerations in Decision Making, the GSA PBS NEPA Desk Guide, the FHWA Policy Guide, and FHWA's Environmental Impact and Related Procedures, the GSA PBS, FHWA, and MaineDOT, in cooperation with the U.S. Coast Guard and in coordination with the U.S. Customs and Border Protection (CBP), announce the availability of a Record of Decision (ROD) for the proposed new U.S. land port of entry (LPOE) in Madawaska, Maine, and new International Bridge between Madawaska, Maine, and Edmundston, New Brunswick, Canada.

**ADDRESSES:** GSA, FHWA, and MaineDOT will have copies of the ROD for review at the Town of Madawaska Town Office on 328 St. Thomas Street, Suite 101, Madawaska, Maine 04756. Further information, including an electronic copy of the ROD, may be found online on the following websites:

- *gsa.gov/madawaskalpoe*
- *https://www.maine.gov/mdot/planning/studies/meib/*

**FOR FURTHER INFORMATION CONTACT:** Alexas Kelly, Project Manager, GSA, New England Region, 10 Causeway Street, 11th Floor, Boston, MA 02222, by phone at 617–549–8190, or by email at *alexandria.kelly@gsa.gov;* or Cheryl Martin, Assistant Division Administrator, FHWA, Edmund S. Muskie Federal Building, 40 Western Avenue, Room 614, Augusta, ME 04330, by phone at 207–512–4912, or by email at *cheryl.martin@dot.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the Proposed Action is to provide for the long-term safe and efficient flow of current and projected traffic volumes, including the movement of goods and people between Edmundston, New Brunswick, and Madawaska, Maine. The Proposed Action is needed because (1) the existing International Bridge is nearing the end of its useful life, and (2) the existing Madawaska LPOE is substandard, inhibiting the agencies assigned to the LPOE from adequately fulfilling their respective missions.

The existing Madawaska-Edmundston International Bridge opened to traffic in 1921 and its design life has been exceeded. Notable bridge deficiencies are (1) substandard roadway width and clearance, (2) foundation susceptible to undermining, (3) piers cracked and

deteriorated, (4) significant steel corrosion, (5) bridge capacity is insufficient, and (6) deficiencies prompting the bridge posting on October 27, 2017, from 50 tons to 5 tons.

A Final Environmental Impact Statement (FEIS) and ROD were published in January 2007, which addressed the construction of a new Madawaska LPOE.

Built in 1959, the current LPOE suffers from facility, operational, and site deficiencies, and does not meet current CBP mission and operational requirements for a LPOE. A few noted deficiencies: (1) Lack of office and inspection areas, (2) deficient inbound and outbound passenger and commercial processing areas, (3) inadequate queuing space for vehicles, and (4) inability to meet the Architectural Barriers Act. In furtherance of the LPOE Project, GSA previously acquired approximately nine acres of land but did not commence construction.

A Supplemental Environmental Impact Statement (SEIS) was needed due to a change in circumstance: The decision by MaineDOT and New Brunswick Department of Transportation and Infrastructure (NBDTI) to include alternatives for addressing deficiencies to the existing Madawaska—Edmundston International Bridge. The SEIS addresses changes to the Proposed Action, including an updated design in accordance with current GSA and CBP requirements, a new International Bridge, and additional land acquisition.

A Final Supplemental Environmental Impact Statement (FSEIS)/Final Programmatic Section 4(f) Evaluation were issued for public review and comment on October 4, 2019. The FSEIS identified the Preferred Alternative for the new U.S. LPOE and new International Bridge location and design; described the environmental impacts of the proposed project and proposed mitigation; and addressed comments received on the Draft Supplemental Environmental Impact Statement/Draft Programmatic Section 4(f) Evaluation issued on November 26, 2018. The 30-day comment period for the FSEIS/Final Programmatic Section 4(f) ended on November 4, 2019.

The ROD states what the decision is; identifies the alternatives considered, including the environmentally preferred alternative; and discusses mitigation plans, including enforcement and monitoring commitments. In the ROD, the agencies discuss all the factors that were contemplated when reaching their decision on whether to, and if so how to, proceed with the Proposed Action. The ROD discusses all practical means to avoid or minimize environmental harm that have been adopted.

The GSA considered three build alternatives for the LPOE FSEIS/Final Programmatic Section 4(f) Evaluation; the FHWA and MaineDOT considered three build alternatives for the International Bridge. The Selected Alternative is identified as LPOE Alternative C and Bridge Alternative 2 from the FSEIS/Final Programmatic Section 4(f) Evaluation. LPOE Alternative C and Bridge Alternative 2 are the environmentally preferred alternatives for the LPOE and International Bridge, respectively.

LPOE Alternative C was identified as the Preferred LPOE Alternative because it furthers the purpose of the project and satisfies the needs for the project. The Preferred LPOE Alternative: (1) Provides enough space for safe and efficient flow of traffic through the LPOE; (2) provides enough space for the operations of the LPOE to function efficiently; (3) meets MaineDOT's access management guidelines and the entrance and exit to the LPOE would be approved by MaineDOT; (4) provides a safer location and distance between the outbound and inbound driveways; (5) provides enough open space to accommodate the necessary length of road to descend from the bridge landing elevation (538) to the elevation of Mill Street (520) without a steep road grade, and provides safer maintenance and circulation in winter conditions; (6) provides increased line of sight, safety and security for CBP personnel to carry out their mission and operations; (7) allows inbound and outbound driveways to connect to Mill Street, eliminating the need for B-trains to use Main Street; and, (8) provides enough space for seasonal snow storage and future expansion.

Bridge Alternative 2 was identified as the Preferred Bridge Alternative because, although it would have one more pier in the Saint John River than another alternative considered, the piers to support the bridge would be smaller, decreasing the risks for ice jamming in the river. While Bridge Alternative 2 would have similar construction impacts and comparable costs (both construction and long-term operation and maintenance) to other alternatives, Bridge Alternative 2 would take approximately six months less time to construct.

The FSEIS/Final Programmatic Section 4(f) Evaluation includes a comprehensive summary of the mitigation measures and commitments from the GSA, FHWA, and MaineDOT in support of the development of the Preferred LPOE Alternative and the Preferred Bridge Alternative to further avoid and minimize adverse impacts.

Dated: February 11, 2020.

**Glenn Rotondo,**

*Regional Commissioner, Public Buildings Service.*

[FR Doc. 2020–04252 Filed 2–28–20; 8:45 am]

**BILLING CODE 6820–FP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–10146, CMS–10062, CMS–10242 and CMS–685]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by April 1, 2020.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax

Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use:* The purpose of this notice is to provide information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process.

CMS requests approval of changes to a currently approved collection under section 1860D–4(g)(1) of the Social Security Act which requires Part D plan sponsors that deny prescription drug coverage to provide a written notice of the denial to the enrollee. The written notice must include a statement, in understandable language, of the reasons for the denial and a description of the appeals process.

Medicare beneficiaries who are enrolled in a Part D plan will be informed of adverse decisions related to their prescription drug coverage and their right to appeal these decisions. The notice provides all ways that the beneficiary can file an appeal under one section. The Part D instructions have also been revised to include a paragraph informing providers that in the case that a request for a coverage determination is denied under Part B due to step therapy requirements, a different notice should be given.

This denial notice is primarily issued to Part D plan enrollees (Medicare beneficiaries) and is most commonly sent to enrollees by mail. Relying on electronic transmission of this notice to beneficiaries is impractical. Plans are required by regulation to maintain a website by which beneficiaries can request an appeal. In this version of the notice, website information is more prominently displayed. *Form Number:* CMS–10146 (OMB control number: 0938–0976); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 525; *Total Annual Responses:* 2,887,866; *Total Annual Hours:* 721,967. (For policy questions regarding this collection contact Sara Klotz at (410) 786–1984.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Collection of Diagnostic Data in the Abbreviated RAPS Format from Medicare Advantage Organizations for Risk Adjusted Payments; *Use:* The 1997 BBA and later legislation required CMS to adjust per-beneficiary payments with a risk adjustment methodology using diagnoses to measure relative risk due to health status instead of just demographic characteristics such as age, sex, and Medicaid eligibility. The purpose of risk adjustment is to pay plan sponsors accurately based on the health status and diagnoses of their Medicare enrollees. Risk adjustment using diagnoses provides more accurate payments for Medicare Advantage Organizations (MAO), with higher payments for enrollees at risk for being sicker, and lower payments for enrollees predicted to be healthier.

The BBA constituted the first legislative mandate for health status risk adjustment. Section 1853 (a)(3) of the Social Security Act as enacted by Section 4001 of Subtitle A of the BBA required the Secretary to implement a risk adjustment methodology that accounted for variations in per capita costs based on health status and other demographic factors for payment to Medicare+Choice (now MA) organizations. The new methodology was to be effective no later than January 1, 2000. The BBA also required that M+C organizations submit data for use in developing risk adjusted payments.

Risk adjustment allows CMS to pay plans for the health risk of the beneficiaries they enroll, instead of paying an identical an average amount for each enrollee Medicare beneficiaries. By risk adjusting plan payments, CMS is able to make appropriate and accurate payments for enrollees with differences in expected costs. Risk adjustment is used to adjust bidding and payment based on the health status and demographic characteristics of an enrollee. Risk scores measure individual beneficiaries' relative risk and the risk scores are used to adjust payments for each beneficiary's expected expenditures. By risk adjusting plan bids, CMS is able to also use standardized bids as base payments to plans.

CMS' fundamental goal for the abbreviate format RAPS data is to require collection of the minimum data necessary for accurate risk-adjusted payment. We believe that diagnostic data provide the most reliable approach to measuring health status, as required by statute. In the absence of these data, we would not be able to accurately determine the beneficiary's health (risk) status. *Form Number:* CMS–10062 (OMB control number: 0938–0878); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 761; *Total Annual Responses:* 46,610,448; *Total Annual Hours:* 33,484. (For policy questions regarding this collection contact Michael P Massimini at 410–786–1566.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Emergency and Non-Emergency Ambulance Transports and Beneficiary Signature Requirements; *Use:* The statutory authority requiring a beneficiary's signature on a claim submitted by a provider is located in section 1835(a) and in 1814(a) of the Social Security Act (the Act), for Part B and Part A services, respectively. The authority requiring a beneficiary's signature for supplier claims is implicit in sections 1842(b)(3)(B) (ii) and in 1848(g)(4) of the

Act. Federal regulations at 42 CFR 424.32(a)(3) state that all claims must be signed by the beneficiary or on behalf of the Beneficiary (in accordance with 424.36). Section 424.36(a) states that the beneficiary's signature is required on a claim unless the beneficiary has died or the provisions of 424.36(b), (c), or (d) apply. For emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim (and the beneficiary's authorized representative is unavailable or unwilling to sign the claim), that it is impractical and infeasible to require an ambulance provider or supplier to later locate the beneficiary or the person authorized to sign on behalf of the beneficiary, before submitting the claim to Medicare for payment. Therefore, an exception was created to the beneficiary signature requirement with respect to emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim, and if certain documentation requirements are met. Thus, we added subsection (6) to paragraph (b) of 42 CFR 424.36. The information required in this ICR is needed to help ensure that services were in fact rendered and were rendered as billed. *Form Number:* CMS–10242(OMB control number: 0938–1049); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profits, Not-for-profit Institutions; *Number of Respondents:* 10,229; *Total Annual Responses:* 13,318,440; *Total Annual Hours:* 1,110,757. (For policy questions regarding this collection contact Martha Kuespert at (410) 786–4605.)

4. *Type of Information Collection Request:* Revision of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations; *Use:* Section 1881(c) of the Social Security Act establishes End Stage Renal Disease (ESRD) Network contracts. The regulations found at 42 CFR 405.2110 and 405.2112 designated 18 ESRD Networks which are funded by renewable contracts. These contracts are on 3-year cycles. To better administer the program, CMS is requiring contractors to submit semi-annual cost reports. The purpose of the cost reports is to enable the ESRD Networks to report costs in a standardized manner. This will allow CMS to review, compare and project ESRD Network costs during the life of the contract. *Form Number:* CMS–685 (OMB Control Number: 0938–0657); *Frequency:* Reporting—Semi-annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 108. (For policy questions regarding this collection contact Benjamin Bernstein at 410–786–6570).

Dated: February 26, 2020.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2020–04242 Filed 2–28–20; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10589]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by May 1, 2020.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

**CMS–10589 QECP Annual Report Workbook Submission Requirement for Qualified Entities Under ACA Section 10332**

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collection**

1. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* QECP Annual Report Workbook Submission Requirement for Qualified Entities under ACA Section 10332; *Use:* This collection focuses on the expansion of qualified entities. This collection covers the requirement that a qualified entity must submit an annual report to CMS. In addition, this collection covers the requirement that a qualified entity must have a qualified entity data use agreement (QE DUA) or non-public analyses agreement in place with an authorized user prior to providing or selling data or analyses to that authorized user.

Section 10332 of the Patient Protection and Affordable Care Act (ACA) requires the Secretary to make standardized extracts of Medicare claims data under Parts A, B, and D available to ''qualified entities'' for the evaluation of the performance of providers of services and suppliers. The statute provides the Secretary with discretion to establish criteria to determine whether an entity is qualified to use claims data to evaluate the performance of providers of services and suppliers.

Section 105 of the Medicare Access and Reauthorization Act of 2015 (MACRA) expands how qualified entities will be allowed to use and disclose data under the qualified entity program consistent with other applicable laws, including information, privacy, security, and disclosure laws.

The information from the collection will be used by CMS to determine whether a qualified entity continues to meet the qualified entity certification requirements under section 10332 of the Affordable Care Act and Section 105 of MACRA. In addition, it will ensure that certain privacy and security requirements are met when qualified entities provide or sell data or sell non-public analyses that contains individually identifiable beneficiary information to authorized users. *Form Number:* CMS–10589 (OMB control number: 0938–1309); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for profits, and Not for profits institutions; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 3,450. (For policy questions regarding this collection contact Kari Gaare at 410–786–8612.)

Dated: February 26, 2020.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2020–04241 Filed 2–28–20; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3388–PN]**

### Medicare and Medicaid Programs; Application From DNV–GL Healthcare USA Inc. for Initial CMS Approval of Its Psychiatric Hospital Accreditation Program

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

**ACTION:** Notice with request for comment.

**SUMMARY:** This proposed notice acknowledges the receipt of an application from the DNV–GL Healthcare USA Inc. (DNV–GL) for initial recognition as a national accrediting organization (AO) for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 1, 2020.

**ADDRESSES:** In commenting, refer to file code CMS–3388–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3388–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3388–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Joann Fitzell, (410) 786–4280. Lillian Williams, (410) 786–8636.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

**I. Background**

Under the Medicare program, eligible beneficiaries may receive covered services from a psychiatric hospital, provided certain requirements are met. Section 1861(f) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at part 42 CFR part 482 subpart E specify the minimum conditions that a psychiatric hospital must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for psychiatric hospitals.

Generally, to enter into an agreement, a psychiatric hospital must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 482 subpart E of our regulations. Thereafter, the psychiatric hospital is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act states, if a provider entity demonstrates through accreditation by an approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we may treat the provider entity as having met those conditions, that is, we may deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Center for Medicare & Medicaid Services (CMS) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. An AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5.

## II. Approval of Accreditation Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that findings concerning review and approval of an AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the DNV–GL Healthcare USA Inc. (DNV–GL) request for initial approval of its psychiatric hospital accreditation program. This notice also solicits public comment on whether the DNV–GL's requirements meet or exceed the Medicare conditions of participation (CoPs) for psychiatric hospitals.

## III. Evaluation of Deeming Authority Request

DNV–GL submitted all the necessary materials to enable us to make a determination concerning its request for initial approval of its psychiatric hospital accreditation program. This application was determined to be complete on January 2, 2020. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of the DNV–GL will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the DNV–GL standards for psychiatric hospitals as compared with CMS' psychiatric hospital CoPs.
- The DNV–GL survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the DNV–GL's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ The DNV–GL's processes and procedures for monitoring a psychiatric hospital found out of compliance with the DNV–GL's program requirements. These monitoring procedures are used only when the DNV–GL identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9(c).

++ The DNV–GL's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ The DNV–GL's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the DNV–GL's staff and other resources, and its financial viability.

++ The DNV–GL's capacity to adequately fund required surveys.

++ The DNV–GL's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ The DNV–GL's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ The DNV–GL's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

Upon completion of our evaluation, including evaluation of public comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

## IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: February 13, 2020.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2020–04137 Filed 2–28–20; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Questionnaire and Data Collection Testing, Evaluation, and Research for the Health Resources and Services Administration, OMB No. 0915–0379— Extension

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR must be received no later than May 1, 2020.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance

Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Questionnaire and Data Collection Testing, Evaluation, and Research for HRSA OMB No. 0915–0379—Extension.

*Abstract:* The purpose of collections under this generic clearance is to obtain formative information from respondents to develop new questions, questionnaires and tools and to identify problems in instruments currently in use. This clearance request is limited to formative research activities emphasizing data collection, toolkit development, and estimation procedures and reports for internal decision-making and development purposes. This clearance request does not extend to the collection of data for public release or policy formation. It is anticipated that these studies will rely heavily on qualitative techniques to meet their objectives. In general, these activities are not designed to yield results that meet generally accepted standards of statistical rigor but are designed to obtain valuable formative information to develop more effective and efficient data collection tools that will yield more accurate results and decrease non-response.

*Need and Proposed Use of the Information:* HRSA conducts cognitive interviews, focus groups, usability tests, field tests/pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation as well as more basic research on response errors in surveys.

HRSA staff use various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing, Computer Assisted Self-Interviewing, Audio Computer-Assisted Self-Interviewing, and web-based questionnaires.

Professionally recognized procedures are followed in each information collection activity to ensure high quality data. Examples of these procedures could include the following:

- Monitoring by supervisory staff of a certain percent of telephone interviews;
- Conducting cognitive interviewing techniques, including think-aloud techniques and debriefings;
- Data-entry from mail or paper-and-pencil surveys will be computerized through scannable forms or checked through double-key entry;
- Observers will monitor focus groups, and focus group proceedings will be recorded; and
- Data submitted through on-line surveys will be subjected to statistical validation techniques to ensure accuracy (such as disallowing out-of-range values).

Each request under this generic clearance will specify the procedures to be used. Participation will be fully voluntary, and non-participation will have not affect eligibility for, or receipt of, future HRSA health services research activities or grant awards, recruitment or participation. Specific testing and evaluation procedures will be described when we notify OMB about each new request. Appropriate consent procedures will be customized and used for each information collection activity and any collection of personal, privacy-protected information will be handled in accordance with all applicable requirements. If the encounter is to be recorded, the respondent's permission to record will be obtained before beginning the interview.

Screening—When screening is required (*e.g.,* quota sampling), the screening will be as brief as possible and the screening questionnaire will be provided as part of the submission to OMB.

Collection methods—The particular information collection methods used will vary, but may include the following:

- Individual in-depth interviews—In-depth interviews will commonly be used to ensure that the meaning of a questionnaire or strategy is understood by the respondent. When in-depth interviewing is used, the interview guide will be provided to OMB for review.
- Focus groups—Focus groups will be used to obtain insights into beliefs and understandings of the target audience early in the development of a questionnaire or tool. When focus groups are used, the focus group discussion guide will be provided to OMB for review.
- Expert/Gatekeeper review of tools—In some instances, tools designed for patients may be reviewed in-depth by medical providers or other gatekeepers to provide feedback on the acceptability and usability of a particular tool. This would usually be in addition to pretesting of the tool by the actual patient or other user.
- Record abstractions—On occasion, the development of a tool or other information collection requires review and interaction with records rather than individuals.
- ''Dress rehearsal'' of a specific protocol—In some instances, the proposed pretesting will constitute a walkthrough of the intended data collection procedure. In these instances, the request will mirror what is expected to occur for the larger scale data collection.

*Likely Respondents:* Respondents will be recruited by means of advertisements in public venues or through techniques that replicate prospective data collection activities that are the focus of the project. For instance, a survey on physician communication, designed to be administered following an office visit, might be pretested using the same procedure. Each submission to OMB will specify the specific recruitment procedure to be used.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Type of information collection | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Mail/email [1] | 1,000 | 1 | 1,000 | 0.26 | 260 |
| Telephone | 1,000 | 1 | 1,000 | 0.26 | 260 |
| Web-based | 1,000 | 1 | 1,000 | 0.25 | 250 |
| Focus Groups | 725 | 1 | 725 | 1.0 | 725 |
| In-person | 500 | 1 | 500 | 1.0 | 500 |
| Automated [2] | 500 | 1 | 500 | 1.0 | 500 |
| Cognitive Testing | 500 | 1 | 500 | 1.41 | 705 |
| Total | 5,225 | | 5,225 | | 3,200 |

[1] May include telephone non-response follow-up in which case the burden will not change.
[2] May include testing of database software, Computer Assisted Personal Interviewing software, or other automated technologies.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2020–04166 Filed 2–28–20; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Meetings of the National Advisory Council on Migrant Health

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice announces that the National Advisory Council on Migrant Health (NACMH) will hold two public meetings for the 2020 calendar year (CY). Information about NACMH, and agendas for these meetings can be found on the NACMH website at: *https://bphc.hrsa.gov/qualityimprovement/strategicpartnerships/nacmh/index.html.*

**DATES:**

- May 5–6, 2020; 9:00 a.m. to 5:00 p.m. Mountain Time (MT).
- November 4–5, 2020; 9:00 a.m. to 5:00 p.m. Eastern Time (ET).

**ADDRESSES:** The May meeting will be held in-person at Courtyard Boulder Longmont, 1410 Dry Creek Drive, Longmont, Colorado 80503. The November meeting will be held in-person at 5600 Fishers Lane, 5W07, Rockville, Maryland 20857.

Instructions for joining the meetings in-person will be posted on the NACMH website 30 business days before the date of the meeting. For meeting information updates, go to the NACMH website at: *https://bphc.hrsa.gov/qualityimprovement/strategicpartnerships/nacmh/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Esther Paul, NACMH Designated Federal Officer (DFO), Strategic Initiatives and Planning Division, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, 16N38B, Rockville, Maryland 20857; 301–594–4300; or *epaul@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** NACMH provides advice and recommendations to the Secretary of HHS on policy, program development, and other matters of significance concerning the activities under section 217 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 218). Specifically, NACMH provides recommendations concerning policy related to the organization, operation, selection, and funding of migrant health centers, and other entities under grants and contracts under section 330 of the PHS Act (42 U.S.C. 254b). NACMH meets twice each calendar year, or at the discretion of the DFO in consultation with the NACMH Chair.

Since priorities dictate meeting times, be advised that times and agenda items are subject to change. For CY 2020 meetings, agenda items may include, but are not limited to, topics and issues related to migratory and seasonal agricultural worker health.

Refer to the NACMH website listed above for all current and updated information concerning the CY 2020 NACMH meetings, including draft agendas and meeting materials, which will be posted 30 calendar days before the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meetings. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to the NACMH should be sent to Esther Paul using the contact information above at least 5 business days before the meeting date.

Individuals who need special assistance or another reasonable accommodation should notify Esther Paul using the contact information listed above at least 10 business days before the meeting(s) they wish to attend. Since the November 2020 meeting will occur in a federal government building, attendees must go through a security check to enter the building. Non-U.S. citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2020–04169 Filed 2–28–20; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Advisory Committee on Research on Women's Health.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meetings.

The meetings will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

*Name of Committee:* Advisory Committee on Research on Women's Health.

*Date:* April 21, 2020.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* Director's Report and Scientific Presentations.

*Place:* National Institutes of Health, Porter Neuroscience Center, Building 35A, Conference Room 620/630, 35 Center Drive, Bethesda, MD 20892.

*Contact Person:* Elizabeth Spencer, R.N., Deputy Director, Office of Research on Women's Health, Executive Secretary, ACRWH, National Institutes of Health, 6707 Democracy Blvd., Room 7W444, Bethesda, MD 20817, (301) 402–1770, *elizabeth.spencer@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meetings. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://orwh.od.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 25, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–04163 Filed 2–28–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given for the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) on March 17, 2020.

The Council was established to advise the Secretary, Department of Health and Human Services (HHS); the Assistant Secretary for Mental Health and Substance Use, SAMHSA; and Director, CSAP concerning matters relating to the activities carried out by and through the Center and the policies respecting such activities.

The meeting will be open to the public and will include the discussion of the Evidence-Based Practices Resource Center; new SAMHSA publications; adolescent prevention programs/activities; and Fostering Healthy Mental, Emotional, and Behavioral Development. The meeting will also include updates on CSAP program developments. The meeting will be held in Rockville, Maryland. Attendance by the public on-site will be limited to the space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations should notify the contact on or before one week prior to the meeting. Five minutes maximum will be allotted for each presentation.

To attend onsite, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Committees' website, *https://snacregister.samhsa.gov/MeetingList.aspx,* or communicate with the CSAP Council's Designated Federal Officer (see contact information below). Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee website, *https://www.samhsa.gov/about-us/advisory-councils,* or by contacting the Designated Federal Officer.

*Committee Name:* Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: March 17, 2020, from 9:30a.m. to 5:00p.m. EDT: (OPEN).

*Place:* SAMHSA, 5600 Fishers Lane, Room 5N54, Rockville, MD 20852, Adobe Connect webcast: *https://samhsa-csap.adobeconnect.com/nac/.*

*Contact:* Matthew J. Aumen, Designated Federal Officer, SAMHSA CSAP NAC, 5600 Fishers Lane, Rockville, MD 20852, Telephone: 240–276–2440, Fax: 301–480–8480, Email: *matthew.aumen@samhsa.hhs.gov.*

Dated: February 26, 2020.

**Carlos Castillo,**

*Committee Management Officer, SAMHSA.*

[FR Doc. 2020–04212 Filed 2–28–20; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities

(IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

**FOR FURTHER INFORMATION CONTACT:** Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs for oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs for oral fluid testing.

## HHS-Certified Laboratories Certified To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

## HHS-Certified Instrumented Initial Testing Facilities Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190. (Formerly: Gamma-Dynacare Medical Laboratories).

## HHS-Certified Laboratories Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories).

Desert Tox, LLC, 10221 North 32nd Street Suite J, Phoenix, AZ 85028, 602–457–5411.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630. (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

CompuChem Laboratories, Inc., A Member of the Roche Group).
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).
Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.
MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085. Testing for Department of Defense (DoD) Employees Only.

**Anastasia Marie Donovan,**

*Policy Analyst.*

[FR Doc. 2020–04151 Filed 2–28–20; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

**Project: SAMHSA SOAR Web-Based Data Form (OMB No. 0930–0329)—EXTENSION**

In 2009 SAMHSA created a Technical Assistance Center to assist in the implementation of the Supplemental Security Income (SSI)/Social Security Disability Insurance (SSDI) Outreach, Access, and Recovery (SOAR) effort in all states. The primary objective of SOAR is to improve the allowance rate for the Social Security Administration's (SSA) disability benefits for people who are experiencing or at risk of homelessness, and who have serious mental illnesses.

During the SOAR training, the importance of keeping track of SSI/SSDI applications through the process is stressed. In response to requests from states implementing SOAR, the Technical Assistance Center under SAMHSA's direction developed a web-based data form that case workers can use to track the progress of submitted applications, including decisions received from SSA either on initial application or on appeal. This password-protected web-based data form is hosted on the SOAR website (*https://soartrack.prainc.com*). Use of this form is completely voluntary.

There are two parts to the SOAR Web-based Data Form. Part I of the SOAR Web-based Data Form is intended for SOAR-trained case workers to enter the outcomes of SOAR-assisted SSI/SSDI applications. Part II of the SOAR Web-based Data Form includes two sections reserved for SOAR State Team Leads to report annually. The first section of Part II collects quantitative summary data from states that do not track SOAR-assisted SSI/SSDI applications using the SOAR Web-based Data Form Part I. The second section of Part II collects qualitative (open-ended) questions on annual SOAR accomplishments, identified challenges, and collaborations.

Data from Part I of the form can be compiled into reports on decision results and the use of SOAR critical components, such as the SSA–1696 Appointment of Representative, which allows SSA to communicate directly with the case worker assisting with the application. These reports will be reviewed by agency directors, SOAR state-level leads, and the SAMHSA SOAR Technical Assistance Center to quantify the success of the effort overall and to identify areas where additional technical assistance is needed.

There are no proposed changes to Part I of this form. These questions will be answered by all 700 case worker respondents, on average 3 times per year. There are no proposed changes to Part II. These questions will be answered by 75 respondents once per year.

The estimated response burden is as follows:

| Form name | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| SOAR Web-based Data Form (Part I) | 700 | 3 | 2,100 | .25 | 525 |
| Annual Report Questions (Part II) | 75 | 1 | 75 | 1 | 37.50 |
| Total | 775 | | 2,175 | | 562.50 |

Written comments and recommendations concerning the proposed information collection should be sent by April 1, 2020 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to

send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Jennifer Wilson,**

*Budget Analyst.*

[FR Doc. 2020–04201 Filed 2–28–20; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2020–0044]**

### Certificate of Alternative Compliance for the M/V PELICAN II

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of issuance of a certificate of alternative compliance.

**SUMMARY:** The Coast Guard announces that the Chief of Prevention Division, Seventh District has issued a certificate of alternative compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for the M/V PELICAN II (O.N. 1296903). We are issuing this notice because its publication is required by statute. Due to the construction and placement of the masthead light, stern light, and sidelights, M/V PELICAN II cannot fully comply with the light, shape, or sound signal provisions of the 72 COLREGS without interfering with the vessel's design and construction. This notification of the issuance of these certificates of alternative compliance promotes the Coast Guard's marine safety mission.

**DATES:** The Certificate of Alternative Compliance for the M/V PELICAN II was issued on January 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** For information or questions about this notice call or email LCDR Dale Cressman, D7 dpi, U.S. Coast Guard, 305–415–7148, *Dale.T.Cressman@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law, however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the Coast Guard determines that the vessel cannot comply fully with those requirements without interfering with the special function of the vessel.[1]

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for a determination that compliance with alternative requirements is justified,[2] and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot comply fully with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.[3] If the Coast Guard issues a COAC, it must publish notice of this action in the **Federal Register**.[4]

The Chief of Prevention Division, Seventh District, U.S. Coast Guard, certifies that the M/V PELICAN II (O.N. 1296903) is a vessel of special construction or purpose, and that, with respect to the positions of the masthead light, stern light, and sidelights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel's car deck. The Chief of Prevention Division, Seventh District, U.S. Coast Guard, further finds and certifies that the lights are configured in closest possible compliance with the applicable provisions of the 72 COLREGS.[5]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: January 16, 2020.

**J.D. Espino-Young,**

*Captain, U.S. Coast Guard, Chief, Prevention Division, Seventh Coast Guard District.*

[FR Doc. 2020–04251 Filed 2–28–20; 8:45 am]

**BILLING CODE 9110–04–P**

[1] 33 U.S.C. 1605.

[2] 33 CFR 81.5.

[3] 33 CFR 81.9.

[4] 33 U.S.C. 1605(c) and 33 CFR 81.18.

[5] 33 U.S.C. 1605(a); 33 CFR 81.9.

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2661–20; DHS Docket No. USCIS–2015–0005]**

**RIN 1615–ZB76**

### Extension of the Designation of Yemen for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Yemen for Temporary Protected Status (TPS) for 18 months, from March 4, 2020, through September 3, 2021. The extension allows currently eligible TPS beneficiaries to retain TPS through September 3, 2021, so long as they otherwise continue to meet the eligibility requirements for TPS.

This notice also sets forth procedures necessary for nationals of Yemen (or aliens having no nationality who last habitually resided in Yemen) to re-register for TPS and to apply for Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). USCIS will issue new EADs with a September 3, 2021, expiration date to eligible beneficiaries under Yemen's TPS designation who timely re-register and apply for EADs under this extension.

**DATES:** *Extension of Designation of Yemen for TPS:* The 18-month extension of the TPS designation of Yemen is effective March 4, 2020, and will remain in effect through September 3, 2021. The 60-day re-registration period runs from March 2, 2020 through May 1, 2020. (Note: It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

**FOR FURTHER INFORMATION CONTACT:**

- You may contact Maureen Dunn, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by mail at 20 Massachusetts Avenue NW, Washington, DC 20529–2060, or by phone at 800–375–5283.
- For further information on TPS, including guidance on the re-registration process and additional information on eligibility, please visit the USCIS TPS web page at

*www.uscis.gov/tps.* You can find specific information about this extension of Yemen's TPS designation by selecting ''Yemen'' from the menu on the left side of the TPS web page.

- If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this notice.

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Through this notice, DHS sets forth procedures necessary for eligible nationals of Yemen (or aliens having no nationality who last habitually resided in Yemen) to re-register for TPS and to apply for renewal of their EADs with USCIS. Re-registration is limited to persons who have previously registered for TPS under the designation of Yemen and whose applications have been granted.

For aliens who have already been granted TPS under Yemen's designation, the 60-day re-registration period runs from March 2, 2020 through May 1, 2020. USCIS will issue new EADs with a September 3, 2021, expiration date to eligible Yemeni TPS beneficiaries who timely re-register and apply for EADs. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that all re-registrants may not receive new EADs before their current EADs expire on March 3, 2020. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of these EADs issued under the TPS designation of Yemen for 180 days, through August 30, 2020. Additionally, aliens who have EADs with an expiration date of September 3, 2018, and who applied for a new EAD during the last re-registration period but have not yet received their new EADs are also covered by this automatic extension. Therefore, TPS beneficiaries who have EADs with: (1) A March 3, 2020 or September 3, 2018 expiration date and (2) an A–12 or C–19 category code, can show these EADs as proof of continued employment authorization through August 30, 2020. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Employment Eligibility Verification (Form I–9), E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Aliens who have a Yemen-based Application for Temporary Protected Status (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of March 2, 2020 do not need to file either application again. If USCIS approves an alien's Form I–821, USCIS will grant the TPS through September 3, 2021. Similarly, if USCIS approves a pending TPS-related Form I–765, it will be valid through the same date. There are currently approximately 1,647 beneficiaries under Yemen's TPS designation.

**What Is Temporary Protected Status?**

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to lawful permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a country's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

**When was Yemen designated for TPS?**

Former Secretary of Homeland Security Jeh Johnson initially designated Yemen for TPS on September 3, 2015, based on ongoing armed conflict in the country resulting from the July 2014 offensive by the Houthis, a northern opposition group that initiated a violent, territorial expansion across the country, eventually forcing Yemeni government leaders into exile in Saudi Arabia. *See Designation of Republic of Yemen for Temporary Protected Status, 80 FR 53319 (Sept. 3, 2015).* On January 4, 2017, former Secretary Johnson announced an 18-month extension of Yemen's existing designation and a new designation of Yemen for TPS on the dual bases of ongoing armed conflict and extraordinary and temporary conditions. *See Extension and Redesignation of Republic of Yemen for Temporary Protected Status, 82 FR 859 (Jan. 4, 2017).*

More recently, in July 2018, former Secretary Kirstjen Nielsen extended Yemen's designation for 18 months, though March 3, 2020. *See Extension of the Designation of Yemen for Temporary Protected Status, 83 FR 40307 (Aug. 14, 2018).*

**What authority does the Secretary have to extend the designation of Yemen for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain

country conditions exist.[1] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, or termination of, or extension of, a designation. The Secretary, in his discretion, may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in the foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary does not determine that the foreign state no longer meets the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

**Why is the Secretary extending the TPS designation for Yemen through September 3, 2021?**

DHS has reviewed conditions in Yemen. Based on the review, including input received from other Government agencies, the Secretary has determined that an 18-month extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions supporting Yemen's TPS designation remain.

Now in its fifth year, the conflict in Yemen continues, with ongoing clashes between the Houthi and government forces in Yemen. The Saudi-led coalition continues to wage a persistent air campaign against the Houthis and their allies, and fighting between government forces and the United Arab Emirates-backed Southern Transition Council (STC) initiated a new wave of violence in the south in 2019. In addition, terrorist groups, including Al-Qaeda in the Arabian Peninsula (AQAP) and a faction of the self-described Islamic State (IS–Y), carried out hundreds of attacks throughout Yemen in 2018 and 2019.

Civilians in Yemen continue to be killed and injured and to suffer numerous human rights abuses and violations, including those involving unlawful or arbitrary killings, forced disappearances, torture, sexual violence, arbitrary arrest and detention, and harsh and life-threatening prison conditions. Saudi-led coalition airstrikes have resulted in civilian casualties on multiple occasions. Houthi forces have used banned antipersonnel landmines, recruited children, and fired artillery into cities including Taiz and Aden, killing and wounding civilians. Government and Houthi security forces have committed rape and other forms of serious sexual violence targeting foreign migrants, internally displaced persons (IDPs), and other vulnerable groups. Non-state actors, including tribal militias, militant secessionist elements, AQAP, and IS–Y have also reportedly committed significant human rights abuses with impunity.

The United Nations has reported that there have been at least 102,000 civilian fatalities due to armed conflict in Yemen since 2015. 2018 was the deadliest year of the conflict to date, with 30,800 reported fatalities. From January–June 2019, 11,900 civilian fatalities were reported, also according to NGO reports.

Yemen continues to experience a significant humanitarian crisis. An estimated 24.1 million people—about 80 percent of the country's population of 30.5 million—require humanitarian assistance, according to the United Nations. From 2016 to 2018, as many as 4.3 million people were internally displaced in Yemen. An estimated 3.6 million remained displaced as of late 2019, while 1 million have returned from displacement to their places of origin, according to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA). According to the International Organization for Migration, more than 190,000 people, including about 65,000 Yemenis, have fled to neighboring countries since the outbreak of the conflict. Yemen currently hosts more than 422,000 refugees, asylum-seekers, and migrants, many of whom grew more vulnerable due to the worsening security and economic situation in 2018, according to UNOCHA. More than 30 percent of new arrivals to Yemen are unaccompanied minors, also according to UNOCHA.

Yemen relies on imports for approximately 90 percent of staple food supplies, according to UNOCHA. Prior to 2015, Yemen was already suffering from significant food insecurity. In March 2019, the World Food Program declared that Yemen was experiencing the world's largest food crisis, affecting 20.1 million individuals. Of those experiencing food insecurity, 9.9 million are facing acute food insecurity. There are nearly 2.3 million suspected cholera cases, and more than 3,700 associated deaths from cholera, since April 2017, according to the World Health Organization.

Years of protracted conflict have severely damaged much of Yemen's critical infrastructure, according to UNOCHA. The conflict has caused significant destruction of housing, medical facilities, schools, and power and water utilities, limiting the availability of electricity, clean water, and medical care and hampering the ability of humanitarian organizations to deliver critically needed food, medicine, and water, according to a 2019 DOS Yemen Travel Advisory. In 2019, the escalating conflict extensively damaged the remaining public and civilian infrastructure, also according to UNOCHA.

Yemen's economy continues to deteriorate due to the ongoing conflict. The country's Gross Domestic Product (GDP) is estimated to have contracted by almost 40 percent since the end of 2014, although official statistics remain unavailable, according to the World Bank. The decline in economic activity has in turn led to a significant reduction in revenue collection, and increased the country's debt. Along with growing debt, a sharp increase in inflation and a large depreciation in the exchange rate from April 2018 to April 2019 dramatically reduced household purchasing power. The share of the population living below the poverty line has notably increased since the conflict began, with current projections indicating that more than 75 percent of the total population lives below the poverty line, also according to the World Bank.

Based upon this review, and after consultation with appropriate Government agencies, the Secretary has determined that:

- The conditions supporting Yemen's designation for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Yemen and, due to

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

such conflict, requiring the return to Yemen of Yemeni nationals (or aliens having no nationality who last habitually resided in Yemen) would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).

- There continue to be extraordinary and temporary conditions in Yemen that prevent Yemeni nationals (or aliens having no nationality who last habitually resided in Yemen) from returning to Yemen in safety, and it is not contrary to the national interest of the United States to permit Yemeni TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Yemen for TPS should be extended for an 18-month period, from March 4, 2020, through September 3, 2021. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

**Notice of Extension of the TPS Designation of Yemen**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, the conditions supporting Yemen's designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of TPS for Yemen for 18 months, from March 4, 2020, through September 3, 2021. *See* INA section 244(b)(1)(A), (b)(1)(C); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C).

**Chad F. Wolf,**

*Acting Secretary.*

**Required Application Forms and Application Fees to Re-Register for TPS**

To re-register for TPS based on the designation of Yemen, you must submit an Application for Temporary Protected Status (Form I–821). There is no Form I–821 fee for re-registration. *See* 8 CFR 244.17. You may be required to pay the biometric services fee. Please see additional information under the ''Biometric Services Fee'' section of this notice.

Through this **Federal Register** notice, your existing EAD issued under the TPS designation of Yemen with the expiration date of March 3, 2020, is automatically extended for 180 days, through August 30, 2020. Although not required to do so, if you want to obtain a new EAD valid through September 3, 2021, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or submit a Request for a Fee Waiver (Form I–912)). If you do not want a new EAD, you do not have to file Form I–765 and pay the Form I–765 fee. If you do not want to request a new EAD now, you may also file Form I–765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application.

Additionally, aliens who have EADs with an expiration date of September 3, 2018, and who applied for a new EAD during the last re-registration period but have not yet received their new EADs are also covered by this automatic EAD extension through August 30, 2020. You do not need to apply for a new EAD to benefit from this 180-day automatic extension. If you have a Form I–821 and/or Form I–765 that was still pending as of March 2, 2020, then you do not need to file either application again. If USCIS approves your pending TPS application, USCIS will grant you TPS through September 3, 2021. Similarly, if USCIS approves your pending TPS-related Form I–765, USCIS will issue you a new EAD that will be valid through the same date.

You may file the application for a new EAD either prior to or after your current EAD has expired. However, you are strongly encouraged to file your application for a new EAD as early as possible to avoid gaps in the validity of your employment authorization documentation and to ensure that you receive your new EAD by August 30, 2020.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

**Biometric Services Fee**

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *www.uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometrics screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *www.dhs.gov/privacy.*

**Refiling a TPS Re-Registration Application After Receiving a Denial of a Fee Waiver Request**

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Properly filing early will also allow you to have time to refile your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to refile by the re-registration deadline, you may still refile your Form I–821 with the biometrics fee. USCIS will review this situation to determine whether you established good cause for late TPS re-registration. However, you are urged to refile within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at *www.uscis.gov/tps.* Following denial of your fee waiver request, you may also refile your Form I–765 with fee either with your Form I–821 or at a later time, if you choose.

**Note:** Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I–821 fee) when filing a TPS re-registration application, you may decide to wait to request an EAD. Therefore, you do not have to file the Form I–765 or pay the associated Form I–765 fee (or request a fee waiver) at the time of re-registration, and could wait to seek an EAD until after USCIS has approved your TPS re-registration application. If you choose to do this, to re-register for TPS you would only need to file the Form I–821 with the biometrics services fee, if applicable, (or request a fee waiver).

**Mailing Information**

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

| If you would like to send your application by: | Then, mail your application to: |
|---|---|
| U.S. Postal Service | U.S. Citizenship and Immigration Services, Attn: TPS Yemen, P.O. Box 6943, Chicago, IL 60680–6943. |
| A non-U.S. Postal Service courier. | U.S. Citizenship and Immigration Services, Attn: TPS Yemen, 131 S Dearborn Street—3rd Floor, Chicago, IL 60603–5517. |

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please

mail your application to the appropriate mailing address in Table 1. When re-registering and requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us to verify your grant of TPS and process your application.

**Supporting Documents**

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS website at *www.uscis.gov/tps* under ''Yemen.''

**Employment Authorization Document (EAD)**

*How can I obtain information on the status of my EAD request?*

To get case status information about your TPS application, including the status of an EAD request, you can check Case Status Online at *www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833). If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS at *my.uscis.gov/en/appointment/v2.* However, we strongly encourage you first to check Case Status Online or call the USCIS Contact Center for assistance before requesting an appointment online.

*Am I eligible to receive an automatic extension of my current EAD through August 30, 2020, through this* ***Federal Register*** *notice?*

Yes. Provided that you currently have a Yemen TPS-based EAD described below, this notice automatically extends your EAD through August 30, 2020, if you are a national of Yemen (or an alien having no nationality who last habitually resided in Yemen); and have one of the following:

- An EAD with a marked expiration date of March 3, 2020, bearing the notation A–12 or C–19 on the face of the card under Category, or
- An EAD with a marked expiration date of September 3, 2018, bearing the notation A–12 or C–19 on the face of the card under Category and you applied for a new EAD during the last re-registration period but have not yet received a new EAD.

Although this **Federal Register** notice automatically extends your EAD through August 30, 2020, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS.

**When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I–9?**

You can find the Lists of Acceptable Documents on the third page of Form I–9 as well as the Acceptable Documents web page at *www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within 3 days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization), or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *www.uscis.gov/I-9Central.*

An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended employment authorization for a new job?'' of this **Federal Register** notice for further information. If your EAD has an expiration date of March 3, 2020, or September 3, 2018 (and you applied for a new EAD during the last re-registration period but have not yet received a new EAD), and states A–12 or C–19 under Category, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through August 30, 2020, unless your TPS has been withdrawn or your request for TPS has been denied. If you have an EAD with a marked expiration date of March 3, 2020, that states A–12 or C–19 under Category, and you received a Notice of Action (Form I–797C) that states your EAD is automatically extended for 180 days, you may choose to present your EAD to your employer together with this Form I–797C as a List A document that provides evidence of your identity and employment authorization for Form I–9 through August 30, 2020, unless your TPS has been withdrawn or your request for TPS has been denied. See the subsection titled, ''How do my employer and I complete the Employment Eligibility Verification (Form I–9) using my automatically extended employment authorization for a new job?'' for further information.

As an alternative to presenting evidence of your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or an acceptable receipt.

**What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?**

Even though your EAD has been automatically extended, your employer is required by law to ask you about your continued employment authorization, and you will need to present your employer with evidence that you are still authorized to work. Once presented, your employer should update the EAD expiration date in Section 2 of Form I–9. *See* the section ''What corrections should my current employer make to Form I–9 if my employment authorization has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through August 30, 2020. Your employer may need to re-inspect your automatically extended EAD to check the Card Expires date and Category code if your employer did not keep a copy of your EAD when you initially presented it.

The last day of the automatic extension for your EAD is August 30, 2020. Before you start work on August 31, 2020, your employer is required by law to reverify your employment authorization in Section 3 of Form I–9. At that time, you must present any document from List A or any document from List C on Form I–9, Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions, to reverify employment authorization.

If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9, and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *www.uscis.gov/I-9Central* for the most current version of Form I–9.

Your employer may not specify which List A or List C document you must

present and cannot reject an acceptable receipt.

**Can my employer require that I provide any other documentation to prove my status, such as proof of my Yemeni citizenship or a Form I–797C showing I re-registered for TPS?**

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I–9 ''Lists of Acceptable Documents'' that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request documentation that does not appear on the Lists of Acceptable Documents. Therefore, employers may not request proof of Yemeni citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If presented with an EAD that has been automatically extended, employers should accept such a document as a valid List A document, so long as the EAD reasonably appears to be genuine and relates to the employee. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

**How do my employer and I complete Form I–9 using my automatically extended employment authorization for a new job?**

When using an automatically extended EAD to complete Form I–9 for a new job before August 31, 2020, for Section 1, you should:

a. Check ''An alien authorized to work until'' and enter August 30, 2020 as the expiration date; and

b. Enter your USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

For Section 2, your employer should:

a. Determine if the EAD is auto-extended by ensuring it is in Category A–12 or C–19 and has a Card Expires date of March 3, 2020 (or Card Expires date of September 3, 2018, if you applied for a new EAD during the last re-registration period but have not yet received a new EAD);

b. Write in the document title;

c. Enter the issuing authority;

d. Enter either the employee's A-Number or USCIS number from Section 1 in the Document Number field on Form I–9; and

e. Write August 30, 2020, as the expiration date.

Before the start of work on August 31, 2020, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

**What corrections should my current employer make to Form I–9 if my employment authorization has been automatically extended?**

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended, your employer may need to re-inspect your current EAD if the employer does not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 and has a Card Expires date of March 3, 2020 (or a Card Expires date of September 3, 2018, if you applied for a new EAD during the last re-registration period but have not yet received a new EAD). If your employer determines that your EAD has been automatically extended, your employer should update Section 2 of your previously completed Form I–9 as follows:

a. Write EAD EXT and August 30, 2020, as the last day of the automatic extension in the Additional Information field; and

b. Initial and date the correction.

**Note:** This is not considered a reverification. Employers do not need to complete Section 3 until either the 180-day automatic extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By August 31, 2020, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization in Section 3. If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9 and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *www.uscis.gov/I-9Central* for the most current version of Form I–9.

**If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?**

Employers may create a case in E-Verify for a new employee by providing the employee's A-Number or USCIS number from Form I–9 in the Document Number field in E-Verify.

**If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?**

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on August 31, 2020, as appropriate, you must reverify his or her employment authorization in Section 3 of Form I–9. Employers should not use E-Verify for reverification.

**Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I9Central@dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

**Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* USCIS accepts calls in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment

Eligibility Verification (Form I–9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of Tentative Nonconfirmation (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from an employee's Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *www.justice.gov/ier* and on the USCIS and E-Verify websites at *www.uscis.gov/i-9-central* and *www.e-verify.gov.*

**Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)**

For Federal purposes, TPS beneficiaries presenting an EAD referenced in this **Federal Register** Notice do not need to show any other document, such as an I–797C Notice of Action, to prove that they qualify for this extension. However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, and/or that may be used by DHS to determine whether you have TPS or other immigration status. Examples of such documents are:

- Your current EAD;
- A copy of your Form I–797C, Notice of Action, for your Form I–765 providing an automatic extension of your currently expired or expiring EAD;
- A copy of your Form I–797C, Notice of Action, for your Form I–821 for this re-registration;
- A copy of your Form I–797, the notice of approval, for a past or current Form I–821, if you received one from USCIS; and
- Any other relevant DHS-issued document that indicates your immigration status or authorization to be in the United States, or that may be used by DHS to determine whether you have such status or authorization to remain in the United States.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. While SAVE can verify when an alien has TPS, each agency's procedures govern whether they will accept an unexpired EAD, I–797, or I–94. You should:

a. Present the agency with a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your alien or I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response showing the validity of your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or auto-extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *save.uscis.gov/casecheck,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at *www.uscis.gov/save.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2019–N162; FRES48010811290 XXX]**

### Endangered and Threatened Species; Receipt of Incidental Take Permit Application and Habitat Conservation Plan; Availability of Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from the Pacific Gas and Electric Company for a permit to conduct activities with the potential to take listed species that is incidental to, and not the purpose of, carrying out otherwise lawful activities. With some exceptions, the Endangered Species Act prohibits certain activities that may impact listed species unless a Federal permit allows such activity. We invite comments on this application and the accompanying Environmental Assessment, which we will take into consideration before issuing a permit.

**DATES:** We will accept comments received or postmarked on or before April 1, 2020.

**ADDRESSES:** *Obtaining Documents:* The documents this notice announces, as

well as any comments and other materials that we receive, will be available for public inspection on the U.S. Fish and Wildlife Service's Sacramento Field Office website at *http://www.fws.gov/sacramento.* They may also be viewed in person by appointment at the Sacramento Fish and Wildlife Office during regular business hours by contacting the individuals in **FOR FURTHER INFORMATION CONTACT**.

*Submitting Comments:* Please submit comments by one of the following methods:

- *Fax:* (916) 414–6713.
- *U.S. mail or hand-delivery:* Eric Tattersall, Assistant Field Supervisor; U.S. Fish and Wildlife Service; Sacramento Fish and Wildlife Office; 2800 Cottage Way, W–2605; Sacramento, CA 95825

We request that you submit comments by only the methods described above.

**FOR FURTHER INFORMATION CONTACT:** Joshua Emery, Senior Biologist, Conservation Planning Division; or Eric Tattersall, Assistant Field Supervisor, at the Sacramento Fish and Wildlife Office address above or by telephone at (916) 414–6600. If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential for take of listed species that is likely to occur incidental to the otherwise lawful activities as described in the applicant's habitat conservation plan, titled the *Draft Pacific Gas and Electric Company Multiple Region Operation and Maintenance Habitat Conservation Plan* (draft HCP).

This notice also advises the public that we have prepared a draft environmental assessment (draft EA) under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

## Background

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). By regulation, this take prohibition also applies to certain species listed as threatened. (50 CFR 17.31(a)). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for listed wildlife species are set forth in 50 CFR parts 17.22 and 17.32.

NEPA requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In these NEPA analyses, the Federal agency will identify direct, indirect, and cumulative effects, as well as possible mitigation for effects on environmental resources that could occur with implementation of the proposed action and alternatives.

## Proposed Action

The Service would issue an ITP to PG&E for a period of 30 years for certain covered activities (described below) in 34 counties in California. Annual species effects as a result of PG&E's activities are estimated to be approximately 100 acres (ac) of permanent habitat loss and 465 ac of temporary habitat disturbance. PG&E has requested inclusion of 36 species for coverage (covered species)—24 animals and 12 plants, 35 of which are currently listed as threatened or endangered under the Act, with one non-listed species also proposed for inclusion in the HCP. Of these covered species, the Service would, through issuance of the ITP, authorize incidental take of the 24 animal species proposed for coverage.

## Draft HCP Area

The geographic scope of the draft HCP includes Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Kern, Lake, Lassen, Madera, Mariposa, Mendocino, Modoc, Monterey, Nevada, Placer, Plumas, Sacramento, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba counties. The geographic scope of the draft HCP also includes, for mitigation purposes, an area known as the integrated plan area, which encompasses the geographic boundaries of the applicant's two existing HCPs in the San Joaquin Valley and California Bay Area.

## Covered Activities

The proposed section 10 ITP may allow take of wildlife covered species resulting from covered activities in the proposed HCP plan area. PG&E is requesting incidental take authorization for covered species that could be affected by activities identified in the draft HCP. The draft HCP covers all PG&E O&M, minor new construction, and pipeline safety enhancement program activities related to PG&E's natural gas and electric transmission and distribution systems that may result in take of covered species and that are located in the draft HCP area. O&M activities occur throughout PG&E's existing network of facilities and would occur at or near the existing facilities. Minor new construction activities include installing new or replacement structures to upgrade facilities or to extend service to new customers. Minor new construction, when in natural vegetation or agricultural land-cover types that contain suitable habitat for covered species, is limited to approximately 2 miles or fewer of new electric or gas line extensions from an existing line, a total of 1.0 ac or less of new gas pressure limiting stations within the study area, and 3 ac or less per electric substation expansion. The size of a minor new construction project would be estimated as the total footprint, expressed in ac. Additionally, PG&E's community pipeline safety initiative involves upgrading key existing gas transmission pipelines located in heavily populated and other critical areas. Covered activities include inspection, field testing, and potentially replacing many pipeline segments to ensure reliable and safe delivery of gas to customers. Pipeline replacements are estimated to average between 4 miles and 8 miles and are primarily in urban areas, although there would also be replacement activities in areas of natural vegetation. In such areas, pipeline replacement projects will take place in areas that have been previously disturbed by the construction of the original pipeline.

The draft HCP area consists of PG&E's gas and electric transmission and distribution facilities, rights-of-way, buffer lands, areas owned by PG&E and/or subject to PG&E easements, access routes, and those areas acquired as mitigation to offset the impacts resulting from covered activities. The total draft HCP area is approximately 564,781 ac; of this area, 303,287 ac (53.7 percent) are in natural land-cover types, 144,274 ac (25.5 percent) are in urban land-cover types, and 117,682 ac (20.8 percent) are in agricultural land-cover types.

The proposed section 10 ITP may allow take of the following covered wildlife species in California during the course of patrols and inspections, power pole replacements, reconductoring gas pipeline segment replacement, gas valve station replacement, and trimming of vegetation near power lines. Proposed incidental take (measured as habitat loss) for wildlife species over the permit term is shown in the table below.

| Species | Proposed for incidental take (measured as habitat loss) over permit term |
|---|---|
| **Animal Species** | |
| Blunt-nosed leopard lizard (*Gambelia sila*) | 70.94 ac, (13.28-ac permanent loss; 57.56-ac temporary disturbance). |
| California tiger salamander Central California distinct population segment (DPS) (*Ambystoma californiense*). | *Breeding habitat:* 35.04 ac, (5.91-ac permanent loss; 29.13-ac temporary disturbance).<br>*Upland habitat:* 1,394.51 ac, (248.81-ac permanent loss; 1,148.71-ac temporary disturbance). |
| California tiger salamander Santa Barbara DPS (*Ambystoma californiense*). | *Breeding habitat:* 0.16 ac, (0.02-ac permanent loss; 0.14-ac temporary disturbance).<br>*Upland habitat:* 88.78 ac, (11.77-ac permanent loss; 77.01-ac temporary disturbance). |
| California red-legged frog (*Rana draytonii*) | *Breeding habitat:* 234.00 ac, (48.00-ac permanent loss; 186.00-ac temporary disturbance).<br>*Upland habitat:* 768.00 ac, (127.50-ac permanent loss; 640.52-ac temporary disturbance). |
| Conservancy fairy shrimp (*Branchinecta conservatio*) | 65.42 ac, (7.50-ac permanent loss; 57.92-ac temporary disturbance). |
| Foothill yellow-legged frog (*Rana boylii*) | *Breeding habitat:* 11.57 ac, (1.69-ac permanent loss; 9.88-ac temporary disturbance).<br>*Dispersal habitat:* 139.00 ac, (20.23-ac permanent loss; 118.76-ac temporary disturbance). |
| Giant garter snake (*Thamnophis gigas*) | *Aquatic habitat:* 102.75 ac, (12.75-ac permanent loss; 90.00-ac temporary disturbance).<br>*Upland habitat:* 338.01 ac, (38.01-ac permanent loss; 300.00-ac temporary disturbance). |
| Giant kangaroo rat (*Dipodomys ingens*) | 180.00 ac, (30.00-ac permanent loss; 150.00-ac temporary disturbance). |
| Longhorn fairy shrimp (*Branchinecta longiantenna*) | 24.39 ac, (3.32-ac permanent loss; 21.06-ac temporary disturbance). |
| Marbeled murrelet (*Brachyramphus marmoratus*) | 127.50 ac, (45.00-ac permanent loss; 82.50-ac temporary disturbance). |
| Morro shoulderband snail (*Helminthoglypta walkeriana*). | 9.00 ac, (3.00-ac permanent loss; 6.00-ac temporary disturbance). |
| Mount Hermon June beetle (*Polyphylla barbata*) | 30 ac, (7.50-ac permanent loss; 22.50-ac temporary disturbance). |
| Mountain yellow-legged frog (*Rana muscosa*) | 3.60 ac, (0.60-ac permanent loss; 3.00-ac temporary disturbance). |
| Northern spotted owl (*Strix occidentalis caurina*) | 825.00 ac, (165.00-ac permanent loss; 660.00-ac temporary disturbance). |
| Ohlone tiger beetle (*Cicindela ohlone*) | 30.00 ac, (7.50-ac permanent loss; 22.50-ac temporary disturbance). |
| Point Arena mountain beaver (*Aplodontia rufa nigra*) | 10.50 ac, (3.00-ac permanent loss; 7.50-ac temporary disturbance). |
| San Joaquin kit fox (*Vulpes macrotis mutica*) | 65.42 ac, (7.50-ac permanent loss; 57.92-ac temporary disturbance). |
| Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*). | *High-value habitat:* 105.00 ac, (15.00-ac permanent loss; 90.00-ac temporary disturbance).<br>*Moderate value habitat:* 170.55 ac, (29.06-ac permanent loss; 141.49-ac temporary disturbance).<br>*Low-value habitat:* 1216.86 ac, (213.86-ac permanent loss; 1002.99-ac temporary disturbance). |
| Smith's blue butterfly (*Euphilotes enoptes smithi*) | 87.94 ac, (15.25-ac permanent loss; 72.69-ac temporary disturbance). |
| Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). | 360.60 ac, (78.93-ac permanent loss; 281.67-ac temporary disturbance). |
| Vernal pool fairy shrimp (*Branchinecta lynchi*) | 380.54 ac, (41.97-ac permanent loss; 338.57-ac temporary disturbance). |
| Vernal pool tadpole shrimp (*Lepidurus packardi*) | 380.54 ac, (41.97-ac permanent loss; 338.57-ac temporary disturbance). |
| Yosemite toad (*Anaxyrus canorus*) | 2.50 ac, (0.50-ac permanent loss; 2.00-ac temporary disturbance). |
| Zayante band-winged grasshopper (*Trimerotropis infantilis*). | 18.75 ac, (3.59-ac permanent loss; 15.15-ac temporary disturbance). |
| Species | Proposed for coverage (measured as habitat loss) over permit term |
| **Plant Species** | |
| Beach layia (*Lavia carnosa*) | 0.32 ac or 143 plants, whichever total is met first. |
| Ione manzanita (*Arctostaphylos myrtifolia*) | 12.25 ac or 64 plants, whichever total is met first. |
| Kern mallow (*Eremalche parryi* ssp. *kernensis*) | 10.5 ac or 1,226 plants, whichever total is met first. |
| Layne's ragwort (*Packera layneae*) | 2.86 ac or 103 plants, whichever total is met first. |
| Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*) | 6.6 ac or 6,266 plants, whichever total is met first. |
| Monterey spineflower (*Chorizanthe pungens* var. *pungens*). | 46.6 ac or 4,376 plants, whichever total is met first. |
| Pine Hill ceanothus (*Ceanothus roderickii*) | 3.67 ac or 33 plants, whichever total is met first. |
| Pine Hill flannelbush (*Fremontodendron decumbens*) | 1.19 ac or 2 plants, whichever total is met first. |
| Robust spineflower (*Chorizanthe robusta* var. *robusta*) | 1.3 ac or 3,765 plants, whichever total is met first. |
| San Benito evening-primrose (*Camissonia benitensis*) | 0.37 ac or 1,888 plants, whichever total is met first. |
| Stebbins' morning-glory (*Calystegia stebbinsii*) | 0.37 ac or 1,888 plants, whichever total is met first. |
| Yadon's rein orchid (*Piperia yadonii*) | 2.1 ac or 64 plants, whichever total is met first. |

## Public Availability of Comments

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.

## Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA. We will evaluate the application, associated documents, and any public comments we receive to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the applicant for the incidental take of the Covered Species.

## Authority

We issue this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) 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 and 43 CFR 46.305).

**Jennifer Norris,**

*Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.*

[FR Doc. 2020–04224 Filed 2–28–20; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–R8–ES–2018–0116; FF08ESMF00–FXES11140800000–189]**

### Block 12 Development Project, Kern County, California; Draft Environmental Assessment and Draft Habitat Conservation Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of permit application; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of a draft environmental assessment under the National Environmental Policy Act. We also announce receipt of an application for an incidental take permit under the Endangered Species Act (ESA), and receipt of a draft habitat conservation plan. Aera Energy, LLC has applied for an incidental take permit under the ESA for the Block 12 Development Project in Kern County, California. The permit would authorize the take of four species incidental to the construction, operation, and maintenance of the project. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before April 1, 2020.

**ADDRESSES:** *Obtaining Documents:*

- *Electronic:* The incidental take permit (ITP) application, draft environmental assessment (draft EA), draft habitat conservation plan (HCP), and any comments and other materials that we receive are available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–201X–0116.
- *Hardcopy:* Hardcopies of the ITP application, draft EA, and draft HCP are also available for public inspection, by appointment, during regular business hours at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; see **FOR FURTHER INFORMATION CONTACT**.

*Submitting Comments:* To send written comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft EA, draft HCP, or both.

- *Internet:* Submit comments at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2018–0116.
- *U.S. Mail or Hand-Delivery:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2018–0116; U.S. Fish and Wildlife Service Headquarters, MS: PERMA; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comments under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Justin Sloan, Senior Wildlife Biologist, or Patricia Cole, Chief, San Joaquin Valley Division, Sacramento Fish and Wildlife Office, by phone at 916–414–6600 or via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental assessment (EA), prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. This notice also announces the receipt of an application from Aera Energy, LLC (applicant), for a 35-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the permit requires the preparation of an HCP with measures to avoid, minimize, and mitigate the impacts of incidental take to the maximum extent practicable. The applicant prepared the draft Block 12 Development Project Habitat Conservation Plan (draft HCP) pursuant to section 10(a)(1)(B) of the ESA. The purpose of the EA is to assess the effects of issuing the permit and implementing the draft HCP on the natural and human environment.

## Background Information

Section 9 of the ESA (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal habitat conservation plan (HCP) program, go to *http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.*

## National Environmental Policy Act Compliance

The proposed permit issuance triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The draft EA was prepared to analyze the impacts of issuing an ITP based on the draft HCP and to inform the public of the proposed action, any alternatives, and associated impacts, and to disclose any irreversible commitments of resources.

*Proposed Action Alternative*

Under the Proposed Action Alternative, the Service would issue an ITP to the applicants for a period of 35 years for certain covered activities (described below). The applicant has requested an ITP for four covered species (described below), three of which are listed as endangered under the Act.

Habitat Conservation Plan Area

The geographic scope of the draft HCP encompasses 503 acres, including the development area and conservation lands. The project would result in the expansion of oil production facilities into approximately 55 acres of the HCP area, located within the Belridge Producing Complex on privately owned land in the unincorporated portion of western Kern County, California.

Covered Activities

The proposed section 10 ITP would allow take of four covered species from covered activities in the proposed HCP area. The applicant is requesting incidental take authorization for covered activities including construction, drilling, operations and maintenance, and plugging and abandonment of oil wells in the project area. The applicant is proposing to implement a number of project design features, including best management practices, as well as general and species-specific avoidance and minimization measures to minimize the impacts of the take from the covered activities.

Covered Species

The following four federally listed endangered species are proposed to be included as covered species in the proposed HCP:

Blunt-nosed leopard lizard (*Gambelia sila*)
Giant kangaroo rat (*Dipodomys ingens*)
San Joaquin kit fox (*Vulpes macrotis mutica*)
Kern mallow (*Eremalche kernensis*)

The non-listed San Joaquin antelope squirrel (*Ammospermophilus nelsoni*) is also proposed to be included as a covered species.

*No-Action Alternative*

Under the No-Action Alternative, the Service would not issue an ITP to the applicant, and the draft HCP would not be implemented. Under this alternative, the applicant may choose not to expand the oil field, or would do so in a manner presumed not to result in the take of ESA listed species.

**Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice, the draft EA, and the draft HCP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Any other environmental issues that should be considered with regard to the proposed development and permit action.

**Public Availability of Comments**

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might 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.

**Next Steps**

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive as part of our NEPA compliance process to determine whether the application meets the requirements of section 10(a) of the Act. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action for the potential issuance of an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

**Authority**

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*), and its implementing regulations at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*) and its implementing regulations at 40 CFR 17.22.

**Jennifer Norris,**

*Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, Sacramento, California.*

[FR Doc. 2020–04173 Filed 2–28–20; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2020–N022; FXES11130300000–201–FF03E00000]**

### Endangered and Threatened Species; Receipt of Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before April 1, 2020.

**ADDRESSES:** *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd., West, Suite 990, Bloomington, MN 55437–1458.

**FOR FURTHER INFORMATION CONTACT:** Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Permit Applications Available for Review and Comment**

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE65584D ... | Ian S. Pearse, Fort Collins, CO. | Rusty patched bumble bee (*Bombus affinis*). | IL, IN, IA, MI, MN, OH, VA, WI | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture; handle; temporarily hold; tag; collect fecal and tarsal samples; release. | New. |

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE60813D ... | Nichole Lally, Bay City, MI. | Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus towsendii ingens*), Virginia big-eared bat (*C.t. virginianus*). | AL, AR, CT, DE, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, band, radio-tag, release. | New. |
| TE62048D ... | Carly Kalina, Des Moines, IA. | Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*. | AL, AR, CT, DE, GA, IL, IN, IA, KY, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, OK, PA, SC, TN, VT, VA, WV. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, band, radio-tag, collect guano samples, release. | New. |
| TE65859D ... | Benjamin Schuplin, North Royalton, OH. | Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*). | AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, harp trap, band, radio-tag, release. | New. |

### Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

### Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Lori Nordstrom,**

*Assistant Regional Director, Ecological Services.*

[FR Doc. 2020–04225 Filed 2–28–20; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2020–N033; FXES11140200000–201–FF02ENEH00]**

### Application for an Incidental Take Permit; Low-Effect Habitat Conservation Plan for the Four Corners Water Development Project, Pueblo of Santa Clara, Rio Arriba County, New Mexico

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), make available an application for an incidental take permit (ITP) supported by a low-effect habitat conservation plan (LEHCP) for the Four Corners Water Development Project, Pueblo of Santa Clara, Rio Arriba County, New Mexico. The Pueblo of Santa Clara has applied to the Service for an ITP under the Endangered Species Act of 1973, as amended. The requested ITP, which would be in effect for a period of 20 years, if granted, would authorize incidental take of the federally endangered Rio Grande silvery minnow. In accordance with National Environmental Policy Act (NEPA) requirements, we have determined that the proposed action qualifies for a categorical exclusion as low effect. We are accepting comments on the permit application, proposed LEHCP, and draft NEPA screening form.

**DATES:** *Submission of comments:* We will accept comments received or postmarked on or before April 1, 2020.

**ADDRESSES:** *Obtaining documents:* You may obtain copies of the ITP application, the LEHCP, or other related documents by going to the Service's website at *https://www.fws.gov/southwest/es/NewMexico/*. Alternatively, a limited number of CD–ROM and printed copies of the LEHCP are available, by request, from the Project Leader, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113; telephone 505–346–2525; fax 505–346–2543. Please note that your request is in reference to the Pueblo of Santa Clara LEHCP.

The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Copies of the LEHCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:

- U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 2105 Osuna Rd NE, Albuquerque, NM 87113.

*Submitting Comments*

You may submit written comments by one of the following methods:

- *By email: nmesfo@fws.gov.* Please note that your request is in reference to the Pueblo of Santa Clara HCP.
- *By hard copy:* Project Leader, New Mexico Ecological Services Field Office, 2105 Osuna Rd. NE, Albuquerque, NM 87113; telephone 505–346–2525; fax 505–346–2542. Please note that your request is in reference to the Pueblo of Santa Clara LEHCP.

We request that you submit comments by only the methods described above. Generally, we will post any personal information you provide us (see the Public Availability of Comments section for more information).

**FOR FURTHER INFORMATION CONTACT:** Seth Willey, Acting Project Leader, U.S. Fish and Wildlife Service, 2105 Osuna Rd NE, Albuquerque, NM 87113 or (505) 761–4781.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), make available an application for an incidental take permit (ITP) supported by a low-effect habitat conservation plan (LEHCP) for the Four Corners Water Development Project, Pueblo of Santa Clara, Rio Arriba County, New Mexico. The Pueblo of Santa Clara has applied to the Service for an ITP under the Endangered Species Act of 1973, as amended. The requested ITP, which would be in effect for a period of 20 years, if granted, would authorize incidental take of the Rio Grande silvery minnow (*Hybognathus amarus;* silvery minnow), which is listed as an endangered species under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The potential incidental take would be associated with the pumping of up to 1 million gallons per day from four existing shallow alluvial wells within the proposed plan area. This action, when considered alone, has minor effects on the silvery minnow. However, removal of this groundwater may have small impacts on the volume of the spring runoff that would reach downstream in low flow years, which, when combined with the cumulative effects of other existing and future water management actions, could affect the threshold flows needed for successful silvery minnow spawning and recruitment in the permit area. In accordance with National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements, we have determined that the proposed action qualifies for a categorical exclusion as low effect. We are accepting comments on the permit application, proposed LEHCP, and draft NEPA screening form supporting using a categorical exclusion.

## National Environmental Policy Act Requirements

In accordance with the requirements of NEPA, we advise the public that:

1. We have determined that the proposed permit action qualifies for categorical exclusion as low effect. We are accepting comments on the permit application and draft NEPA screening form supporting use of a categorical exclusion; and

2. The applicant has developed a LEHCP in support of an application for an ITP, which describes the measures the applicant has volunteered to take to minimize and mitigate the effects of incidental take of the silvery minnow to the maximum extent practicable pursuant to section 10(a)(1)(B) of the ESA.

As described in the LEHCP, the potential incidental take of silvery minnow could occur within the Rio Grande from Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir in New Mexico, and could result from otherwise lawful activities.

## Background

Section 9 of the ESA and our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct: (16 U.S.C. 1532(19)). However, under limited circumstances, we issue permits to authorize incidental take—*i.e.,* take that is incidental to, and not the purpose of—the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for endangered and threatened wildlife species are at 50 CFR 17.22 and 17.32, respectively. In addition to meeting other criteria, the take authorized by an incidental take permit must not jeopardize the existence of federally listed fish, wildlife, or plants.

## Proposed Action

The ITP would cover incidental ''take'' of the silvery minnow associated with the pumping of up to 1 million gallons per day (mgd) from four existing shallow alluvial wells within the permit area (the ''covered activities''). The proposed action is the issuance of an ITP by the Service for the covered activities in the permit area, pursuant to section 10(a)(1)(B) of the ESA.

The requested term of the permit is 20 years. To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed and proposes to implement its LEHCP, which describes the actions to reduce or avoid impacts the applicant has agreed to undertake. These actions are designed to minimize and mitigate for the impacts of the potential incidental take of the silvery minnow, to the maximum extent practicable, and ensure that incidental take will not appreciably reduce the likelihood of the survival and recovery of this species in the wild.

The applicant proposes to minimize and mitigate impacts to the silvery minnow by modifying pumping operations when flow condition are likely to result in the estimated densities of silvery minnow in the permit area to be below those considered self-sustaining. That is, when the May/June runoff flows that cross downstream stream gauges are low. The Pueblo of Santa Clara will suspend the proposed new pumping amount for 1 week in May when the forecasted total May–June runoff volume of the Rio Grande at Otowi Bridge Gauge is at or below the threshold value of approximately 205,010 acre-feet. The runoff volume during the months of May and June for the Rio Grande at Otowi Bridge Gage in New Mexico is estimated in the Basin Data Reports that are released each year in April and May by the U.S. Department of Agriculture Natural Resources Conservation Service and National Water Climate Center (online at https: *https://www.wcc.nrcs.usda.gov/basin.html*). The cessation of the up to 1 million gallons per day of groundwater pumping under those specified threshold conditions would result in an increase of up to 21.5 acre-feet of surface water runoff that would contribute to spring runoff during low-flow years.

## Next Steps

We have made a preliminary determination that the applicant's LEHCP, including the proposed mitigation and minimization measures has (1) minor or negligible effects on federally listed or candidate species and their habitats and (2) minor or negligible effects on other environmental values or resources. We will evaluate the permit application, the LEHCP, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the LEHCP and issue the ITP under section 10(a)(1)(B) of the ESA to the Pueblo of Santa Clara for take of silvery minnow in accordance with the terms of the LEHCP and specific terms and conditions of the authorizing permit. We will not make our final decision until after the 30-day comment period ends, and we will fully consider all comments we receive during the public comment period.

## Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority**

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: February 24, 2020.

**Amy L. Lueders,**

*Regional Director, Southwest Region, U.S. Fish and Wildlife Service.*

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**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[201A2100DD/AAKC001030/A0A501010.999900 253G]**

### List of Programs Eligible for Inclusion in Funding Agreements Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs and Fiscal Year 2020 Programmatic Targets

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice lists programs or portions of programs that are eligible for inclusion in self-governance funding agreements with Indian Tribes and lists Fiscal Year 2020 programmatic targets for each of the non-Bureau of Indian Affairs (BIA) bureaus in the Department of the Interior (Department), pursuant to Title IV of the Indian Self-Determination and Education Assistance Act (Act), as amended.

**DATES:** These programs are eligible for inclusion in self-governance funding agreements until September 30, 2020.

**ADDRESSES:** Inquiries or comments regarding this notice may be directed to Ms. Sharee M. Freeman, Director, Office of Self-Governance (MS 2071–MIB), 1849 C Street NW, Washington, DC 20240–0001, telephone: (202) 219–0240, fax: (202) 219–4246, or to the bureau-specific points of contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kenneth D. Reinfeld, Office of Self-Governance, telephone: (703) 390–6551 or (202) 821–7107.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Title IV of the Act instituted a permanent self-governance program at the Department. Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in Department bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance Tribe.

Under section 405(c) of the Act, the Secretary of the Interior (Secretary) is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program and (2) programmatic targets for non-BIA bureaus.

Two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function, or activity that is administered by the Department that is ''otherwise available to Indian tribes or Indians,'' can be administered by a Tribe through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Act. Section 403(b)(2) also specifies, ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance Tribe.

Under section 403(k) of the Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the Tribe. However, a Tribe (or Tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, the non-BIA bureaus will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances. In those instances, where the Tribe disagrees with the bureau's determination, the Tribe may request reconsideration from the Secretary.

Subpart G of the self-governance regulations found at 25 CFR part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

*Response to Comments*

A special session to discuss in detail a draft 2020 non-BIA **Federal Register** Notice was held on April 4, 2019, at the 2019 Tribal Self-Governance Annual Consultation Conference located in the Grand Traverse Resort and Spa in Acme, Michigan. Comments were requested to be provided by Friday, June 14, 2019.

*Changes Made From 2019 to 2020*

No requests for changes were received.

**II. Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior for Fiscal Year 2019**

A. Bureau of Land Management (2)
- Council of Athabascan Tribal Governments
- Duckwater Shoshone Tribe of the Duckwater Reservation

B. Bureau of Reclamation (5)
- Gila River Indian Community of the Gila River Indian Reservation
- Chippewa Cree Indians of the Rocky Boy's Reservation
- Hoopa Valley Tribe
- Karuk Tribe
- Yurok Tribe of the Yurok Reservation

C. Office of Natural Resources Revenue (none)

D. National Park Service (3)
- Grand Portage Band of Lake Superior Chippewa Indians
- Sitka Tribe of Alaska
- Yurok Tribe of the Yurok Reservation

E. Fish and Wildlife Service (1)
- Council of Athabascan Tribal Governments

F. U.S. Geological Survey (none)

G. Office of the Special Trustee for American Indians (1)
- Confederated Salish and Kootenai Tribes of the Flathead Reservation

H. Appraisal and Valuation Services Office (29)
1. The Quapaw Tribe of Indians
2. Morongo Band of Mission Indians

3. Muckleshoot Indian Tribe
4. Pueblo of Taos
5. Confederated Tribes of the Umatilla Indian Reservation
6. Association of Village Council Presidents
7. Kawerak, Inc.
8. Native Village of Tanana
9. Tanana Chiefs Conference [includes Gwichyaa Gwich'in (aka Fort Yukon)]
10. Central Council of Tlingit and Haida Indian Tribes
11. Cherokee Nation
12. The Choctaw Nation of Oklahoma
13. Eastern Shawnee Tribe of Oklahoma
14. The Muscogee (Creek) Nation
15. Wyandotte Nation
16. Oneida Nation
17. Confederated Salish and Kootenai Tribes of the Flathead Reservation
18. Lummi Tribe of the Lummi Reservation
19. Port Gamble S'Klallam Tribe
20. Confederated Tribes of Siletz Indians of Oregon
21. Hoopa Valley Tribe
22. Redding Rancheria
23. Chippewa Cree Indians of the Rocky Boy's Reservation
24. Absentee-Shawnee Tribe of Indians of Oklahoma
25. Citizen Potawatomi Nation, Oklahoma
26. Kaw Nation, Oklahoma
27. Sac & Fox Nation, Oklahoma
28. Salt River Pima-Maricopa Indian Community of the Salt River Reservation
29. Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada

## III. Eligible Programs of the Department of the Interior non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either ''otherwise available to Indians'' under Title I of the Act and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating Tribe. The list represents the most current information on programs potentially available to Tribes under a self-governance funding agreement.

The Department will also consider for inclusion in funding agreements other programs or activities not listed below, but which, upon request of a self-governance Tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

### *A. Eligible Bureau of Land Management (BLM) Programs*

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, depending upon availability of funds, the need for specific services, and the self-governance Tribe's demonstration of a special geographic, cultural, or historical connection, may also be available for inclusion in self-governance funding agreements. Once a Tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for Tribal participation through a funding agreement.

Tribal Services

1. Minerals Management. Inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement. In addition, in a study conducted pursuant to Secretarial Order 3377, the Office of the Solicitor determined that the following functions are available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement: inspection and enforcement of Indian oil and gas operations, determining trust land locations; approving Applications for Permits to Drill; securing and enforcing bonds (for surface of split estate); and providing mineral assessments and valuation.

2. Cadastral Survey. Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

Other Activities

1. Cultural heritage. Cultural heritage activities, such as research and inventory, may be available in specific States.

2. Natural Resources Management. Activities such as silvicultural treatments, timber management, cultural resource management, watershed restoration, environmental studies, tree planting, thinning, and similar work, may be available in specific States.

3. Range Management. Activities, such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. Riparian Management. Activities, such as facilities construction, erosion control, rehabilitation, and other similar activities, may be available in specific States.

5. Recreation Management. Activities, such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. Wildlife and Fisheries Habitat Management. Activities, such as construction and maintenance, implementation of statutory, regulatory and policy or administrative plan-based species protection, interpretive design and construction, and similar activities may be available in specific States.

7. Wild Horse Management. Activities, such as wild horse round-ups, adoption and disposition, including operation and maintenance of wild horse facilities, may be available in specific States.

For questions regarding self-governance, contact Bryon Loosle, Bureau of Land Management (WO–240), Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, telephone (202) 912–7240, fax (202) 452–7701.

### *B. Eligible Bureau of Reclamation (Reclamation) Programs*

The mission of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control, enhancement of fish and wildlife habitats; and outdoor recreation.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement. This list was developed with consideration of the proximity of identified self-governance Tribes to Reclamation projects.

1. Klamath Project, California and Oregon
2. Trinity River Fishery, California
3. Central Arizona Project, Arizona

4. Rocky Boy's/North Central Montana Regional Water System, Montana
5. Indian Water Rights Settlement Projects, as authorized by Congress

Upon the request of a self-governance Tribe, Reclamation will also consider for inclusion in funding agreements other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

For questions regarding self-governance, contact Mr. Kelly Titensor, Policy Analyst, Native American and International Affairs Office, Bureau of Reclamation (96–43000) (MS 7069–MIB); 1849 C Street NW, Washington, DC 20240, telephone: (202) 513–0558, fax: (202) 513–0311.

*C. Eligible Office of Natural Resources Revenue (ONRR) Programs*

The Office of Natural Resources Revenue (ONRR) collects, accounts for, and distributes mineral revenues from both Federal and Indian mineral leases.

The ONRR also evaluates industry compliance with laws, regulations, and lease terms, and offers mineral-owning Tribes opportunities to become involved in its programs that address the intent of Tribal self-governance. These programs are available to self-governance Tribes and are a good preparation for assuming other technical functions. Generally, ONRR program functions are available to Tribes because of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA) at 30 U.S.C. 1701. The ONRR promotes Tribal self-governance and self-determination over trust lands and resources through the following program functions that may be available to self-governance Tribes:

1. Audit of Tribal Royalty Payments. Audit activities for Tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For Tribes already participating in ONRR cooperative audits, this program is offered as an option.)

2. Verification of Tribal Royalty Payments. Financial compliance verification, monitoring activities, and production verification.

3. Tribal Royalty Reporting, Accounting, and Data Management. Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. Tribal Royalty Valuation. Preliminary analysis and recommendations for valuation, and allowance determinations and approvals.

5. Royalty Internship Program. An orientation and training program for auditors and accountants from mineral-producing Tribes to acquaint Tribal staff with royalty laws, procedures, and techniques. This program is recommended for Tribes that are considering a self-governance funding agreement, but have not yet acquired mineral revenue expertise via a FOGRMA section 202 cooperative agreement, as this term is defined in FOGRMA and implementing regulations at 30 CFR 228.4.

For questions regarding self-governance, contact Heidi Badarraco, Program Manager—Indian Trust, Outreach & Coordination, Office of Natural Resources Revenue, Denver Federal Center, 6th & Kipling, Building 67, Mail Stop 641100C, Denver, Colorado 80225–0165, telephone: (303) 231–3434.

*D. Eligible National Park Service (NPS) Programs*

NPS administers the National Park System, which is made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. NPS maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list below was developed considering the proximity of an identified self-governance Tribe to a national park, monument, preserve, or recreation area and the types of programs that have components that may be suitable for administering through a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of programs which may be eligible for Tribal participation through funding agreements.

Elements of Programs That May Be Eligible for Inclusion in a Self-Governance Funding Agreement

1. Archaeological Surveys
2. Comprehensive Management Planning
3. Cultural Resource Management Projects
4. Ethnographic Studies
5. Erosion Control
6. Fire Protection
7. Gathering Baseline Subsistence Data—Alaska
8. Hazardous Fuel Reduction
9. Housing Construction and Rehabilitation
10. Interpretation
11. Janitorial Services
12. Maintenance
13. Natural Resource Management Projects
14. Operation of Campgrounds
15. Range Assessment—Alaska
16. Reindeer Grazing—Alaska
17. Road Repair
18. Solid Waste Collection and Disposal
19. Trail Rehabilitation
20. Watershed Restoration and Maintenance
21. Beringia Research
22. Elwha River Restoration
23. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska
2. Bering Land Bridge National Preserve—Alaska
3. Cape Krusenstern National Monument—Alaska
4. Denali National Park & Preserve—Alaska
5. Gates of the Arctic National Park & Preserve—Alaska
6. Glacier Bay National Park and Preserve—Alaska
7. Katmai National Park and Preserve—Alaska
8. Kenai Fjords National Park—Alaska
9. Klondike Gold Rush National Historical Park—Alaska
10. Kobuk Valley National Park—Alaska
11. Lake Clark National Park and Preserve—Alaska
12. Noatak National Preserve—Alaska
13. Sitka National Historical Park—Alaska
14. Wrangell-St. Elias National Park and Preserve—Alaska
15. Yukon-Charley Rivers National Preserve—Alaska
16. Casa Grande Ruins National Monument—Arizona
17. Hohokam Pima National Monument—Arizona
18. Montezuma Castle National Monument—Arizona
19. Organ Pipe Cactus National Monument—Arizona
20. Saguaro National Park—Arizona
21. Tonto National Monument—Arizona
22. Tumacacori National Historical Park—Arizona
23. Tuzigoot National Monument—Arizona
24. Arkansas Post National Memorial—Arkansas
25. Death Valley National Park—California
26. Devils Postpile National Monument—California

27. Joshua Tree National Park—California
28. Lassen Volcanic National Park—California
29. Point Reyes National Seashore—California
30. Redwood National Park—California
31. Whiskeytown National Recreation Area—California
32. Yosemite National Park—California
33. Hagerman Fossil Beds National Monument—Idaho
34. Effigy Mounds National Monument—Iowa
35. Fort Scott National Historic Site—Kansas
36. Tallgrass Prairie National Preserve—Kansas
37. Boston Harbor Islands National Recreation Area—Massachusetts
38. Cape Cod National Seashore—Massachusetts
39. New Bedford Whaling National Historical Park—Massachusetts
40. Isle Royale National Park—Michigan
41. Sleeping Bear Dunes National Lakeshore—Michigan
42. Grand Portage National Monument—Minnesota
43. Voyageurs National Park—Minnesota
44. Bear Paw Battlefield, Nez Perce National Historical Park—Montana
45. Glacier National Park—Montana
46. Great Basin National Park—Nevada
47. Aztec Ruins National Monument—New Mexico
48. Bandelier National Monument—New Mexico
49. Carlsbad Caverns National Park—New Mexico
50. Chaco Culture National Historic Park—New Mexico
51. Pecos National Historic Park—New Mexico
52. White Sands National Monument—New Mexico
53. Fort Stanwix National Monument—New York
54. Great Smoky Mountains National Park—North Carolina/Tennessee
55. Cuyahoga Valley National Park—Ohio
56. Hopewell Culture National Historical Park—Ohio
57. Chickasaw National Recreation Area—Oklahoma
58. Crater Lake National Park—Oregon
59. John Day Fossil Beds National Monument—Oregon
60. Alibates Flint Quarries National Monument—Texas
61. Guadalupe Mountains National Park—Texas
62. Lake Meredith National Recreation Area—Texas
63. Ebey's Landing National Recreation Area—Washington
64. Fort Vancouver National Historic Site—Washington
65. Mount Rainier National Park—Washington
66. Olympic National Park—Washington
67. San Juan Islands National Historic Park—Washington
68. Whitman Mission National Historic Site—Washington

For questions regarding self-governance, contact Jennifer Talken-Spaulding, Acting Manager, American Indian Liaison Office, National Park Service, 1849 C Street NW, Room 7351, Washington, DC 20240, telephone: (202) 354–2090, or email: *Jennifer_Talken-Spaulding@nps.gov.*

*E. Eligible Fish and Wildlife Service (Service) Programs*

The mission of the Service is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian Tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance Tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for Tribal participation through an annual funding agreement.

1. Subsistence Programs within the State of Alaska. Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs and facilitate Tribal Consultation to ensure ANILCA Title VII terms are being met, as well as activities fulfilling the terms of Title VIII of ANILCA.

2. Technical Assistance, Restoration and Conservation. Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.

3. Endangered Species Programs. Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA) or candidate species under the ESA. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.

4. Education Programs. Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off national Wildlife Refuge lands in a variety of communities, and assist with environmental education and outreach efforts in local villages.

5. Environmental Contaminants Program. Conduct activities associated with identifying and removing toxic chemicals, to help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.

6. Wetland and Habitat Conservation Restoration. Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. Fish Hatchery Operations. Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit National Wildlife Refuges and Tribes. Such activities may include, but are not limited to: Tagging, rearing and feeding of fish, disease treatment, and clerical or facility maintenance at a fish hatchery.

8. National Wildlife Refuge Operations and Maintenance. Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes

The Service developed the list below based on the proximity of identified self-governance Tribes to Service facilities that have components that may be suitable for administering through a self-governance funding agreement.

1. Alaska National Wildlife Refuges—Alaska
2. Alchesay National Fish Hatchery—Arizona

3. Humboldt Bay National Wildlife Refuge—California
4. Kootenai National Wildlife Refuge—Idaho
5. Agassiz National Wildlife Refuge—Minnesota
6. Mille Lacs National Wildlife Refuge—Minnesota
7. Rice Lake National Wildlife Refuge—Minnesota
8. National Bison Range—Montana
9. Ninepipe National Wildlife Refuge—Montana
10. Pablo National Wildlife Refuge—Montana
11. Sequoyah National Wildlife Refuge—Oklahoma
12. Tishomingo National Wildlife Refute—Oklahoma
13. Bandon Marsh National Wildlife Refuge—Washington
14. Dungeness National Wildlife Refuge—Washington
15. Makah National Fish Hatchery—Washington
16. Nisqually National Wildlife Refuge—Washington
17. Quinault National Fish Hatchery—Washington
18. San Juan Islands National Wildlife Refuge—Washington
19. Tamarac National Wildlife Refuge—Wisconsin

For questions regarding self-governance, contact Scott Aikin, Fish and Wildlife Service, National Native American Programs Coordinator, 1211 SE Cardinal Court, Suite 100, Vancouver, Washington 98683, telephone (360) 604–2531 or fax (360) 604–2505.

*F. Eligible U.S. Geological Survey (USGS) Programs*

The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance Tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.

For questions regarding self-governance, contact Monique Fordham, Esq., National Tribal Liaison, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–4437 or fax (703) 648–6683.

*G. Eligible Office of the Special Trustee for American Indians (OST) Programs*

The Department has responsibility for what may be the largest land trust in the world, approximately 56 million acres. OST oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust financial assets, and reporting on these transactions. The mission of the OST is to serve Indian communities by fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A Tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. Beneficiary Processes Program (Individual Indian Money Accounting Technical Functions).

The MOU between the Tribe/Consortium and OST outlines the roles and responsibilities for the performance of the OST program by the Tribe/Consortium. If those roles and responsibilities are already fully specified in the existing funding agreement with the OSG, an MOU is not necessary. To the extent that the parties desire specific program standards, an MOU will be negotiated between the Tribe/Consortium and OST, which will be binding on both parties and attached and incorporated into the OSG funding agreement.

If a Tribe/Consortium decides to assume the operation of an OST program, the new funding for performing that program will come from OST program dollars. A Tribe's newly-assumed operation of the OST program(s) will be reflected in the Tribe's OSG funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Office of the Special Trustee for American Indians (MS 5140—MIB), 1849 C Street NW, Washington, DC 20240–0001, phone: (202) 208–7587, fax: (202) 208–7545.

*H. Eligible Appraisal and Valuation Services Office Programs*

The Appraisal and Valuation Services Office (AVSO), established on March 19, 2018 by Secretarial Order No. 3363, provides appraisal, valuation, evaluation, and consulting expertise to Indian beneficiaries, federal clients and other stakeholders in accordance with the highest professional and ethical standards. AVSO is responsible for all real property appraisal and valuation services within the Department of the Interior as well as conducting mineral economic evaluations to the following bureau clients: Bureau of Indian Affairs, Bureau of Indian Education, Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, and the National Park Service. Within AVSO are four land valuation divisions; Indian Trust Property Valuation Division, Land Buy-Back Program Valuation Division, Division of Minerals Evaluation and Federal Land Division.

The MOU between the Tribe/Consortium and AVSO outlines the roles and responsibilities for the performance of the AVSO program by the Tribe/Consortium. An MOU will be negotiated between the Tribe/Consortium and AVSO, which will be binding on both parties and attached and incorporated into the OSG funding agreement.

If a Tribe/Consortium decides to assume the operation of an AVSO program, the new funding for performing that program will come from AVSO program dollars. A Tribe's newly-assumed operation of an AVSO program will be reflected in the Tribe's OSG funding agreement.

For questions regarding the assumption of an AVSO program under self-governance, contact Eldred F. Lesansee, Associate Deputy Director, Appraisal and Valuation Services Office, 4400 Masthead Street NE, Albuquerque, NM 87109, (505) 816–1318, fax (505) 816–3129.

## IV. Programmatic Targets

The programmatic target for Fiscal Year 2020 provides that, upon request of a self-governance Tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: February 25, 2020.

**David L. Bernhardt,**

*Secretary, Department of the Interior.*

[FR Doc. 2020–04249 Filed 2–28–20; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO956000 L14400000.BJ0000 20X]**

### Notice of Filing of Plats of Survey, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of official filing.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

**DATES:** Unless there are protests of this action, the plats described in this notice will be filed on April 1, 2020.

**ADDRESSES:** You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

**FOR FURTHER INFORMATION CONTACT:** Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov*. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and subdivision of section 34 in Township 30 South, Range 69 West, Sixth Principal Meridian, Colorado, was accepted on December 3, 2019.

The plat incorporating the field notes of the remonumentation of a corner in Township 7 South, Range 91 West, Sixth Principal Meridian, Colorado, was accepted on December 19, 2019.

The plat incorporating the field notes of the remonumentation of a corner in Township 11 South, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on December 26, 2019.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey in Township 51 North, Range 9 East, New Mexico Principal Meridian, Colorado, was accepted on January 27, 2020.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chap. 3)

**Randy A. Bloom,**

*Chief Cadastral Surveyor.*

[FR Doc. 2020–04237 Filed 2–28–20; 8:45 am]

**BILLING CODE 4310–JB–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–432 and 731–TA–1024–1028 (Third Review) and AA1921–188 (Fifth Review)]**

### Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, Korea, Mexico, and Thailand; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on prestressed concrete steel wire strand (''PC strand'') from Brazil, India, Korea, Mexico, and Thailand, and the antidumping finding on PC strand from Japan, as well as revocation of the countervailing duty order on PC strand from India, would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted March 2, 2020. To be assured of consideration, the deadline for responses is April 1, 2020. Comments on the adequacy of responses may be filed with the Commission by May 14, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On December 8, 1978, the Department of the Treasury issued an antidumping finding on imports of PC strand from Japan (43 FR 57599). Following first five-year reviews by the Department of Commerce (''Commerce'') and the Commission, effective February 3, 1999, Commerce issued a continuation of the antidumping finding on imports of PC strand from Japan (64 FR 40554, July 27, 1999). Following second five-year reviews by Commerce and the Commission, effective June 25, 2004, Commerce issued a continuation of the antidumping finding on imports of PC strand from Japan (69 FR 35584). On January 28, 2004, Commerce issued antidumping duty orders on imports of PC strand from Brazil, India, Korea, Mexico, and Thailand (69 FR 4109–4113). On February 4, 2004, Commerce issued a countervailing duty order on imports of PC strand from India (69 FR 5319). In 2009, the Commission conducted grouped first five-year reviews of the antidumping duty orders on imports of PC strand from Brazil, India, Korea, Mexico, and Thailand; the first five-year review of the countervailing duty order on imports of PC strand from India; and the third five-year review of the antidumping finding on imports of PC strand from Japan (''2009 reviews''). Following the Commission's 2009 reviews, Commerce issued a continuation of the antidumping duty orders on imports of PC strand from Brazil, India, Korea, Mexico, and Thailand; the countervailing duty order on imports of PC strand from India; and the

antidumping finding on imports of PC strand from Japan, effective December 11, 2009 (74 FR 65739). Following the Commission's grouped second five-year reviews of the antidumping duty orders on imports of PC strand from Brazil, India, Korea, Mexico, and Thailand; the second five-year review of the countervailing duty order on imports of PC strand from India; and the fourth five-year review of the antidumping finding on imports of PC strand from Japan (''2015 reviews''), Commerce issued a continuation of the antidumping duty orders on imports of PC strand from Brazil, India, Korea, Mexico, and Thailand; the countervailing duty order on imports of PC strand from India; and the antidumping finding on imports of PC strand from Japan, effective April 23, 2015 (80 FR 22708). The Commission is now conducting grouped third five-year reviews of the antidumping duty orders on imports of PC strand from Brazil, India, Korea, Mexico, and Thailand; the third five-year review of the countervailing duty order on imports of PC strand from India; and the fifth five-year review of the antidumping finding on imports of PC strand from Japan pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Brazil, India, Japan, Korea, Mexico, and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its expedited first and second five-year reviews of the antidumping finding concerning Japan, the Commission found that the appropriate definition of the *Domestic Like Product* was the same as Commerce's scope: All steel wire strand, other than alloy steel, not galvanized, which has been stress-relieved and is suitable for use in prestressed concrete. (The Commission did not explicitly make a like product determination in its original determination concerning Japan.) In its original determinations concerning Brazil, India, Korea, Mexico, and Thailand, the Commission found the *Domestic Like Product* to be all PC strand co-extensive with Commerce's scope, that is, steel strand produced from wire of non-stainless, non-galvanized steel that is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications and that encompasses covered and uncovered strand and all types, grades, and diameters of prestressed concrete steel wire strand. In its grouped full 2009 review determinations and its grouped expedited 2015 review determinations, the Commission defined the *Domestic Like Product* consistent with its prior determinations, that is, steel strand produced from wire of non-stainless, non-galvanized steel that is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications and that encompasses covered and uncovered strand and all types, grades, and diameters of prestressed concrete steel wire strand. The Commission recognized that the description of the scope of the finding concerning Japan and the scope of the orders concerning Brazil, India, Korea, Mexico, and Thailand differed in a number of technical respects but found that those differences lacked significance.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second reviews of the antidumping finding concerning Japan, the Commission defined the *Domestic Industry* as all producers of PC strand. Likewise, in its original determinations concerning Brazil, India, Korea, Mexico, and Thailand, the Commission found the *Domestic Industry* to be all producers of PC strand. The Commission also determined that plastic coating did not constitute sufficient production-related activity to qualify coaters as members of the domestic industry producing PC strand. In its grouped full 2009 review determinations and its grouped expedited 2015 review determinations, the Commission defined the *Domestic Industry* to include all producers of the *Domestic Like Product.*

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available

to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 1, 2020. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 14, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–458, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information To Be Provided in Response to This Notice of Institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the finding/orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority**

This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 24, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–04078 Filed 2–28–20; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–459 and 731–TA–1155 (Second Review)]**

## Commodity Matchbooks From India; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing and the antidumping duty orders on commodity matchbooks from India would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted March 2, 2020. To be assured of consideration, the deadline for responses is April 1, 2020. Comments on the adequacy of responses may be filed with the Commission by May 14, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On December 11, 2009, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of commodity matchbooks from India (74 FR 65737 and 65740). Following the first five-year reviews by Commerce and the Commission, effective April 30, 2015, Commerce issued a continuation of the antidumping and countervailing duty orders on imports of commodity matchbooks from India (80 FR 24232–24233). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is India.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its expedited first five-year review determinations, the Commission found a single *Domestic Like Product* comprised of commodity matchbooks coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited first five-year review determinations, the Commission defined the *Domestic Industry* as all U.S. producers of commodity matchbooks.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 1, 2020. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 14, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. 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. Also, in accordance

with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–456, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandis*e, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in cases of matchbooks and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in cases of matchbooks and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in cases of

matchbooks and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority**

This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 24, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–04076 Filed 2–28–20; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1046 (Third Review)]**

## Tetrahydrofurfuryl Alcohol From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on tetrahydrofurfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted March 2, 2020. To be assured of consideration, the deadline for responses is April 1, 2020. Comments on the adequacy of responses may be filed with the Commission by May 14, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On August 6, 2004, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of tetrahydrofurfuryl alcohol from China (69 FR 47911). Following the expedited first five-year reviews by Commerce and the Commission, effective December 16, 2009, Commerce issued a continuation of the antidumping duty order on imports of tetrahydrofurfuryl alcohol from China (74 FR 66616). Following the expedited second five-year reviews by Commerce and the Commission, effective April 16, 2015, Commerce issued a continuation of the antidumping duty order on imports of tetrahydrofurfuryl alcohol from China (80 FR 20470). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of all domestically produced tetrahydrofurfuryl alcohol coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the

product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as all U.S. producers of tetrahydrofurfuryl alcohol.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 1, 2020. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 14, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–457, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information to be provided in response to this notice of institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business

association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority**

This proceeding is being conducted under authority of title VII of the Tariff

Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 24, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–04077 Filed 2–28–20; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1190–New]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice, Civil Rights Division, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until April 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions or need a copy of the proposed information collection instrument with instructions or additional information, please contact Daniel Yi, Senior Counsel for Innovation, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20009. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Civil Rights Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* Reporting Portal for Civil Rights Violations.

3. *The agency for number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Civil Rights Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* This form will be made available online to be used by individual complainants at their discretion and convenience. The use of the form is voluntary.

The Civil Rights Division of the U.S. Department of Justice enforces the nation's federal civil rights statutes. Members of the public play a critical role in this effort by reporting civil rights violations to the Division. To facilitate this reporting process, the Division is developing a streamlined online Reporting Portal for Civil Rights Violations. This Portal is designed to facilitate and enhance individual complainant's reporting opportunities, save members of the public time in reporting violations, and improve how the Division responds to those reports. The information the Division plans to collect using the reporting portal will help the Division fulfill its enforcement responsibilities under the statutes outlined above.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 36,000 respondents for this information collection a year. The respondent normally responds 1 time annually. The total number of yearly responses is 36,000. It is estimated that it takes 10 minutes to learn about the law and the Complaint Form and 20 minutes to complete the Complaint Form.

6. *An estimate of the total public burden (in hours) associated with the collection:* Total burden hours are estimated at 18,000.

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: February 25, 2020.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2020–04149 Filed 2–28–20; 8:45 am]

**BILLING CODE 4410–14–P**

## DEPARTMENT OF JUSTICE

### Notice of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on February 21, 2020, a proposed Third Amendment to Consent Decree (''Third Amendment'') in *United States, et al.* v. *Superior Refining Company LLC and Valero Refining—Meraux LLC,* Civil Action No. 3:10–cv–00563–bbc, was lodged with the United States District Court for the Western District of Wisconsin.

The underlying Consent Decree was entered into in 2011 and covered petroleum refineries located in Meraux, Louisiana, and Superior, Wisconsin, that were at that time owned by Murphy Oil USA, Inc., and resolved violations of the Clean Air Act that were alleged by the Environmental Protection Agency, the State of Wisconsin and the State of Louisiana. The proposed Third Amendment pertains solely to the refinery located in Superior, Wisconsin, which is now owned by the Superior Refining Company LLC (''Superior Refining'').

Under the proposed Third Amendment, Superior Refining would be required to implement two emissions-reduction projects in the Superior, Wisconsin, area in order to fully mitigate the harm caused by excess emissions resulting from a fire and explosion at the refinery on April 26, 2018. Specifically, Superior Refining would be required to replace older wood-burning stoves and other wood-burning appliances in the area impacted by the excess emissions with new wood-burning stoves and appliances meeting current EPA emission standards for wood stoves, at an estimated cost of $290,000.00. Superior Refining would

also be required to implement a mitigation project to install solar photovoltaic panels on the campus of University of Wisconsin—Superior that will produce a total capacity of at least 440 kilowatts, which is expected to reduce both the campus' power demand and associated emissions from the electrical power station serving the campus. In addition, Superior Refining would be required to implement several safety-related enhancements to the design, maintenance, and operation of its alkylation process equipment at the refinery.

The publication of this notice opens a period for public comment on the Third Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Superior Refining Company LLC and Valero Refining—Meraux LLC,* D.J. Ref. No. 90–5–2–1–09186. 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 email ..... | *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: *https://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 $11.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Susan M. Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2020–04162 Filed 2–28–20; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *January 1, 2020 through January 31, 2020.* (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

**Section 222(a)—Workers of a Primary Firm**

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

*(A) Increased Imports Path:*

(i) the sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

*(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:*

(i) (I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

**Section 222(b)—Adversely Affected Secondary Workers**

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

**Section 222(e)—Firms Identified by the International Trade Commission**

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e))must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1)of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C)of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 95,276 | Siltronic Corporation, Siltronic AG, Express Professionals, Xenium | Portland, OR | October 10, 2018. |
| 95,283 | Bayou Steel BD Holdings, LLC, Express Employment, Cherokee Millwright and Mechanical, etc.. | Harriman, TN | October 15, 2018. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 94,440 | Wells Fargo Bank NA, Wells Fargo Consumer Banking, Wells Fargo Home Lending Organization, etc. | West Des Moines, IA | January 2, 2018. |
| 94,440A | Wells Fargo Bank NA, Wells Fargo Consumer Banking, Wells Fargo Home Lending Organization, etc. | West Des Moines, IA | January 2, 2018. |
| 94,440B | Wells Fargo Bank NA, Wells Fargo Consumer Banking, Wells Fargo Home Lending Organization, etc. | West Des Moines, IA | January 2, 2018. |
| 94,440C | Wells Fargo Bank NA, Corporate Finance, Enterprise Information Technology Organization, etc. | West Des Moines, IA | January 2, 2018. |
| 94,440D | Wells Fargo Bank NA, Corporate Finance, Enterprise Information Technology Organization, etc. | West Des Moines, IA | January 2, 2018. |
| 94,440E | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Accounting-Controller, etc. | West Des Moines, IA | January 2, 2018. |
| 94,440F | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Accounting-Controller, etc. | Gainesville, FL | January 2, 2018. |
| 94,440G | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Accounting-Controller, etc. | Phoenix, AZ | January 2, 2018. |
| 94,440H | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Accounting-Controller, etc. | Charlotte, NC | January 2, 2018. |
| 94,440I | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Accounting-Controller, etc. | Minneapolis, MN | January 2, 2018. |
| 94,440J | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Accounting-Controller, etc. | Portland, OR | January 2, 2018. |
| 94,440K | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Accounting-Controller, etc. | Charlotte, NC | January 2, 2018. |
| 94,440L | Wells Fargo Bank NA, Corporate Finance, Controller Organization, Supply Chain Management, etc. | West Des Moines, IA | January 2, 2018. |
| 94,440M | Wells Fargo Bank NA, Corporate Finance, Enterprise Information Technology Organization, etc. | West Des Moines, IA | January 2, 2018. |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 95,332 | Barber Steel Foundry Corporation, Wabtec Corporation, Workbox Staffing LLC, Fast Track Staffing Inc. | Rothbury, MI | October 28, 2018. |
| 95,358 | Unilever United States, Manpower | Englewood Cliffs, NJ | November 6, 2018. |
| 95,358A | Unilever United States, Manpower | Shelton, CT | March 2, 2020. |
| 95,358B | Unilever United States, Supply Chain Data Management, Manpower | Suffolk, VA | November 6, 2018. |
| 95,381 | Charles Komar & Sons, Inc | Jersey City, NJ | November 15, 2018. |
| 95,384 | Baptist Healthcare Systems, Inc., Medical Coding Group | New Albany, IN | November 18, 2018. |
| 95,385 | Cenveo Worldwide Limited, Discount Labels, IT Support Division | New Albany, IN | November 18, 2018. |
| 95,397 | Carestream Health, Inc., Information Technology, Datrose, Aerotek, Miller & Associates, etc. | Rochester, NY | November 20, 2018. |
| 95,408 | Regal Beloit America, Inc., Regal Beloit Corporation, Luttrell Staffing Group | Erwin, TN | November 21, 2018. |
| 95,411 | Amphenol TCS, Amphenol, Additional Contract Services, Microtech Staffing, Triton Staffing. | Nashua, NH | November 22, 2018. |
| 95,416 | Line Pipe Systems LLC, LPS Inc., Research and Development Division | Rancho Cucamonga, CA. | November 22, 2018. |
| 95,421 | Dun & Bradstreet, Inc. (D & B), Customer Service Department, Dun & Bradstreet Corporation. | Tucson, AZ | November 25, 2018. |
| 95,422 | Schneider Electric Systems USA Inc., Schneider Electric SE, Volt Funding Corporation, Artech Information Systems. | Ashburn, VA | November 25, 2018. |
| 95,469 | UnitedHealthcare Services, Inc., UnitedHealth Group, OptumRx, BriovaRx Specialty Pharmacy, etc. | Jeffersonville, IN | December 6, 2018. |
| 95,480 | Panasonic Customer Call Center, Panasonic Corporation of North America, Aerotek. | Chesapeake, VA | December 13, 2018. |
| 95,494 | Overland Products Company, Inc., Premier Staffing, Inc | Fremont, NE | December 18, 2018. |
| 95,501 | Vivint Solar Developer, LLC, Vivint Solar, Inc | Lehi, UT | December 19, 2018. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 95,107 | The Waterbury Screw Machine Products Company | Waterbury, CT. | |
| 95,122 | Conduent State & Local Solutions Inc., Conduent Business Services, LLC | London, KY. | |
| 95,200 | Kopin Targeting Corporation, Kopin Corporation, Protingent Staffing | Scotts Valley, CA. | |
| 95,223 | Pattison Sand Company, LLC | Clayton, IA. | |
| 95,286 | Nestle Dreyer's Ice Cream Company, Direct Store Delivery, Nestle USA, Inc | North Little Rock, AR. | |
| 95,327 | Nestle Dreyer' Ice Cream Company, Direct Store Delivery, Nestle USA, Inc | Portland, OR. | |
| 95,327A | Nestle Dreyer's Ice Cream Company, Direct Store Delivery, Nestle USA, Inc | Eugene, OR. | |
| 95,343 | Smithfield Fresh Meats Corporation, Warehouse Facility, Smithfield Foods, WH Group, Aerotek, Headway Staffing. | Newport News, VA. | |
| 95,425 | Nestle Dreyer's Ice Cream Company, Direct Store Delivery, Nestle USA, Inc | Bordentown, NJ. | |
| 95,426 | Nestle Dreyer's Ice Cream Company, Direct Store Delivery, Nestle USA, Inc | Keasbey, NJ. | |
| 95,435 | Nestle Dreyer's Ice Cream Company, Direct Store Delivery, Nestle USA, Inc | Tinley Park, IL. | |
| 95,436 | Nestle Dreyer's Ice Cream Company, Direct Store Delivery, Nestle USA, Inc | Glendale Heights, IL. | |
| 95,503 | The Dress Barn, Inc., Ascena Retail Group, Inc | Sioux Falls, SD. | |
| 95,503A | The Dress Barn, Inc., Ascena Retail Group, Inc | Rapid City, SD. | |

**Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 95,413 | Digital Intelligence Systems, LLC (DISYS) | Glenn Allen, VA. | |
| 95,413A | Digital Intelligence Systems, LLC (DISYS) | St. Louis, MO. | |
| 95,485 | Comcast Cable Communications Xfinity, Security Fusion Center | Englewood, CO. | |

The following determinations terminating investigations were issued in cases where the petition regarding the investigation has been deemed invalid.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 95,372 ..... | Ferrara Candy Company ..... | Creston, IA. | |

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 95,295 ..... | Ignite Holdings, LLC ..... | Winchester, VA. | |
| 95,502 ..... | Vivint Solar Developer, LLC, Vivint Solar, Inc ..... | Lehi, UT. | |

I hereby certify that the aforementioned determinations were issued during the period of *January 1, 2020 through January 31, 2020.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 11th day of February 2020.

**Hope D. Kinglock,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2020–04193 Filed 2–28–20; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than March 12, 2020.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Administrator, Office of Trade Adjustment Assistance, at the address shown below, not later than March 12, 2020.

The petitions filed in this case are available for inspection at the Office of the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 11th day of February 2020.

**Hope D. Kinglock,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

### APPENDIX

112 TAA Petitions Instituted Between 1/1/20 and 1/31/20

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 95524 ..... | Cree (State/One-Stop) ..... | Morgan Hill, CA ..... | 01/02/20 | 12/31/19 |
| 95525 ..... | Optum Services Inc. (State/One-Stop) ..... | Hartford, CT ..... | 01/02/20 | 12/31/19 |
| 95526 ..... | Parkdale Mills (Workers) ..... | Galax, VA ..... | 01/02/20 | 12/21/19 |
| 95527 ..... | Wells Fargo (Workers) ..... | Concord, CA ..... | 01/02/20 | 01/01/20 |
| 95528 ..... | IAC, Dayton LLC (Company) ..... | Dayton, TN ..... | 01/03/20 | 01/02/20 |
| 95529 ..... | ATI Holdings, LLC (State/One-Stop) ..... | Bolingbrook, IL ..... | 01/06/20 | 01/03/20 |
| 95530 ..... | Halliburton Energy Services (Workers) ..... | El Reno, OK ..... | 01/06/20 | 01/04/20 |
| 95531 ..... | Mercari, Inc. (Workers) ..... | Portland, OR ..... | 01/06/20 | 01/03/20 |
| 95532 ..... | Nestle USA, Inc. (State/One-Stop) ..... | Kalamazoo, MI ..... | 01/06/20 | 01/03/20 |
| 95533 ..... | Semling-Menke Company (Union) ..... | Merrill, WI ..... | 01/06/20 | 01/03/20 |
| 95534 ..... | AT&T (State/One-Stop) ..... | Tualatin, OR ..... | 01/07/20 | 01/06/20 |
| 95535 ..... | JLL (Workers) ..... | Westmont, IL ..... | 01/07/20 | 01/06/20 |
| 95536 ..... | Johnson Controls (State/One-Stop) ..... | Plymouth, MN ..... | 01/07/20 | 01/06/20 |
| 95537 ..... | State Street Corporation (State/One-Stop) ..... | Boston, MA ..... | 01/07/20 | 01/06/20 |
| 95538 ..... | TMK Ipsco (State/One-Stop) ..... | Blytheville, AR ..... | 01/07/20 | 01/06/20 |
| 95539 ..... | U.S. Bank, Portland Columbia Center (State/One-Stop) ..... | Portland, OR ..... | 01/07/20 | 01/06/20 |
| 95540 ..... | Applied Materials, Inc. (State/One-Stop) ..... | Kalispell, MT ..... | 01/08/20 | 01/06/20 |

112 TAA PETITIONS INSTITUTED BETWEEN 1/1/20 AND 1/31/20—Continued

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 95541 | Health Care Strategies (State/One-Stop) | Richardson, TX | 01/08/20 | 01/07/20 |
| 95542 | Honeywell (State/One-Stop) | Atlanta, GA | 01/08/20 | 01/07/20 |
| 95543 | Rite-Aid (State/One-Stop) | Lancaster, CA | 01/08/20 | 01/07/20 |
| 95544 | Sanko Electronics America Inc. (State/One-Stop) | Torrance, CA | 01/08/20 | 01/07/20 |
| 95545 | United States Steel (Workers) | Braddock, PA | 01/08/20 | 01/07/20 |
| 95546 | XPO Logistics (Company) | Hazelwood, MO | 01/08/20 | 01/07/20 |
| 95547 | Google (State/One-Stop) | Mountain View, CA | 01/09/20 | 01/08/19 |
| 95548 | HCL America (State/One-Stop) | Webster, NY | 01/09/20 | 01/08/19 |
| 95549 | MAS US Holdings, MAS Acme (Company) | Asheboro, NC | 01/09/20 | 01/08/19 |
| 95550 | Branson Ultrasonics Corporation (State/One-Stop) | Honeoye Falls, NY | 01/10/20 | 01/09/20 |
| 95551 | Kautex (a Textron Company) (Company) | Detroit, MI | 01/10/20 | 01/09/20 |
| 95552 | Koos Manufacturing, Inc. (State/One-Stop) | South Gate, CA | 01/10/20 | 01/09/20 |
| 95553 | Alcoa (State/One-Stop) | Point Comfort, TX | 01/13/20 | 01/10/20 |
| 95554 | AVMED Health Plans (State/One-Stop) | Gainesville, FL | 01/13/20 | 01/10/20 |
| 95555 | SMX Staffing (State/One-Stop) | Winchester, VA | 01/13/20 | 01/10/20 |
| 95556 | Spirit Aerosystems, Inc. (State/One-Stop) | Wichita, KS | 01/13/20 | 01/10/20 |
| 95557 | Stanley Black and Decker REVISED (State/One-Stop) | Greenfield, IN | 01/13/20 | 01/10/20 |
| 95558 | Veritas Genetics (State/One-Stop) | Danvers, MA | 01/13/20 | 01/08/20 |
| 95559 | Allianz (State/One-Stop) | Minneapolis, MN | 01/14/20 | 01/13/20 |
| 95560 | HP Inc. (Workers) | Boise, ID | 01/14/20 | 01/13/20 |
| 95561 | Pace Industries (State/One-Stop) | Arden Hills, MN | 01/14/20 | 01/13/20 |
| 95562 | Pier 1 Imports (State/One-Stop) | Jefferson City, MO | 01/14/20 | 01/13/20 |
| 95563 | Hologic (State/One-Stop) | Marlborough, MA | 01/15/20 | 01/13/20 |
| 95564 | MSX International (State/One-Stop) | Center Line, MI | 01/15/20 | 01/14/20 |
| 95565 | Optum Services Inc. (State/One-Stop) | Windsor, CT | 01/15/20 | 01/14/20 |
| 95566 | Autolite (Workers) | Duncan, SC | 01/16/20 | 01/15/20 |
| 95567 | Metal Box International (State/One-Stop) | Chicago, IA | 01/16/20 | 01/15/20 |
| 95568 | Optum Technology (State/One-Stop) | San Francisco, CA | 01/16/20 | 01/15/20 |
| 95569 | Almatis, Inc. (Workers) | Leetsdale, PA | 01/17/20 | 01/16/20 |
| 95570 | Hutchinson Technology (Company) | Hutchinson, MN | 01/17/20 | 01/16/20 |
| 95571 | Pierce Pacific Manufacturing Inc. (State/One-Stop) | Portland, OR | 01/17/20 | 01/16/20 |
| 95572 | Tektronix Inc. (State/One-Stop) | Beaverton, OR | 01/17/20 | 01/16/20 |
| 95573 | United States Marble (State/One-Stop) | Remus, MI | 01/17/20 | 01/16/20 |
| 95574 | Walmart GBS (Workers) | Charlotte, NC | 01/17/20 | 01/16/20 |
| 95575 | Zions Bancorporation (State/One-Stop) | Salt Lake City, UT | 01/17/20 | 01/16/20 |
| 95576 | C&D Technologies (Union) | Milwaukee, WI | 01/21/20 | 01/17/20 |
| 95577 | Constantia Colmar (Workers) | Colmar, PA | 01/21/20 | 01/17/20 |
| 95578 | EnTech Plastics, Inc. (Company) | Corry, PA | 01/21/20 | 01/20/20 |
| 95579 | Heraeus Precious Metals North America Conshohocken, LLC (Workers). | West Conshohocken, PA | 01/21/20 | 01/17/20 |
| 95580 | Philadelphia Energy Solutions (Union) | Philadelphia, PA | 01/21/20 | 01/17/20 |
| 95581 | Blue Cross Blue Shield (State/One-Stop) | Virginia, MN | 01/22/20 | 01/21/20 |
| 95582 | Fort Dearborn Company (State/One-Stop) | Harahan, LA | 01/22/20 | 01/21/20 |
| 95583 | Metal Box International (State/One-Stop) | Franklin Park, IL | 01/22/20 | 01/21/20 |
| 95584 | Norma Group Inc. (State/One-Stop) | Auburn Hills, MI | 01/22/20 | 01/21/20 |
| 95585 | Northern Star Generation Services (State/One-Stop) | Colver, PA | 01/22/20 | 01/21/20 |
| 95586 | P&F Systems (State/One-Stop) | Auburn Hills, MI | 01/22/20 | 01/21/20 |
| 95587 | YS Industry INC (State/One-Stop) | Vernon, CA | 01/22/20 | 01/21/20 |
| 95588 | Cal Amp (State/One-Stop) | Oxnard, CA | 01/23/20 | 01/22/20 |
| 95589 | Ducommun Aerosturctures Inc. (State/One-Stop) | Parsons, KS | 01/23/20 | 01/22/20 |
| 95590 | International Automotive Components (Company) | Mendon, MI | 01/23/20 | 01/22/20 |
| 95591 | Liberty Mutual Insurance (Workers) | Montoursville, PA | 01/23/20 | 01/22/20 |
| 95592 | Prime Healthcare—Saint John Hospital (State/One-Stop) | Leavenworth, KS | 01/23/20 | 01/22/20 |
| 95593 | Sakthi Automotive Group USA (Company) | Detroit, MI | 01/23/20 | 01/22/20 |
| 95594 | Wipro Technologies for Comcast Xfinity Cable Communications (State/One-Stop). | Englewood, CO | 01/23/20 | 01/22/20 |
| 95595 | Full Circle Recycling (State/One-Stop) | Johnston, RI | 01/24/20 | 01/17/20 |
| 95596 | J.R. Vinagro Corporation (State/One-Stop) | Johnston, RI | 01/24/20 | 01/23/20 |
| 95597 | LSC Communications (State/One-Stop) | Mattoon, IL | 01/24/20 | 01/23/20 |
| 95598 | Lucky's Market (State/One-Stop) | St. Louis, MO | 01/24/20 | 01/23/20 |
| 95599 | Pier 1 Imports (State/One-Stop) | St. Louis, MO | 01/24/20 | 01/23/20 |
| 95600 | Siletz Trucking Company (State/One-Stop) | Independence, OR | 01/24/20 | 01/23/20 |
| 95601 | Timken (State/One-Stop) | Fort Scott, KS | 01/24/20 | 01/22/20 |
| 95602 | Tri-Starr Management Services REVISED (State/One-Stop) | Jeffersonville, IN | 01/24/20 | 01/23/20 |
| 95603 | Agilent Technologies (State/One-Stop) | Ankeny, IA | 01/27/20 | 01/24/20 |
| 95604 | The Atlas Group (State/One-Stop) | Wichita, KS | 01/27/20 | 01/24/20 |
| 95605 | Cox Machine (State/One-Stop) | Wichita, KS | 01/27/20 | 01/24/20 |
| 95606 | Optum Services Inc. (State/One-Stop) | Rocky Hill, CT | 01/27/20 | 01/24/20 |
| 95607 | Premier Surfaces (State/One-Stop) | Chantilly, VA | 01/27/20 | 01/24/20 |
| 95608 | Schenker Inc. (State/One-Stop) | Wichita, KS | 01/27/20 | 01/24/20 |
| 95609 | XPO Logistics (Company) | Hazelwood, MO | 01/27/20 | 01/24/20 |

112 TAA PETITIONS INSTITUTED BETWEEN 1/1/20 AND 1/31/20—Continued

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 95610 | Aquity Solutions (State/One-Stop) | Cary, NC | 01/28/20 | 01/27/20 |
| 95611 | Bank of New York Mellon (State/One-Stop) | Pittsburgh, PA | 01/28/20 | 01/27/20 |
| 95612 | Georgia-Pacific Gypsum (State/One-Stop) | Cuba, MO | 01/28/20 | 01/27/20 |
| 95613 | Hudson's Bay Company (Workers) | Wilkes-Barre, PA | 01/28/20 | 01/27/20 |
| 95614 | LSC Communications US, LLC (State/One-Stop) | Strasburg, VA | 01/28/20 | 01/24/20 |
| 95615 | Restwell Mattress Factory (State/One-Stop) | Eden Prairie, MN | 01/28/20 | 01/28/20 |
| 95616 | Sleep Number Corporation (State/One-Stop) | Minneapolis, MN | 01/28/20 | 01/28/20 |
| 95617 | Bluestone Coke LLC (Workers) | Birmingham, AL | 01/29/20 | 01/28/20 |
| 95618 | Branson Ultrasonics Corporation (State/One-Stop) | Danbury, CT | 01/29/20 | 01/28/20 |
| 95619 | Concentrix (State/One-Stop) | Arnold, MO | 01/29/20 | 01/28/20 |
| 95620 | Express Clothing (State/One-Stop) | St. Peters, MO | 01/29/20 | 01/28/20 |
| 95621 | HCL/ComDoc (State/One-Stop) | North Canton, OH | 01/29/20 | 01/28/20 |
| 95622 | Joyson Safety (State/One-Stop) | Knoxville, TN | 01/29/20 | 01/28/20 |
| 95623 | Neuro Spine Institute (Pacific Sports and Spine) (State/One-Stop). | Eugene, OR | 01/29/20 | 01/28/20 |
| 95624 | PVH Corporation (State/One-Stop) | Brinkley, AR | 01/29/20 | 01/28/20 |
| 95625 | Schawk USA, Inc. (State/One-Stop) | Cincinnati, OH | 01/29/20 | 01/27/20 |
| 95626 | TLC & Associates (State/One-Stop) | Alamogordo, NM | 01/29/20 | 01/28/20 |
| 95627 | Comfort Holding, LLC operating as Innocor, Inc. (State/One-Stop). | West Chicago, IL | 01/30/20 | 01/29/20 |
| 95628 | Corsicana Bedding, LLC (State/One-Stop) | Aurora, IL | 01/30/20 | 01/29/20 |
| 95629 | Astoria Forest Products (State/One-Stop) | Astoria, OR | 01/31/20 | 01/30/20 |
| 95630 | Elite Comfort Solutions (State/One-Stop) | Fort Smith, AR | 01/31/20 | 01/27/20 |
| 95631 | JW Aluminum (State/One-Stop) | St. Louis, MO | 01/31/20 | 01/30/20 |
| 95632 | Mitec Powertrain, Inc. (Company) | Findlay, OH | 01/31/20 | 01/30/20 |
| 95633 | Mohawk Industries, Inc. (State/One-Stop) | Melbourne, AR | 01/31/20 | 01/30/20 |
| 95634 | Novanta (State/One-Stop) | San Jose, CA | 01/31/20 | 01/30/20 |
| 95635 | Smith's Interconnect (State/One-Stop) | Costa Mesa, CA | 01/31/20 | 01/30/20 |

[FR Doc. 2020–04194 Filed 2–28–20; 8:45 am]
**BILLING CODE P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Post-Initial Determinations Regarding Eligiblity To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations (on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *01/01/2020 through 01/31/2020.* Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

**Revised Certifications of Eligibility**

The following revised certifications of eligibility to apply for TAA have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination, and the reason(s) for the determination.

The following revisions have been issued.

| TA–W No. | Subject firm | Location | Impact date | Reason(s) |
|---|---|---|---|---|
| 95,041 | Newell Brands | Winchester, VA | 8/1/2018 | Wages Reported Under Different FEIN Number. |

**Revised Determinations (After Affirmative Determination Regarding Application for Reconsideration)**

The following revised determinations on reconsideration, certifying eligibility to apply for TAA, have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following revised determinations on reconsideration, certifying eligibility to apply for TAA, have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 92,574 | Truvision Services, Inc. | Yorkville, IL | 1/25/2016 |

**Negative Determinations on Reconsideration (After Affirmative Determination Regarding Application for Reconsideration)**

In the following cases, negative determinations on reconsideration have been issued because the eligibility criteria for TAA have not been met for the reason(s) specified.

The investigation revealed that the criteria under Trade Act section 222(a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) have not been met.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 94,578 | Michigan Bell Telephone Company | Kalamazoo, MI. | |
| 94,578A | Wisconsin Bell, Inc | Appleton, WI. | |
| 94,578B | Indiana Bell Telephone Company Incorporated | Indianapolis, IN. | |
| 94,578C | AT&T Services, Inc | Syracuse, NY. | |
| 94,578D | AT&T Services, Inc | Meridian, CT. | |

I hereby certify that the aforementioned determinations were issued during the period of *01/01/2020 through 01/31/2020.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 11th day of February 2020.

**Hope D. Kinglock,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2020–04191 Filed 2–28–20; 8:45 am]

**BILLING CODE 4510–FN–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Request for Comments on Updated Guidance for Completing the Transition to the Next Generation Internet Protocol, Internet Protocol Version 6 (IPv6)

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of public comment period.

**SUMMARY:** The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled, *Completing the Transition to Internet Protocol Version 6.*

**DATES:** The public comment period on the draft memorandum begins on the day it is published in the **Federal Register** and ends 30 days after date of publication in the **Federal Register**. *Privacy/FOIA Notice:* Comments submitted in response to this notice may be publically available and are subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such sensitive personal information or proprietary information, or any other information that you would not want publically disclosed.

**ADDRESSES:** Interested parties should provide comments via electronic mail to the following inbox: *OFCIO@omb.eop.gov.* The Office of Management and Budget is located at 725 17th Street NW, Washington, DC 20503. No physical copies will be accepted.

**FOR FURTHER INFORMATION CONTACT:** Carol Bales, OMB, at 202.395.9915 or *cbales@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) is proposing updated guidance to Federal agencies on completing the transition to Internet Protocol Version 6 (IPv6). In August 2005, OMB issued M–05–22, *Transition Planning for Internet Protocol Version 6 (IPv6),* requiring agencies to enable IPv6 on their backbone networks by June 30, 2008. This policy outlined deployment and acquisition requirements. In September 2010, OMB issued a memo titled ''*Transition to IPv6*'', requiring Federal agencies to operationally deploy native IPv6 for public internet servers and internal applications that communicate with public servers. The intent of the newly proposed policy articulated in the draft memorandum is to communicate the requirements for completing the operational deployment of IPv6 across all Federal information systems and services, and help agencies overcome barriers that prevent them from migrating to IPv6-only systems.

In the last 5 years, IPv6 momentum in industry has dramatically increased, with large IPv6 commercial deployments in many business sectors now driven by reducing cost, decreasing complexity, improving security and eliminating barriers to innovation in networked information systems. Mobile networks, data centers and leading-edge enterprise networks, for example, have been evolving to IPv6-only networks. It is essential for the Federal government to expand and enhance its strategic commitment to the transition to IPv6 in order to keep pace with and capitalize on industry trends. The attached draft memorandum prepared by the Office of Management and Budget, in collaboration with the Federal Chief Information Officers Council and Federal Chief Information Security Officers Council, supports the Administration's goals for modernizing Federal Information Technology.

**Suzette Kent,**

*Federal Chief Information Officer, Office of the Federal Chief Information Officer, Office of Management Budget.*

[FR Doc. 2020–04202 Filed 2–28–20; 8:45 am]

**BILLING CODE 3110–05–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 20–020]**

### NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation and Engineering Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

**DATES:** Thursday, March 19, 2020, 8:30 a.m.–5:00 p.m., Eastern Time.

**ADDRESSES:** NASA Headquarters, Room 6H41, 300 E Street SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Green, Designated Federal Officer, Space Technology Mission Directorate,

NASA Headquarters, Washington, DC 20546, (202) 358–4710, or *g.m.green@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. This meeting will also be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1–844–467–6272 and enter the numeric participant passcode 102421 followed by the # sign. The WebEx link is *https://nasaenterprise.webex.com,* the meeting number is 903 769 393, and the password is n@cTIE031920. Note: If dialing in, please ''mute'' your telephone. The agenda for the meeting includes; the following topics:

—Space Technology Mission Directorate Update
—FY 2021 Budget Proposal and Update
—Space Technology on International Space Station Update
—Lunar Surface Innovation Initiative Update
—Office of the Chief Technologist Update
—Flight Opportunities and Small Spacecraft Technology Program Updates
—Office of the Chief Engineer Update
—Overview of Processes To Evaluate Technology Implementation
—TechPort Demonstration

Attendees will be required to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 business days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ms. Anyah Dembling via email at *anyah.dembling@nasa.gov* or by telephone at (202) 358–5195. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation no less than three working days prior to the meeting to Ms. Anyah Dembling.

*Note:* As a precaution, individuals returning from China will not be allowed into NASA Headquarters until the 14 days of observation and self-care period has expired, and they are determined not to be infectious. Attendees to the Technology, Innovation and Engineering Committee meeting who are returning from China should only participate virtually through the provided dial-in audio and WebEx, until the 14 days of observation and self-care period has expired.

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

**Patricia Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2020–04159 Filed 2–28–20; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–20–0004; NARA–2020–023]**

## Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

**DATES:** NARA must receive comments by April 16, 2020.

**ADDRESSES:** You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

**SUPPLEMENTARY INFORMATION:**

### Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in

consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

**Background**

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

*Schedules Pending:*

1. Department of Health and Human Services, Indian Health Service, Sanitation Facilities (DAA–0513–2019–0001).

2. Department of Homeland Security, Bureau of Customs and Border Protection, Electronic System for Travel Authorization Records (DAA–0568–2019–0006).

3. Department of Justice, Drug Enforcement Administration, Diversion Control Records (DAA–0170–2017–0006).

4. Department of Transportation, Federal Aviation Administration, Suspected Unapproved Parts (DAA–0237–2019–0010).

5. Federal Retirement Thrift Investment Board, Office of Communications and Education, Communications and Education Records (DAA–0474–2018–0001).

6. Federal Retirement Thrift Investment Board, Office of Enterprise Risk Management, Enterprise Risk Management Records (DAA–0474–2018–0005).

7. National Archives and Records Administration, Agency-wide, Electronic Messaging Records (DAA–0064–2019–0006).

**Laurence Brewer,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2020–04188 Filed 2–28–20; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–244; NRC–2020–0062]**

## Exelon Generation Company, LLC; R. E. Ginna Nuclear Power Plant; Add One-Time Note for Use of Alternative Residual Heat Removal Methods

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–18, issued to Exelon Generation Company, LLC, for operation of the R. E. Ginna Nuclear Power Plant (Ginna). The amendment would revise Technical Specifications (TSs) 3.4.7, ''RCS [reactor coolant system] Loops—MODE 5, Loops Filled''; 3.4.8, ''RCS Loops—MODE 5, Loops Not Filled''; 3.9.4, ''Residual Heat Removal (RHR) and Coolant Circulation—Water Level ≥ 23 Ft''; and 3.9.5, ''Residual Heat Removal (RHR) and Coolant Circulation—Water Level < 23 Ft,'' to add a one-time note for use of alternative residual heat removal methods.

**DATES:** Submit comments by April 1, 2020. Requests for a hearing or petition for leave to intervene must be filed by May 1, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0062. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** V. Sreenivas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2597; email: *V.Sreenivas@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2020–0062 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0062.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The license amendment request dated February 25, 2020, is available in ADAMS under Accession No. ML20056E958.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2020–0062 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Introduction

The NRC is considering the issuance of an amendment to Renewed Facility Operating License No. DPR–18, issued to Exelon Generation Company, LLC (the licensee), for operation of Ginna, located in Wayne County, New York.

The proposed amendment would revise TSs 3.4.7, 3.4.8, 3.9.4, and 3.9.5 to add an asterisk to allow the use of alternative means for residual heat removal. This one-time change is requested to support Ginna in the shutdown of the reactor during the upcoming refueling outage scheduled to start in April 2020.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

This one-time change is requested to support the station in the shutdown of the reactor during the upcoming refueling outage scheduled to start in April 2020. The proposed method of cooldown during Mode 5 is the water solid Steam Generator cooldown method. This method involves removing residual heat by filling the steam lines with water and using the Steam Generators as water-to-water heat exchangers. The proposed method to achieve Mode 5, loops not filled, utilizes portions of the normal RHR loop, additional piping, fittings, hoses, and connections meeting to safety-related Class 1 or 2 criteria, and portions of the low pressure ECCS [emergency core cooling system] system. These proposed alternative methods will not act as a precursor or an initiator for any transient or design basis accident; therefore, the proposed change does not significantly increase the probability of any accident previously evaluated.

The proposed change provides an alternate means to remove decay heat and is intended to mitigate the consequences of an initiating event within the assumed acceptance limits. This alternative method has been analyzed to ensure that it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of this method does not affect the integrity of the fission product barriers utilized for mitigation of radiological dose consequences as a result of an accident. Plant response as modeled in the safety analyses is unaffected. Hence, the releases used as input to the dose calculations are unchanged from those previously assumed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed alternative methods do not affect accident initiation sequences or response scenarios as modeled in the safety analyses. This method will not create a new failure scenario. In addition, no new failure modes are being created for any plant equipment. The proposed alternative methods have been designed to applicable regulatory and industry standards. Fault conditions, failure detection, reliability and equipment qualification have been considered. The new methods do not result in any new or different accident scenarios. The types of accidents defined in the UFSAR [Updated Final Safety Analysis Report] continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

No safety analyses were changed or modified as a result of the proposed TS changes. The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. Margins associated with the current safety analyses acceptance criteria are unaffected. The current safety analyses remain bounding since their conclusions are not affected by the new method.

Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the above analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day comment period. However, if circumstances change during the comment period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day comment period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. If the Commission takes this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

## III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations

are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

## IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate).

Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the licensee's application dated February 25, 2020 (ADAMS Accession No. ML20056E958).

*Attorney for licensee:* Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* James G. Danna.

Dated at Rockville, Maryland, this 26th day of February, 2020.

For the Nuclear Regulatory Commission.

**James G. Danna,**

*Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2020–04243 Filed 2–28–20; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2020–0001]**

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of March 2, 9, 16, 23, 30, April 6, 2020.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

**Week of March 2, 2020**

*Thursday, March 5, 2020*

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

**Week of March 9, 2020—Tentative**

There are no meetings scheduled for the week of March 9, 2020.

**Week of March 16, 2020—Tentative**

There are no meetings scheduled for the week of March 16, 2020.

**Week of March 23, 2020—Tentative**

There are no meetings scheduled for the week of March 23, 2020.

**Week of March 30, 2020—Tentative**

*Tuesday, March 31, 2020*

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Kellee Jamerson: 301–415–7408)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

*Thursday, April 2, 2020*

10:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

**Week of April 6, 2020—Tentative**

There are no meetings scheduled for the week of April 6, 2020.

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email

at *Denise.McGovern@nrc.gov*. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 27th day of February 2020.

For the Nuclear Regulatory Commission.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2020–04365 Filed 2–27–20; 4:15 pm]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88276; File No. SR–CboeBZX–2020–003]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the –1x Short VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) (Trust Issued Receipts)

February 25, 2020.

On January 3, 2020, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the –1x Short VIX Futures ETF, a series of VS Trust, under Rule 14.11(f)(4) (''Trust Issued Receipts''). The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 8, 2020. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates April 22, 2020, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–CboeBZX–2020–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–04185 Filed 2–28–20; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87992 (January 16, 2020), 85 FR 4023.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88277; File No. SR–FICC–2020–001]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Interpretive Guidance With Respect to Settlement Finality

February 25, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and subparagraph (f)(1)[4] of Rule 19b–4 thereunder. 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 proposed rule change of Fixed Income Clearing Corporation (''FICC'') is annexed [sic] hereto as Exhibit 5. The proposed rule change would amend the FICC Government Securities Division (''GSD'') Rulebook (the ''GSD Rules'') and the FICC Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules'' and collectively with the GSD Rules, the ''Rules'') in order to adopt the Interpretive Guidance with respect to Settlement Finality (''Interpretive Guidance''), which would provide greater transparency to FICC Members regarding settlement finality in the Rules, as described in greater detail below.[5]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the GSD Rules or the MBSD Rules, as applicable, *available at http://www.dtcc.com/legal/rules-and-procedures.*

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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The proposed rule change would add the Interpretive Guidance into the Rules, which would provide greater transparency to FICC Members relating to settlement finality in the Rules.

(i) Background

FICC is a clearing agency registered with, and under the supervision of, the Commission and it is a ''covered clearing agency'' under the Commission's Standards for Covered Clearing Agencies.[6] Rule 17Ad–22(e)(8) of the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.[7] It is FICC's policy to ensure that the point of settlement finality is defined in the Rules in compliance with Rule 17Ad–22(e)(8) of the Act and that the point of settlement finality is transparent to FICC's Members. The proposed rule change would add the Interpretive Guidance to the Rules to provide greater transparency regarding settlement finality in the Rules.

A. FICC Money and Securities Settlement

Through GSD, FICC processes two types of settlements: (1) The funds-only settlement process that consists of the transfer of cash for (a) changes in the value of securities when they are marked to market, (b) cash adjustments related to securities trades, (c) the pass-through of coupon payments for term repurchase agreements (''repos'') or trade obligations that cross a coupon date, and (d) other items, such as billing invoices and (2) the settlement process associated with securities deliveries and related payment obligations.

Through MBSD, FICC processes two types of settlements: (1) The cash settlement process that that consists of the transfer of cash for (a) the TBA Transaction Adjustment Payment, (b) Net Pool Transaction Adjustment Payment, (c) principal and interest payments for failing net pool settlement obligations (to the extent that they are not handled by the Fedwire Securities Service Automated Claims Adjustment Process), and (d) other items, such as Factor Update Adjustments, CPR Claim payments and billing invoices and (2) the settlement associated with securities deliveries and related payment obligations.

B. Point of Settlement Finality for GSD Funds-Only Settlement and MBSD Cash Settlement

1. Funds-Only/Cash Settlement Processes

GSD funds-only settlement and MBSD cash settlement are governed by GSD Rule 13 and MBSD Rule 11, respectively,[8] which require the settling banks to use the FRB's [9] National Settlement Service (''NSS'') [10] to complete GSD funds-only settlement and MBSD cash settlement.[11]

GSD funds-only settlement and MBSD cash settlement are each a daily process of generating a net credit or debit cash amount for each Member and settling those cash amounts between Members and FICC. The GSD funds-only settlement and MBSD cash settlement processes are primarily cash pass-through processes; *i.e.,* those Members that are in a net debit position are obligated to submit payments that are then used to pay Members in a net credit position.[12] Net debits and credits of all Members using the same settling bank are further netted and reported [13] to the settling bank which is required to acknowledge the net-net debits or credits.[14] The settling banks then debit or credit the Members' accounts for which they settle.[15]

FICC has a settlement interface with its affiliate, The Depository Trust Company (''DTC''). DTC acts as Settlement Agent for FICC and for the Members' settling banks with respect to GSD funds-only settlement and MBSD cash settlement.[16] In submitting the NSS file, DTC, as Settlement Agent, submits instructions to cause the FRB accounts of the settling banks to be charged for their net-net debit balances and credited with their net-net credit balances. Members are required to engage a settling bank that meets FICC's settling bank limited membership criteria to effect money settlement via NSS on behalf of the Members.[17] Each settling bank is required to acknowledge the daily settlement balances and their intention to settle with FICC by the applicable deadlines or its refusal to settle by the applicable deadlines.[18] Once a settling bank has acknowledged the balances and its intention to settle, it must settle such amounts pursuant to the process set forth in the Rules by the payment deadline established by FICC on FICC's posted time schedules.[19]

FICC processes GSD funds-only settlement debit and credit payments via the NSS twice daily at 10:00 a.m. and 3:15 p.m.[20] FICC processes MBSD cash settlement debits via NSS in the morning at 10:00 a.m. daily and settlement credits via NSS in the afternoon at 2:45 p.m. daily.[21]

2. Interpretive Guidance With Respect to Settlement Finality—Funds-Only/Cash Settlement

The point of finality for GSD funds-only settlement and MBSD cash settlement is defined by the Federal Reserve Bank Operating Circular 12,[22]

[6] *See* Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961, 81 FR 70786 (Oct. 13, 2016).

[7] 17 CFR 240.17Ad–22(e)(8).

[8] GSD Rule 13 and MBSD Rule 11, *supra* note 5.

[9] FRB means the Board of Governors of the Federal Reserve System and each Federal Reserve Bank, as appropriate. GSD Rule 1 and MBSD Rule 1, *supra* note 5.

[10] NSS is a multilateral settlement service owned and operated by the FRB. The service is offered to depository institutions that settle for participants in clearinghouses, financial exchanges and other clearing and settlement groups. Settlement agents, acting on behalf of those depository institutions in a settlement arrangement, electronically submit settlement files to the FRB. Files are processed on receipt, and entries are automatically posted to the depository institutions' FRB accounts.

[11] GSD Rule 13, Section 5(i) and MBSD Rule 11, Section 9(i), *supra* note 5.

[12] Certain amounts, such as billing amounts owed by Members to FICC, are credited and paid to FICC through the funds-only/cash settlement processes rather than passed on to other Members.

[13] GSD Rule 13, Sections 2 and 5(a) and MBSD Rule 11, Section 9(a), *supra* note 5.

[14] GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9(b), *supra* note 5.

[15] Each Member is required to enter into a settling bank agreement with the settling bank that settles its account. GSD Rule 13, Section 4 and MBSD Rule 3A, Section (a), *supra* note 5. In the settling bank agreement, the settling bank undertakes to perform settlement services on behalf of the Member which would include debiting or crediting the Member's account upon settlement.

[16] GSD Rule 13, Section 5(h) and MBSD Rule 11, Section 9(h), *supra* note 5.

[17] GSD Rule 13, Section 4(a) and MBSD Rule 3A, Section (a), *supra* note 5.

[18] GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9(b), *supra* note 5.

[19] GSD Rule 13, Section 5(g) and MBSD Rule 11, Section 9(g), *supra* note 5.

[20] Schedule of Timeframes in the GSD Rules, *supra* note 5.

[21] The schedule of funds only settlement for MBSD is posted on its website at *http://www.dtcc.com. See* MBSD Rule 11, Section 9(g), *supra* note 5.

[22] Federal Reserve Bank Operating Circular 12 (Multilateral Settlement), Effective June 30, 2016 (''Operating Circular 12''), *available at https://www.frbservices.org.*

which governs NSS processing by the FRB. FICC and each Member's settling bank is a ''Settler'' and together are in a ''Settlement Arrangement'' (each term as defined in Operating Circular 12) for purposes of GSD funds-only settlement and MBSD cash settlement.[23] DTC, as the Settlement Agent (as defined in the Rules and in Operating Circular 12), provides the Settlement File (as defined in Operating Circular 12) to the FRB. Each Settler maintains a Master Account (as defined in Operating Circular 12) with the FRB.[24] The point of finality in accordance with Operating Circular 12 is, for debits, the time at which the Settler's Master Account is debited by the FRB,[25] and, for credits, the time at which the Settler's Master Account is credited by the FRB.[26]

Therefore, the point of finality with respect to settlement for GSD funds-only settlement and MBSD cash settlement is the point at which each of the Master Accounts for FICC and the settling banks designated by each of the Members have been debited and credited through NSS pursuant to the Settlement File provided by the Settlement Agent.

C. Point of Finality for GSD and MBSD Settlement of Securities Deliveries and Related Payment Obligations

1. Securities Settlement Processes

(a) GSD Securities Settlement/MBSD Securities Settlement

GSD and MBSD settlement for securities deliveries and related payment obligations (other than GCF Repo Transactions and CCIT Transactions) are governed by GSD Rule 12 and MBSD Rule 9, respectively.[27] Settlement for securities deliveries and related payment obligations occurs on a delivery-versus-payment basis on the books of FICC's clearing bank [28] or via Fedwire Securities Service (''Fedwire'').[29]

FICC designates a clearing bank to act on its behalf in the delivery and receipt of securities to or from the Members for securities settlement.[30] FICC shall notify each GSD Member and MBSD Member, as applicable, of the clearing bank or banks that FICC will use to deliver eligible securities to Members and to receive eligible securities from Members, and by product, the types of securities that each such clearing bank will so deliver and receive.[31] In turn, each Member (prior to activating its membership) must notify FICC of the clearing bank or banks that the Member has designated to act on its behalf in the delivery and receipt of securities to or from FICC.[32] Such designation is subject to FICC's determination that such clearing bank (a) has and will maintain access to Fedwire, (b) has and will maintain the operational capability to interact satisfactorily with the clearing banks that act on behalf of FICC, and (c) has agreed to act on behalf of such Member in accordance with the Rules.[33]

If the Member's designated clearing bank for securities settlement is the same as FICC's clearing bank, obligations for securities deliveries and related payment obligations will be settled for a Member on the books of FICC's designated clearing bank. If the Member's designated clearing bank is not the same as FICC's clearing bank, obligations for securities deliveries and related payment obligations will be settled between the clearing banks using Fedwire. All deliveries are made against full payment.[34]

(b) GCF Repo® Service and the CCIT Service Settlement

Settlement for securities deliveries and related payment obligations relating to the GCF Repo® Service and the CCIT Service are governed by GSD Rule 20 and GSD Rule 3B.[35] FICC and each Member settling transactions through the GCF Repo Service and CCIT Service maintain accounts at FICC's designated clearing bank for settlement of securities deliveries and related payment obligations with respect to the GCF Repo Service and the CCIT Service.[36] Settlement for securities deliveries and related payment obligations [37] for the GCF Repo Service and the CCIT Service occurs on the books of FICC's designated clearing bank.[38]

2. Interpretive Guidance With Respect to Settlement Finality—Settlement for Securities Deliveries and Related Payment Obligations

Settlement for securities deliveries and related payment obligations occurs (i) on the books of FICC's designated clearing bank for each Member whose designated clearing bank for such settlement is the same as FICC's designated clearing bank and (ii) through the Fedwire system, for each Member whose designated clearing bank for such settlement is not the same as FICC's designated clearing bank.

(a) Point of Finality on the Books of FICC's Clearing Bank

The point of finality relating to settlement of securities deliveries and related payment obligations that occurs

[23] For purposes of Operating Circular 12, the following definitions apply:

''Balance'' means the amount listed on a Settlement File that a Settler owes (debit Balance) or is due (credit Balance) as a result of the clearing activities of the Settlement Arrangement.

''Master Account'' means the Master Account (as that term is defined in the Reserve Banks' Operating Circular 1, Account Relationships) of a Settler on the books of a Reserve Bank.

''Settler'' means an entity that has established an account with a Reserve Bank and settles its own Balances, settles Balances for the account of another Participant, or both.

''Settlement Agent'' means the entity authorized to act on behalf of the Settlers under Operating Circular 12.

''Settlement File'' means the instructions submitted by a Settlement Agent showing the debit and credit Balances of the Settlers.

*See* Section 1.2 of Operating Circular 12, *supra* note 22. *See also* Federal Reserve Banks Operating Circular 1 (Account Relationships), Effective February 1, 2013, *available at https://www.frbservices.org.*

[24] *See id.*

[25] *See* Section 5.4 of Operating Circular 12, *supra* note 22.

[26] *See* Section 5.6 of Operating Circular 12, *supra* note 22.

[27] GSD Rule 12 and MBSD Rule 9, *supra* note 5.

[28] FICC currently uses The Bank of New York Mellon (''BNY Mellon'') as its clearing bank for this purpose.

[29] Fedwire Securities Service is an electronic securities service owned and operated by the FRB that provides issuance, maintenance, transfer and settlement services for all marketable U.S. Treasury securities, as well as certain securities issued by other federal government agencies, government-sponsored enterprises and international organizations. *See https://frbservices.org/financial-services/securities/index.html.*

[30] GSD Rule 12, Section 2 and MBSD Rule 9, Section 2, *supra* note 5.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] GSD Rule 12, Section 1 and MBSD Rule 9, Section 1, *supra* note 5.

[35] The GCF Repo service is primarily governed by GSD Rule 20 and enables Netting Members to trade general collateral finance repurchase agreement transactions based on rate, term, and underlying product throughout the day with brokers on a blind basis. GSD Rule 20, *supra* note 5. The CCIT Service is governed by GSD Rule 3B and enables tri-party repurchase agreement transactions in GCF Repo Securities between Netting Members that participate in the GCF Repo Service and institutional cash lenders (other than investment companies registered under the Investment Company Act of 1940, as amended). GSD Rule 3B, *supra* note 5. Section 11 of GSD Rule 3B provides that GSD Rule 20 shall apply to the netting and settlement obligations of FICC and each party to a CCIT Transaction in the same way in which such provisions apply to GCF Repo Transactions. GSD Rule 3B, Section 11, *supra* note 5.

[36] *See* GSD Rule 3B, Section 9(b), *supra* note 5 (requiring each CCIT Member to maintain two accounts at the GCF Clearing Agent Bank, one of which, the CCIT Account, is for the CCIT Member's activity in respect of CCIT Transactions).

[37] GSD Rule 3B, Section 13 provides that certain payment obligations relating to CCIT Transactions are processed pursuant to GSD funds-only settlement described in Item II.(A)(1)(i)B. above. *See* GSD Rule 3B, Section 13, *supra* note 5.

[38] The clearing bank for this purpose is defined as the GCF Clearing Agent Bank. *See* GSD Rule 3B and GSD Rule 20, *supra* note 5. FICC currently uses BNY Mellon as the GCF Clearing Agent Bank.

on the books of FICC's clearing bank is the point at which FICC's clearing bank has acted upon a settlement instruction from FICC.

Pursuant to the agreement between FICC and FICC's clearing bank, a settlement instruction is an instruction by FICC to the clearing bank in respect of settlement that: (1)(a) Instructs the clearing bank to direct delivery, from the FICC account to the Member account(s) designated in such settlement instruction, of securities specified for each such Member account and (b) specifies the dollar amounts that the clearing bank is simultaneously to take collection of from each of the respective Member accounts designated in the settlement instruction for the FICC account; or (2)(a) instructs the clearing bank to direct payment, from the FICC account to the designated Member account(s), of the dollar amounts specified in the settlement instruction for each such Member account and (b) specifies the securities that the clearing bank is simultaneously to take receipt of from each of the Member accounts designated in the settlement instruction for the FICC account.

FICC's clearing bank has acted upon such instructions when the clearing bank (i)(a) directs delivery, from the FICC account to the Member account(s) designated in such settlement instruction, of securities specified for each such Member account and (b) simultaneously collects the dollar amounts from each of the respective Member accounts designated in the settlement instruction for the FICC account; or (ii)(a) directs payment, from the FICC account to the designated Member account(s), of the dollar amounts specified in the settlement instruction for each such Member account and (b) simultaneously takes receipt of securities from each of the Member accounts designated in the settlement instruction for the FICC account.

Therefore, the point of finality of settlement of securities deliveries and related payment obligations that occur on the books of FICC's clearing bank is when each of the accounts held by FICC and the Members at the clearing bank for purposes of securities settlement have been debited and credited in accordance with the settlement instructions provided by FICC.

(b) Point of Finality on the Fedwire System

The point of finality relating to settlement of securities deliveries and related payment obligations that occurs through the Fedwire system is defined by the Federal Reserve Banks Operating Circular No. 7,[39] which governs book entry security account maintenance and transfers. FICC's clearing bank and each Member's clearing bank is a ''Participant'' and maintains a ''Securities Account'' and a ''Master Account'' with the FRB (each term as defined in Operating Circular 7).[40] Operating Circular 7 states that ''[u]nless a Transfer is rejected in accordance with this Circular, all debits and credits in connection with a Transfer become final at the time the debits and credits are posted to the Sender's and Receiver's Securities Accounts and, in case of Transfer Against Payment, their corresponding Master Accounts.'' [41] For purposes of settlement of securities deliveries and related payment obligations, the clearing banks designated by FICC and each Member to deliver and receive securities and related funds on behalf of FICC and each Member, respectively, are the Senders and Receivers described in Operating Circular 7. Therefore, the point of finality of settlement of securities deliveries and related payment obligations is when each of the Securities Accounts and the Master Accounts of the clearing banks designated by FICC and each of the Members have been debited and credited through the Fedwire system in accordance with the settlement instructions provided by FICC.[42]

(ii) Description of the Proposed Rule Change

In order to provide Members greater transparency regarding settlement finality, FICC is proposing to amend the Rules to include the Interpretive Guidance. The Interpretive Guidance would describe settlement finality as set forth above in Items II.(A)(1)(i)B.2. and II.(A)(1)(i)C.2. above.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act [43] requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change would provide additional transparency to FICC Members regarding settlement finality with respect to securities transactions processed through FICC. Accordingly, the proposed rule change would ensure that the Rules are transparent and clear, which would enable all stakeholders to readily understand their respective rights and obligations in connection with FICC's clearance and settlement of securities transactions. Therefore, FICC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[44]

Rule 17Ad–22(e)(8) under the Act [45] requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or

[39] Federal Reserve Banks Operating Circular 7 (Book-Entry Securities Account Maintenance and Transfer Services), Effective October 29, 2017 (''Operating Circular 7''), *available at https://www.frbservices.org.*

[40] For purposes of Operating Circular 7, the following definitions apply:

''*Book-Entry Security*'' means a marketable security issued in electronic form by the United States Government (the ''Treasury''), any agency or instrumentality thereof, certain international organizations, or others, that the Reserve Banks have determined is eligible to be held in a Securities Account and is eligible for Transfer.

''*Free Transfer*'' means a Transfer that does not involve any credit or debit to a Master Account other than a transaction fee.

''*Master Account*'' means a ''Master Account'' (as defined in the Reserve Banks' Operating Circular 1, Account Relationships) on the books of a Reserve Bank. A Master Account is a Funds Account for purposes of the regulations listed in Appendix A of Operating Circular 7. A Master Account does not contain Book-Entry Securities.

''*Participant*'' means an entity that maintains a Securities Account with a Reserve Bank in the entity's name.

''*Receiver*'' means the Participant receiving a Book-Entry Security as a result of a Transfer.

''*Securities Account*'' means an account at a Reserve Bank containing Book-Entry Securities.

''*Sender*'' means the Participant sending a Transfer Message.

''*Transfer*'' means the electronic movement over the Fedwire® Securities Service of a par amount of Book-Entry Securities by debit to the designated Securities Account of the Sender and by credit to the designated Securities Account of the Receiver, or by debit to one Securities Account of a Participant and credit to another Securities Account of that same Participant, in which case that Participant is both a Sender and a Receiver. A Transfer is either a Free Transfer or a Transfer Against Payment.

''*Transfer Against Payment*'' means a Transfer that is effected with a credit to the Master Account of the Sender and a debit to the Master Account of the Receiver, for the amount of the payment.

''*Transfer Message*'' means an instruction of a Participant to a Reserve Bank to effect a Transfer.

*See* Operating Agreement Circular 7, Section 3.0, *supra* note 39.

[41] Operating Circular 7, Section 9.1.1, *supra* note 39. Capitalized terms are defined as set forth in Operating Circular 7. *See supra* note 40.

[42] Each Business Day, FICC makes available to each Member a Report that provides settlement information that FICC deems sufficient to enable each such Member to be able to settle its securities deliveries and related payment obligations and each Member is obligated to provide the appropriate instructions to its clearing bank to deliver and/or receive securities and related payments as set forth in the Report. GSD Rule 12, Section 3 and MBSD Rule 9, Section 3, *supra* note 5.

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] *Id.*

[45] 17 CFR 240.17Ad–22(e)(8).

appropriate, intraday or in real time. The proposed rule change to add the Interpretive Guidance would enhance the transparency with respect to the point at which settlement is final with respect to transactions processed through FICC. Having clear provisions in this regard would enable FICC Members to better identify the point at which settlement is final with respect to their cash and securities transactions. As such, FICC believes the proposed rule change is consistent with Rule 17Ad–22(e)(8) of the Act.[46]

*(B) Clearing Agency's Statement on Burden on Competition*

FICC does not believe that the proposed rule change would impact competition.[47] The proposed rule change would provide interpretive guidance with respect to settlement finality relating to transactions processed through FICC. The proposed rule change would not change current practices of FICC and would not affect FICC Members' rights or obligations. As such, FICC believes that the proposed rule change would not impact FICC Members or have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

FICC has not received or solicited any written comments relating to this proposal. FICC will notify the Commission of any written comments received by FICC.

## 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)[48] of the Act and paragraph (f)[49] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment for (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2020–001 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–FICC–2020–001. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2020–001 and should be submitted on or before March 23, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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[46] *Id.*

[47] 15 U.S.C. 78q–1(b)(3)(I).

[48] 15 U.S.C. 78s(b)(3)(A).

[49] 17 CFR 240.19b–4(f).

[50] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88279; File No. SR–CboeBZX–2020–017]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Codify the Cancel Back Order Type and To Add That the Post Only Order Designated as Cancel Back May Remove Liquidity Pursuant to Exchange Rule 21.1

February 25, 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 February 12, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to codify the Cancel Back order type and amend the Post Only order instructions that may remove liquidity pursuant to Rule 21.1. 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/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to codify the Cancel Back order type, which is a System [5] functionality already in place and currently available to Users today. In addition, the Exchange proposes to add that a Post Only order designated as Cancel Back may, in addition to Post Only orders designated as a display-price sliding order,[6] remove liquidity.

First, the System currently offers ''Cancel Back'' functionality for Users' orders, which is not currently defined in the Rules. Specifically, the functionality operates so that when a User designates an order not to be subject to the display-price sliding process or Price Adjust process,[7] then the order is subject to the Cancel Back instruction (note that an order will always include a Price Adjust, display-price sliding, or Cancel Back instruction). A Cancel Back order is immediately cancelled instead of re-priced when displaying the order at its limit price would create a violation of the linkage rules.[8] The Exchange also notes that Rule 21.6(f) provides affirmative instruction consistent with Cancel Back functionality as it specifically provides that an order entered with a price that would lock or cross a Protected Quotation of another options exchange that is not eligible for either routing, the display-price sliding process, or the Price Adjust process will be cancelled. The Exchange now proposes to codify the existing Cancel Back instruction in proposed Rule 21.1(m). The proposed definition is consistent (save for the provision in connection with Post Only—Cancel Back instructions, as described in greater detail below) with the corresponding definitions of a Cancel Back order under the rules of the Exchange's affiliated exchanges, Cboe EDGX Exchange, Inc. (''EDGX Options'') and Cboe C2 Exchange, Inc. (''C2'').[9] As proposed, a Cancel Back order is an order (including bulk messages) [10] a User designates to not be subject to the display-price sliding process or the Price Adjust process that the System cancels or rejects (immediately at the time the System receives the order or upon return to the System after being routed away) if displaying the order on the Book would create a violation of Rule 27.3 (Locked and Crossed Markets), or if the order cannot otherwise be executed or displayed in the BZX Options Book at its limit price. The System executes a Book Only—Cancel Back order against resting orders. The Exchange notes that pursuant to the Book Only instruction, an order or bulk message may not route away to another Exchange. Therefore, if an incoming Book Only order designated as Cancel Back locked or crossed an away market (*i.e.,* the ABBO), the System would execute it to the extent it could against contra-side interest on the Exchange at prices the same as or better than the ABBO in accordance with the linkage rules. The System would then cancel it (or the remaining portion) to prevent a violation of Rule 27.3 of the intermarket linkage rules.

The proposed Cancel Back order definition also provides that the System executes a Post Only—Cancel Back order as set forth in Rule 21.1(d)(8) (as proposed). In particular, Rule 21.1(d)(8) currently defines a Post Only order as an order to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another options exchange and will not remove liquidity from the BZX Options Book unless it is subject to the display-price sliding process and executing against on order on the Book would be economically beneficial to the User entering the order (*i.e.,* if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BZX Options Book and subsequently provided liquidity).[11] Thus, an executable order entered with a Post Only instruction is eligible to remove liquidity instead of having its display-price adjusted pursuant to those order handling instructions. The Exchange notes that the purpose of the display-price sliding instruction is to ensure compliance with the linkage rules like that of a Cancel Back instruction. The Exchange now proposes to amend Rule 21.1(d)(8) to make it explicit that a Post Only order with a Cancel Back instruction may also be eligible to remove liquidity instead of being cancelled or rejected back to the User in certain circumstances. The Exchange believes that removal of liquidity in these circumstances would be economically beneficial to Users that submit Post Only—Cancel Back orders, in that, instead of being cancelled or rejected back to the User upon locking or crossing the market, a Post Only—Cancel Back order would have the opportunity to execute at an improved price while contributing to liquidity and the price discovery process on the Exchange. The Exchange notes that this is consistent with the price improvement opportunities currently provided for a locking or crossing Post Only order subject to the display-price sliding process, instead of having its display-price adjusted. Users who wish for their Post Only orders to post to the Book and forego the opportunity to remove liquidity upon entry under Rule 21.1(d)(8) may continue to do so by electing that the Post Only order be subject to the Price Adjust process. As indicated above, this proposed description of a Post Only—Cancel Back order in proposed Rule 21.1(m) is unlike the description of a Post Only—Cancel Back order on the Exchange's affiliated options exchanges, C2 and EDGX Options, which cancel or reject a Post Only—Cancel Back order that locks or crosses the respective exchange's best bid or offer, as their rules do not currently offer the same price improvement opportunity (opportunities, as proposed) for their Post Only orders.[12]

[5] The ''System'' is the automated trading system used by BZX Options for the trading of options contracts. *See* Rule 21.1(a).

[6] *See* Rule 21.1(h), which states that, unless a User enters instructions for an order (including a bulk message) to not be subject to the display-price sliding process in this paragraph (h), an order (including a bulk message) that, at the time of entry, would lock or cross a Protected Quotation of another options exchange will be ranked at the locking price in the BZX Options Book and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) (''display-price sliding'').

[7] *See* Rule 21.1(i), which states that an order that, at the time of entry, would lock or cross a Protected Quotation of another options exchange or the Exchange will be ranked and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) (''Price Adjust'').

[8] *See* Chapter XXVII of the Rules. *See also* Options Order Protection and Locked/Crossed Market Plan (the ''Linkage Plan'').

[9] *See* EDGX Options Rule 21.1(l) and C2 Rule 6.10(c).

[10] Bulk messages allow Users to enter, modify or cancel up to an Exchange-specified number of bids and offers in a single message. Therefore, a Cancel Back designation for a bulk message applies to all bulk message bids and offers within a single message. The System handles bulk message bids and offers in the same manner as it handles an order, or quote if submitted by a Market Maker, unless the Rules specify otherwise. *See* Rule 21.1(l)(3).

[11] *See* Rule 21.1(h)(4). Any Post Only Order subject to the display-price sliding process that locks or crosses a Protected Quotation displayed by the Exchange upon entry will be executed as set forth in Rule 21.1(d)(8) or cancelled.

[12] *See* EDGX Options Rule 21.1(d)(8) and C2 Rule 6.10(c).

Additionally, the Exchange proposes to amend Rule 21.1(h)(4), which describes the display-price sliding process as it applies to Post Only orders, to provide additional clarity within the Rule. Currently, Rule 21.1(h)(4) provides that any Post Only Order subject to the display-price sliding process described in this paragraph (h) that locks or crosses a Protected Quotation displayed by the Exchange upon entry will be executed as set forth in Rule 21.1(d)(8) or cancelled. A Post Only bulk message that locks or crosses a Protected Quotation displayed by the Exchange upon entry will be cancelled. Any Post Only Order that locks or crosses a Protected Quotation displayed by an external market upon entry will be subject to the display-price sliding process described in this paragraph (h). The Exchange now proposes to restructure the paragraph language so that it reads in a more uniform and explanatory manner that is easier to follow. Specifically, the Exchange proposes to amend the rule to first provide for the manner in which a Post Only order that is subject to the display-price sliding process will be handled if it either locks or crosses a Protected Quotation displayed by the Exchange or by an away market. The description of how a Post Only order subject to the display price-sliding message will be handled if it locks or crosses an away market is already in this provision, the Exchange is merely proposing to move this clause into the same sentence that describes how such an order is handled upon locking or crossing the Book. As indicated above, this provision then goes on to describe the manner in which a Post Only bulk message that is subject to the display-price sliding process will be handled if it locks or crosses a Protected Quotation displayed by the Exchange. The Exchange proposes to also add to this clause the description of how a Post Only bulk message subject to the display-price sliding process will be handled if it locks or crosses a Protected Quotation displayed by an external market—to which, according to Rule 21.1(h)(1), the System would apply the display-price sliding process. The Exchange notes that it does not make any substantive changes to Rule 21.1(h)(4), but merely amends the rule to provide additional clarity and enhanced explanation within the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed definition of Cancel Back orders will provide additional transparency within the Rules and facilitate better understanding for market participants regarding their flexibility to designate orders as Cancel Back, as an alternative manner to comply with the linkage rules. The Exchange believes that the proposed rule change serves to remove impediments to and perfect the mechanism of a free and open market and a national market system because this change provides Users with Rules that clearly delineate an additional User flexibility regarding how they may instruct the System to handle their orders (*i.e.,* designating their orders as Cancel Back by specifying that their orders are not subject to Price Adjust or display-price sliding). The Exchange also notes that permitting Users to elect that their orders to be treated as Cancel Back is an additional way to ensure compliance with the linkage rules, thereby protecting investors and the public interest. The Exchange also believes that this change is generally consistent with the Cancel Back definitions under the rules of the Exchange's affiliated exchanges, EDGX Options and C2.[16] The Exchange believes that generally mirroring the corresponding rule language of its affiliates will provide better understanding for Users that participate across the affiliated exchanges.

Moreover, the Exchange believes that it is consistent with just and equitable principles of trade to permit an order entered with a Post Only—Cancel Back instruction to remove liquidity when executing as the taker of liquidity would be economically beneficial to a User. This handling is designed to ensure that orders entered with a Post Only instruction are eligible to trade in certain circumstances where the User may have an interest in securing an execution on entry (*i.e.,* as the taker of liquidity) notwithstanding a Post Only instruction. The Exchange does not believe that the proposed change would raise any new or novel issues for market participants, as the System currently allows for Post Only orders subject to the display-price sliding process, an instruction similarly designed to ensure compliance with the linkage rules, to remove liquidity when economically beneficial to the User. The Exchange also believes that the proposed rule change will present Users with increased trading opportunities at multiple price points, which will potentially encourage the provision of more liquidity to the market to interact with such orders. As a result, the Exchange believes that the proposed rule change is reasonably designed to facilitate the mechanism of price discovery and enhance competition and overall market quality on the Exchange to the benefit of all investors.

The Exchange also believes that the proposed change to the provision regarding Post Only orders subject to the display-price sliding process will provide market participants with additional clarity within the rules thereby facilitating increased understanding of the Exchange Rules. By making this provision easier to follow and understand the proposed rule change serves to remove impediments to and perfect the mechanism of a free and open market and national market system and benefit market participants. As noted, the proposed rule change is not of a substantive nature, as it merely reorganizes the provision and adds an order handling explanation that already applies and is provided within the general display-price sliding rule.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all Users would be able to designate their

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

[16] *See supra* note 8.

orders as Cancel Back orders, including Post Only orders. Cancel Back orders of all Users will be handled in the same manner. Additionally, all Post Only—Cancel Back orders that would remove liquidity will be handled in the same manner pursuant to the proposed rule change. Further, the use of the Cancel Back instruction and/or the Post Only—Cancel Back designation is voluntary and all Users may, instead, elect for their orders to be subject to the display-price sliding process or the Price Adjust process (specifically, if they wish for their Post Only orders not to remove liquidity).

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Cancel Back instruction is functionality currently available and contemplated by the Rules. The instruction is intended as an additional order mechanism to ensure compliance with the linkage rules that provides Users with additional flexibility with respect to handling their orders. Second, the proposed rule change to allow Post Only—Cancel Back orders to remove liquidity pursuant to Rule 21.1(d)(8) does not impact intermarket competition as Post Only orders (with any additional instruction), by definition, do not route away to other options exchanges. To the extent that the proposed changes make BZX Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become BZX Options market participants. Additionally, the Exchange notes that the proposed rule change to the rule governing Post Only orders subject to the display-price sliding process would not impose any burden on competition as the proposed changes are nonsubstantive and serve only to add clarity to the rule and make it easier to follow and understand.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[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–CboeBZX–2020–017 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–017 and should be submitted on or before March 23, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–04187 Filed 2–28–20; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88282; File No. SR–NASDAQ–2020–010]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend General 9, Section 1, Titled General Standards

February 25, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend General 9, Section 1, titled ''General Standards.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange recently relocated Nasdaq rules, including The Nasdaq Options Market LLC (''NOM'') rules, into a new Rulebook shell.[3] In relocating the Nasdaq Rulebook, IM–2110–3 titled, ''Front Running Policy'' was inadvertently deleted and not relocated. IM–2110–3 provided, ''Nasdaq members and persons associated with a member shall comply with NASD Interpretive Material 2110–3 as if such Rule were part of Nasdaq's rules.''

This rule should have been relocated to General 9, Section 1(c), similar to the manner in which an identical rule was relocated into the Nasdaq BX, Inc. (''BX'') Rulebook.[4] At this time, the Exchange proposes to relocate this rule into General 9, Section 1(c) similar to BX. The Exchange is not amending IM–2110–3 in any way. The Exchange is correcting its rules by adding IM–2110–3 back into the Nasdaq Rulebook into the same location as an identical rule is located within the BX Rules. The Exchange also proposes to re-letter the current rule to accommodate the addition of this rule.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by correcting its rules by adding IM–2110–3 back into the Nasdaq Rulebook. The deletion of this rule was inadvertent. The Exchange did not intend to remove this rule which addresses the Exchange's front running policy. The Exchange's proposal is consistent with the Act and will protect investors and the public interest by adding back a front running policy into its Rules that was inadvertently deleted. The front running policy is applicable to all members. The Exchange is not amending IM–2110–3 in any way. The Exchange is correcting its rules by adding IM–2110–3 back into the Nasdaq Rulebook into the same location as an identical rule is located within the BX Rules.

### *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. The Exchange believes that restoring IM–2110–3 in the Nasdaq Rules does not impose an undue burden on competition because the rule previously existed and is simply being relocated into the new Rulebook as originally intended.

### *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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may immediately add an inadvertently deleted rule back into the Exchange rulebook and ensure continued compliance of the rule by Exchange members. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2020–010 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.

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[3] *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098).

[4] *See* Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR–BX–2019–039).

[5] The Exchange will also separately file another rule change to amend other NASD Rule references to the FINRA Rulebook.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–NASDAQ–2020–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–010 and should be submitted on or before March 23, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–04184 Filed 2–28–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Wednesday, March 4, 2020.

**PLACE:** The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: February 26, 2020.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2020–04296 Filed 2–27–20; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88281; File No. SR–CBOE–2020–013]**

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 4.13 and 5.31 Concerning the Modified Opening Auction Process

February 25, 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 February 11, 2020, Cboe Exchange, Inc. Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rules 4.13 and 5.31. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

**Rules of Cboe Exchange, Inc.**

* * * * *

**Rule 4.13. Series of Index Options**

(a) General.

(1)–(4) No change.

(5) Method of Determining Day that Exercise Settlement Value will be Calculated, Special Opening Quotation and Expiration Date and Last Trading Day for Options on Volatility Indexes that Measure a 30-Day Volatility Period (''Volatility Index options'').

(A) No change.

(B) Special Opening Quotation. The exercise settlement value of a Volatility Index option for such purposes shall be calculated by the Exchange as a Special Opening Quotation (SOQ) of the applicable Volatility Index using the sequence of opening prices of the options that comprise the Volatility Index[ ]. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price *(which ask price equals $0.05 if the series opens with unexecuted sell market orders)* as determined at the opening of trading.

* * * * *

**Rule 5.31. Opening Auction Process**

(a) Definitions. For purposes of the opening auction process in this Rule 5.31, the following terms have the meaning below. A term defined elsewhere in the Rules has the same

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

meaning with respect to this Rule 5.31, unless otherwise defined below.

* * * * *

**Opening Auction Updates**

The term ''opening auction updates'' means Exchange-disseminated messages that contain information regarding the expected opening of a series based on orders and quotes in the Queuing Book for the applicable trading session and, if applicable, the GTH Book, including the expected opening price, the then-current cumulative size on each side at or more aggressive than the expected opening price, and whether the series would open (and any reason it would not open pursuant to paragraphs (e) and (j)([5]*6*) below).

* * * * *

(b)–(i) No change.

(j) Modified Opening Auction Process. All provisions set forth above in this Rule 5.31 apply to the opening of SPX constituent option series for Regular Trading Hours on exercise settlement value determination days, except as otherwise provided in this paragraph (j) (''modified opening auction process''). The Exchange uses the opening trade prices of SPX series that comprise the settlement strip (or the average of a series' opening bid and ask *(which ask price equals $0.05 if the series opens with unexecuted sell market orders)* if there is no opening trade in that series) established by the modified opening auction process to calculate the exercise or final settlement value, as applicable, of expiring VIX derivatives.

(1)–(4) No change.

(5) *SPX Option Series Opening Sequence. On exercise settlement value determination days, following the opening trigger as set forth in subparagraph (d)(1)(B), the System initiates the opening rotation process for SPX option series in the following sequence:*

*(i) at-the-money (''ATM'') (including series 5.00 above or below, as applicable, the then-current index level) and out-of-the-money (''OTM'') constituent series in order from closest to furthest away from the ATM strike (if a put and call are the same distance away from the ATM strike, the System opens them randomly);*

*(ii) all other constituent series (i.e., in-the-money constituent series) in order from closest to furthest away from the ATM strike (if a put and call are the same distance away from the ATM strike, the System opens them randomly); and*

*(iii) all non-constituent series in a random order.*

*(6)* Opening Rotation. On exercise settlement value determination days, the opening rotation process occurs as set forth in paragraph (e) above, except the System performs the Maximum Composite Width Check and determines the Opening Trade Price pursuant to this subparagraph ([5]*6*), in lieu of subparagraphs (e)(1) and (2), respectively.

(A) No change.

(B) Opening Trade Price Determination. After a series satisfies the Maximum Composite Width Check in subparagraph (A), if there are orders and quotes marketable against each other at a price not outside the Opening Collar, the System determines the Opening Trade Price for the series. If there are no such orders or quotes, there is no Opening Trade Price.

(i) No change.

(ii) If *(a)* the VMIM price is not outside the Opening Collar*, (b) there would be no unexecuted buy market orders (or remaining portions), and (c) there would be no unexecuted sell market orders (or remaining portions) unless the low end of the Opening Collar equals $0.05,* [it]*the VMIM price* is the Opening Trade Price, and the System opens the series pursuant to subparagraph (e)(3) above.

(iii) If (a) the VMIM price is outside the Opening Collar*,* [or] (b) there would be unexecuted *buy* market orders (or remaining portions)*, or (c) there would be unexecuted sell market orders (or remaining portions) and the low end of the Opening Collar is greater than $0.05,* the series does not open. The Queuing Period for the series continues (including the dissemination of opening auction updates) until [the VMIM price is not outside the Opening Collar]*none of the conditions in clauses (a) through (c) are present,* or the Exchange opens the series pursuant to paragraph (h).

([6]*7*) Opening Rotation Self-Trades. A User may submit multiple orders and quotes in accordance with subparagraph (3) above. If, during the opening rotation, the System executes an order or quote of that User against another order or quote of that User, the Exchange does not deem that fact alone to cause these executions to be considered violations of Section 9(a)(1) of the Exchange Act, and instead will evaluate other facts and circumstances. The Exchange reviews all activity, including these executions, during the modified opening auction process for compliance with [the Rules and] the Exchange Act *and the Rules,* including Rule [10]*8*.6 (which prohibits manipulation).

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Rules regarding the modified opening auction process in no-bid series. Rule 5.31(j) describes the opening auction process for S&P 500 options (''SPX'') that are constituent option series [5] on exercise settlement value determination days.[6] All provisions set forth in Rule 5.31 apply to the opening of SPX constituent option series for Regular Trading Hours on exercise settlement value determination days, except as otherwise provided in Rule 5.31(j) (the ''modified opening auction process''), which the Exchange uses in connection with calculating exercise or final settlement values for VIX derivatives. The Exchange uses the opening trade prices of SPX option series that comprise the settlement strip [7] (or the

[5] The term ''constituent option series'' means all SPX (including SPXW) option series listed on the Exchange with the expirations the Exchange uses to calculate the exercise or final settlement value of the expiring VIX derivative on exercise settlement value determination days. The term ''VIX derivatives'' means VIX options listed for trading on the Exchange, VIX futures listed for trading on an affiliated designated contract market, or over-the-counter derivatives overlying VIX whose exercise or final settlement values, as applicable, are calculated pursuant to, or by reference to, as applicable, the modified opening auction process. *See* Rule 5.31(j)(1).

[6] The term ''exercise settlement value determination day'' means a day on which the Exchange determines the exercise or final settlement value, as applicable, of expiring VIX derivatives. *See* Rule 5.31(j)(1).

[7] The term ''settlement strip'' means the constituent option series used to calculate the exercise or final settlement value, as applicable, of expiring VIX derivatives. *See* Rule 5.31(j)(1).

average of a series' opening bid and ask if there is not opening trade in that series) established by the modified opening auction process to calculate the exercise or final settlement value, as applicable, of expiring VIX derivatives.

Current Rule 5.31(j)(5) (proposed Rule 5.31(j)(6)) describes the opening rotation process for the modified opening auction process. Specifically, on exercise settlement value determination days, the opening rotation process occurs in the same manner it does on all other days (as set forth in Rule 5.31(e)), except for the Maximum Composite Width Check and Opening Trade Price,[8] which the System performs pursuant to current Rule 5.31(j)(5)(A) and (B), respectively. Currently, after the opening trigger for SPX options, once a series satisfies the Maximum Composite Width [9] Check in current Rule 5.31(j)(5)(A), if there are orders and quotes marketable against each other at a price not outside the Opening Collar,[10] the System determines the Opening Trade Price for the series. If there are no such orders or quotes, there is no Opening Trade Price for the series.

If there will be an opening trade, in order to determine the Opening Trade Price, the System determines the volume-maximizing, imbalance-minimizing (''VMIM'') price pursuant to Rule 5.31(e)(2)(A) through (C) (in the same manner it determines the VMIM price on non-exercise settlement value determination days). If the VMIM price is not outside the Opening Collar, it is the Opening Trade Price, and the System opens the series.[11] If (a) the VMIM price is outside the Opening Collar or (b) there would be unexecuted market orders (or remaining portions), the series does not open.[12]

The proposed rule change first adopts a sequence in which the System will open SPX option series on exercise settlement value determination days. Currently, the System initiates the opening rotation process in all classes each day in no particular order.[13] Prior to the Exchange's System migration, which was effective on October 7, 2019, the System opened series in a specific sequence. While the System opened series in all classes in accordance with that sequence on all trading days, the purpose of opening series in that order was to enhance the modified opening auction process on exercise settlement value determination days.[14] In connection with the System migration, the Exchange determined to not maintain this functionality due to other enhancements implemented at the time of migration.[15] The Exchange believes those enhancements have had a positive impact on the modified opening auction process on exercise settlement value determination days. However, the Exchange has determined reimplementation of the functionality to open constituent series on exercise settlement value determination days in a specified sequence (in a slightly different manner) may further enhance the modified opening auction process.

Specifically, the proposed rule change adopts Rule 5.31(j)(5),[16] which provides that on exercise settlement value determination days, following the opening trigger as set forth in Rule 5.31(d)(1)(B),[17] the System initiates the opening rotation process for SPX option series in the following sequence:

(i) at-the-money (''ATM'') (including series 5.00 above or below, as applicable, the then-current index level) and out-of-the-money (''OTM'') constituent series in order from closest to furthest away from the ATM strike (if a put and call are the same distance away from the ATM strike, the System opens them randomly);

(ii) all other constituent series (*i.e.,* in-the-money constituent series) in order from closest to furthest away from the ATM strike (if a put and call are the same distance away from the ATM strike, the System opens them randomly); and

(iii) all non-constituent series in a random order.

For purposes of this proposed rule change, a series is ATM if its strike price equals the last disseminated index value on the same trading day. The proposed 5.00 buffer ensures that the ATM series at the time the opening rotation process is initiated is included in the first grouping of series to be opened. For example, assume for an exercise settlement value determination day that the ATM strike value for SPX series is 3300. The System will first initiate the opening rotation for SPX constituent series with strike prices equal to 3300, and then any series with strike prices of 3305 and 3295.[18] The System then initiates the opening rotation for OTM SPX constituent series (which would consist of any SPX constituent put series with strike prices below 3300 and SPX constituent call series with strike prices above 3300) in order from series with strike prices closest to 3300 to those with strike prices further away from 3300 until there are no more OTM constituent series. For example, if there were constituent series puts with strike prices of 3290, 3285, 3275, and 3270, and constituent series calls with strike prices of 3310, 3315, 3320, and 3330, the System would initiate the opening rotation process first for the 3290 put and 3310 call (in a random order), then the 3285 put and 3315 call (in a random order), then the 3320 call, then the 3725 put, and finally the 3270 put and 3330 call (in a random order). The System then initiates the opening rotation for ITM SPX constituent series in order from series with strike prices closest to 3300 to those with strike prices further away from 3300 until there are no more constituent series (in other words, in the same manner it initiated the opening rotation for the OTM SPX constituent

[8] *See* Rule 5.31(e)(1) and (2) for descriptions of the Maximum Composite Width Check and Opening Trade Price determination on non-exercise settlement value determination days.

[9] The term ''Maximum Composite Width'' means the amount that the width of the Composite Market (which is the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Exchange and the away best bid (''ABB'') (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Exchange and the away best offer (''ABO'') (if there is an ABO)) of a series may generally not be greater than for the series to open, subject to certain exceptions. *See* Rule 5.31(a) and (j)(1).

[10] The term ''Opening Collar'' means the price range that establishes limits at or inside of which the System determines the Opening Trade Price (which is the price at which the System executes opening trades in a series during the opening rotation) for a series. *See* Rule 5.31(a) and (j)(1).

[11] Rule 5.31(e)(3) describes how the System opens a series on all days.

[12] In this case, the Queuing Period (the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the electronic book for participation in the opening rotation) for the series continues (including the dissemination of opening auction updates) until the VMIM price is not outside the Opening Collar, or the Exchange opens the series pursuant to Rule 5.31(h) (which permits the Exchange to deviate from the standard manner of the opening auction process when it believes it is necessary in the interests of a fair and orderly market).

[13] *See* Securities Exchange Act Release No. 86387 (July 16, 2019), 84 FR 35147, 35152 (July 22, 2019) (SR–CBOE–2019–034) (notice of filing of proposed rule change to amend the Exchange's opening process).

[14] *See* Securities Exchange Act Release No. 83505 (June 25, 2018), 83 FR 30787, 30790 (June 29, 2018) (SR–CBOE–2018–046) (notice of filing and immediate effectiveness of proposed rule change to amend the hybrid opening process, which was the name of the former opening auction process on the Exchange).

[15] *See supra* note 14.

[16] The proposed rule change renumbers current subparagraphs (j)(5) and (6) to be subparagraphs (j)(6) and (7), respectively. There are no substantive changes to current subparagraph (j)(6) (proposed subparagraph (j)(7)). Proposed changes to current subparagraph (j)(5) (proposed subparagraph (j)(6)) are described below.

[17] Rule 5.31(d)(1)(B) provides that for index options (including SPX options, but excluding VIX options), the System initiates the opening rotation after a time period (which the Exchange determines for all classes) following the System's observation after 9:30 a.m. Eastern time of the first disseminated index value for the index underlying an index option. This applies on exercise settlement value determination days.

[18] If there is a put series and call series with strike prices the same distance away from the ATM strike, the System opens them randomly. In other words, sometimes the put will open first, and other times the call will open first.

series). After the System has initiated the opening rotation process for all constituent series, the System initiates the opening rotation process for all other SPX series (*i.e.,* SPX non-constituent series) in no particular order (as they are opened today).

The order in which the System initiates the opening rotation process for trading is generally immaterial; however, on exercise settlement value determination days, certain ATM and OTM constituent series comprise the settlement strip, and thus their the opening trade prices are used to calculate the exercise or settlement value, as applicable, of expiring VIX derivatives. The Exchange has observed enhanced liquidity in the modified opening auction process since enhancements were implemented in connection with the System migration. At this time, the Exchange believes opening these series first may further enhance liquidity in constituent series on exercise settlement value determination days.

Specifically, Market-Makers are the primary liquidity providers in the Exchange's market, and, pursuant to Rule 5.31, Market-Maker quotes on the Exchange comprise the Composite Market for a class exclusively listed on the Exchange (such as SPX options). The Exchange provides Users, including Market-Makers, with a tool, the Risk Monitor Mechanism (''RMM''), they use to control risk of multiple, automatic executions. An RMM event in a class will cause a Market-Makers' quotes in all series in the class to be rejected or cancelled (certain events may cause a User's quotes in all classes to be cancelled).[19] As a result, a Market-Maker's opening transactions in series not used to calculate an exercise or settlement value, as applicable, may cause an RMM event, cancelling the Market-Makers' orders or quotes in all other series in the class, including series used to calculate an exercise settlement value. This reduces liquidity in constituent series, and may contribute to delayed openings of these series, which could ultimately delay calculation of the exercise or settlement value, as applicable, of expiring VIX derivatives. Additionally, the Exchange has observed larger Market-Maker quote sizes in further OTM puts and calls compared to sizes in less OTM puts and calls and ATM puts and calls, which have higher weightings in the formula used to determine the exercise or final settlement value, as applicable, of expiring VIX derivatives in accordance with the VIX Index methodology.[20] If the further OTM puts and calls open prior to the less OTM puts and calls and ATM puts and calls, similarly reduced liquidity in those ATM and less OTM puts and calls from RMM events may occur. The Exchange believes the proposed rule change may increase liquidity in constituent series, which is desirable to ensure these series open at competitive prices on exercise settlement value determination days. While liquidity is important to open all series on the Exchange, given the potential impact on the exercise settlement value determined for expiring VIX derivatives, the Exchange believes it is appropriate to ensure a fair and orderly opening of the series used to calculate the exercise settlement value.

The proposed rule change clarifies in proposed Rule 5.31(j)(6)(B)(ii) and (iii) that having no unexecuted market orders (or remaining portions) is a condition for a series to open, as implied by current Rule 5.31(j)(5)(B)(iii), which states a series does not open if there would be unexecuted market orders (or remaining portions). The Exchange believes this proposed clarification enhances the description of when a series is eligible to open pursuant to the modified opening auction process by listing the complete list of opening criteria in all relevant provisions within the rule.

The proposed rule change also amends the modified opening auction process to permit a series to open when there would be unexecuted sell market orders [21] (or remaining portions) if the low end of the Opening Collar equals $0.05.[22] A sell market order may only fully execute during the opening rotation (at the Opening Trade Price) if there is sufficient buy interest to satisfy the size of the market order. Currently, if there is a sell market order but no buy interest, or insufficient buy interest to satisfy the size of the sell market order, the series would not open pursuant to current Rule 5.31(j)(5)(B)(iii).

The proposed rule change will permit series to open with unexecuted sell market orders (or remaining portions) if the lower end of the Opening Collar equals $0.05 (the minimum increment for the series). If a series opens with any unexecuted sell market orders (or remaining portions), the System will handle those orders as it would any other orders that are unexecuted at the open.[23] The current prohibition on opening a series if there would be unexecuted sell market orders is intended to protect those orders from executing at potentially erroneous prices following the conclusion of the opening rotation in series that may not be truly zero-bid options. The Exchange does not believe a low-value series should not open because there is no (or minimal) interest from investors purchase contracts in that series, as that is consistent with the value (or lack of value) of the series. The Exchange believes series for which the lower end of the Opening Collar equals $0.05 are likely true no-bid series, or series with minimal value. The following table demonstrates that when the Composite Market is no-bid [24] with an offer of 0.40 or less, the lower end of the Opening Collar is $0.05 (which is the minimum increment in SPX series trading less than $3.00).[25] The lower end of the Opening Collar will be greater than $0.05 in a series with a Composite Market offer greater than 0.40.

| Composite market (CM) | CM midpoint | OC width | Opening collar (OC) [26] |
|---|---|---|---|
| 0–.05 | .025 | .25 | .05–.15 |
| 0–.10 | .05 | .25 | .05–.20 |

[19] *See* Rule 5.34(c)(5).

[20] *See, e.g.,* the VIX methodology at *http://www.cboe.com/vix/.*

[21] A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. *See* Rule 5.6(b).

[22] The minimum increment applicable to SPX options is $0.05 if the series trading price is lower than $3.00 and $0.10 if the series trading price is $3.00 or higher. *See* Rule 5.4(a). A series will continue to not be eligible to open if there would be unexecuted buy market orders (or remaining portions) or unexecuted sell market orders (or remaining portions) if the low end of the Opening Collar equals anything other than $0.05.

[23] Pursuant to Rule 5.31(f), following the conclusion of the opening rotation, the System enters any unexecuted orders and quotes (or remaining portions) from the Queuing Book into the Book in time sequence (subject to a User's instructions), where they may be processed in accordance with Rule 5.32. The System cancels any unexecuted opening only orders (or remaining portions) following the conclusion of the opening rotation.

[24] While it is possible for the lower end of the Opening Collar to equal $0.05 in a series with a Composite Market bid of 0.05, if a series will open with unexecuted sell market orders, that means it would open with no Market-Maker bid in the series. Therefore, the proposed rule change focuses on no-bid Composite Markets.

[25] *See* Rule 5.4(a).

| Composite market (CM) | CM midpoint | OC width | Opening collar (OC) [26] |
|---|---|---|---|
| 0–.15 | .075 | .25 | .05–.20 |
| 0–.20 | .10 | .25 | .05–.25 |
| 0–.25 | .125 | .25 | .05–.25 |
| 0–.30 | .15 | .25 | .05–.30 |
| 0–.35 | .175 | .25 | .05–.30 |
| 0–.40 | .20 | .25 | .05–.35 |
| 0–.45 | .225 | .25 | .10–.35 |

The Exchange believes it will contribute to a fair and orderly opening and settlement process to open lower-value constituent series on exercise settlement value determination days even if there would be unexecuted sell market order interest. In order for the Exchange to calculate the exercise or settlement value for expiring VIX derivatives, in its role as index calculator for the VIX Index, all constituent series that comprise the settlement strip must be open (with or without an opening trade) on exercise settlement value determination days. As set forth in Rules 4.13(a)(5)(B) and 5.31(j), the Exchange uses the opening trade prices of SPX constituent series that comprise the settlement strip (or the average of a series' opening bid and ask if there is no opening trade in that series) established by the modified opening auction process to calculate the exercise or final settlement value, as applicable, of expiring VIX derivatives. This will permit these constituent series (which may be truly no-bid series) that may be part of the settlement strip to open sooner, and thus permit calculation of the exercise or settlement value, as applicable, for VIX derivatives sooner. This may also provide unexecuted sell market orders in low-value series with additional execution opportunities, which may be limited in such series. The Exchange believes the benefit of opening these series earlier to permit calculation of the exercise or settlement value of expiring VIX derivatives outweighs the minimal risk (if any) of executing sell market orders at anomalous execution prices following the opening rotation given the low-value of these series.

If an option series has a larger offer, it is less likely to be worthless but may just not have any bids for a brief time.[27] The Exchange believes options in series with a Composite Market bid of zero but a larger Composite Market offer [28] are less likely to be worthless, and therefore believes it is appropriate to not open such a series if there would be unexecuted sell market orders to prevent a potentially anomalous execution price, since the next bid entered in that series is likely to be much higher than $0.05. It would be unfair to an investor to let its sell market order trade at a price of $0.05 because, for example, the firm submitted its order during the Queuing Period on a day when there was insufficient buy interest to satisfy all sell market orders, even though the bids present during that Queuing Period were significantly higher than $0.05.

As noted above, the Exchange uses the average of a series' opening bid and ask if there is no opening trade in that series when calculating the exercise or final settlement value, as applicable, of expiring VIX derivatives on exercise settlement value determination days. If a series opens with unexecuted sell market orders, that could only occur if there was an opening bid of zero.[29] In connection with the proposed rule change that creates the possibility that a series may open with no opening bid and unexecuted sell market orders, the proposed rule change amends Rules 4.13(a)(5)(B) and 5.31(j) to provide that, in series in which there is no opening trade, the ask price will equal $0.05 (the minimum increment of the series) if the series opens with unexecuted sell market orders. The Exchange believes it is reasonable to use such an ask price, as it is consistent with currently functionality that converts a sell market order to a limit order with a price equal to the minimum trading increment for the series if it is no-bid and the national best offer is less than or equal to $0.50.[30]

The proposed rule change also amends proposed Rule 5.31(j)(7) (current Rule 5.31(j)(6)) to make a clarifying change and correct a cross-reference. Currently, that subparagraph regarding self-trades that may occur during an opening rotation states that the Exchange reviews all activity, including these types of executions, during the modified opening auction process for compliance with the Rules and the Exchange Act, including Rule 10.6 (which prohibits manipulation). First, the proposed rule change rephrases this sentence so that it references the Exchange Act and the Rules, including Rule 10.6, to make clear that the rule cross-reference refers to an Exchange Rule rather than a Rule under the Exchange Act. Second, the proposed rule change corrects to the rule cross-reference to say Rule 8.6, rather than Rule 10.6. Rule 8.6 describes the Exchange's prohibition on manipulative activity.

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.[31] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [32] 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.

[26] Because the Opening Collar establishes the limits for the opening trade price, the minimum amount for the lower end of the range collar is 0.05 in a nickel class, as that is the lowest eligible opening trade price.

[27] For similar reasons, the System currently converts a sell market order to a limit order with a price equal to the minimum trading increment for the series if it is no-bid and the national best offer is less than or equal to $0.50, but will cancel the order if the national best offer is greater than $0.50. *See* Rule 5.34(a)(1)(A).

[28] The Composite Market threshold of $0.40 is similar to the threshold the Exchange currently has in place to protect sell market orders in no-bid series after the opening of trading. *See id.*

[29] As set forth in Rule 5.31(e)(3)(A), market orders have first priority to trade at the Opening Trade Price. Therefore, if there are unexecuted sell market orders (or remaining portions) at the open, there was either no buy interest or any buy interest executed against part of the sell market orders but there was an insufficient amount to satisfy the size of the sell market order interest.

[30] *See* Rule 5.34(a)(1)(A).

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [33] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, as it may permit an earlier opening of constituent series on exercise settlement value determination days. As a result, the Exchange may be able to calculate the exercise or settlement value, as applicable, of expiring VIX derivatives, at an earlier time.

The proposed rule change regarding the sequence in which constituent series will open merely modifies the order in which the System opens select series in one class for trading on the Exchange on certain days. The System will continue to open all non-constituent series on all trading days, and all constituent series on non-exercise settlement value determination days, in no particular order. With respect to constituent series, the proposed rule change will permit the System to initiate the opening rotation process for series with higher weightings in the formula used to determine the exercise or final settlement value prior to the series with lower weightings (or not SPX option series that are not part of the exercise settlement value calculation). While the order in which the System opens series is generally immaterial (and thus why the Exchange has opened them in no particular order, and will continue to do so for all non-constituent series on all trading days, and for constituent series on all trading days other than exercise settlement value determination days), the Exchange believes opening ATM and OTM constituent series prior to all other series on expiration settlement value determination days will permit series used to calculate exercise or final settlement values, as applicable, for expiring VIX Index derivatives to open at an earlier time. As discussed above, the Exchange also believes this proposed rule change may enhance liquidity in these series on exercise settlement value determination days, which benefits investors that hold expiring VIX derivatives.

The proposed rule change regarding the opening of constituent series when there are unexecuted sell market orders in certain circumstances will further remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. This proposed rule change will permit these constituent series (which may be truly no-bid series) that may be part of the settlement strip to open sooner, and thus permit calculation of the settlement value for VIX derivatives sooner. This may also provide unexecuted sell market orders in low-value series with additional execution opportunities, which may be limited in such series, and may be individuals seeking to close out a worthless position. The Exchange believes the benefit of opening these series earlier to permit calculation of the exercise or settlement value of expiring VIX derivatives outweighs the minimal risk (if any) of executing sell market orders at anomalous execution prices following the opening rotation given the low-value of these series. By continuing to not open series with higher offers if there would be unexecuted sell market orders, the Exchange believes the modified opening auction process will continue to protect these orders from executing at potentially erroneous prices following the opening rotation in series that are not truly low-value/no-bid.

The Exchange believes the proposed threshold of series for which the lower end of the Opening Collar is $0.05 (and thus has a Composite Market offer of no more than $0.40) appropriately reflects the interests of investors, as options in series with offers higher than $0.40 are less likely to be worthless, and not permitting a series to open in these conditions may prevent execution of these orders at unfavorable prices. The Exchange also believes the threshold promotes fair and orderly markets, because sell market orders in low-bid/no-bid series with offers of $0.40 or less are likely to be individuals seeking to close out worthless positions. The proposed rule change provides these orders with additional execution opportunities by making these series eligible to open earlier. The Exchange notes the proposed rule change is consistent with other current functionality that converts sell market orders in no-bid series to limit orders with a price equal to the minimum increment in the series if the offer is $0.50 or less.[34] Additionally, other options exchanges will open series if there are unexecuted sell market orders.[35]

The Exchange believes the proposed rule change to clarify opening conditions on exercise settlement value determination days enhances the description of when a series is eligible to open pursuant to the modified opening auction process, which promotes transparency in the Exchange's Rules and ultimately benefits investors. As noted above, this is not a change in the modified opening auction process, but merely a clarification.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, because it will apply in the same manner to all constituent series on exercise settlement value determination days. The proposed rule change regarding the opening sequence of constituent series only modified the order in which the System will open these series for trading, and only those days. The proposed rule change has no impact on the sequence in which the System will open non-constituent series on all trading days, or constituent series on all trading days other than exercise settlement value determination days. The proposed rule change regarding opening constituent series with unexecuted sell market orders will only impact low-value constituent series in a narrow set of circumstances. The proposed rule change has no impact on constituent series in which there would be unexecuted sell market orders and the lower end of the Opening Collar is greater than $0.05, which series will continue to not be eligible to open until that condition is resolved.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it solely impacts the timing of the opening of certain series in one class listed for trading on the Exchange on certain days. The proposed rule change will permit constituent series with higher weightings in the calculation of the exercise or settlement value, as applicable, of expiring VIX derivatives, as well as low-value/no-bid constituent series that may be part of the settlement strip, to open sooner, and thus permit an earlier calculation of the exercise or settlement value, as applicable, for VIX derivatives. As discussed above, the Exchange believes the proposed rule change regarding the opening sequence of constituent series may enhance liquidity in these series on exercise settlement value determination days.

[33] *Id.*

[34] *See* Rule 5.34(a)(1)(A).

[35] *See, e.g.,* NYSE Arca, Inc. (''Arca'') Rule 6.64–O.

Additionally, the proposed rule change regarding opening constituent series with unexecuted sell market orders may also provide unexecuted sell market orders in low-value series with additional execution opportunities, which may be limited in such series. The Exchange believes the benefit of opening these series earlier to permit calculation of the exercise or settlement value, as applicable, of expiring VIX derivatives outweighs the minimal risk (if any) of executing sell market orders at anomalous execution prices following the opening rotation given the low-value of these series. By continuing to not open series with higher Composite Market offers if there would be unexecuted sell market orders, the Exchange believes the modified opening auction process will continue to protect these orders from executing at potentially erroneous prices following the opening rotation in series that are not truly low-value/no-bid. As noted above, the proposed rule change is consistent with current Exchange functionality regarding the handling of sell market orders in no-bid series.[36] Additionally, other options exchanges will open series if there are unexecuted sell market orders.[37]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [38] and subparagraph (f)(6) of Rule 19b–4 thereunder.[39]

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–2020–013 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–2020–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–013 and should be submitted on or before March 23, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–04183 Filed 2–28–20; 8:45 am]

**BILLING CODE 8011–01–P**

[36] *See* Rule 5.34(a)(1)(A).

[37] *See, e.g.,* Arca Rule 6.64–O.

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, March 4, 2020 at 10:00 a.m.

**PLACE:** The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

**MATTER TO BE CONSIDERED:** The Commission will consider whether to propose rule amendments that would simplify, harmonize, and improve certain aspects of the framework for exemptions from registration under the Securities Act of 1933 to promote capital formation while preserving or enhancing important investor protections.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: February 26, 2020.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2020–04295 Filed 2–27–20; 11:15 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Docket No. SBA–2020–0006]**

### Community Advantage Pilot Program

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of changes to Community Advantage Pilot Program and request for comments.

**SUMMARY:** The Community Advantage (''CA'') Pilot Program is a pilot program to increase SBA-guaranteed loans to small businesses in underserved areas. The Small Business Administration (''SBA'' or ''Agency'') continues to refine and improve the design of the CA Pilot Program. To support SBA's commitment to expanding access to capital for small businesses and entrepreneurs in underserved markets, SBA is issuing this Notice to revise the requirements for refinancing non-SBA guaranteed, same institution debt in certain circumstances. Further, SBA is revising the number of loans a CA Lender must make before it can begin processing loans under its delegated authority. Finally, SBA is providing guidance on the expiration and process for renewal of CA Lenders' Loan Guaranty Agreements (SBA Form 750CA).

**DATES:** The changes take effect March 2, 2020. The CA Pilot Program will remain in effect until September 30, 2022.

*Comment Date:* Comments must be received on or before April 1, 2020.

**ADDRESSES:** You may submit comments, identified by SBA docket number SBA–2020–0006, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
- *Mail:* Daniel Upham, Chief, Microenterprise Development Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Daniel Upham, Chief, Microenterprise Development Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.* If you wish to submit confidential business information (''CBI'') as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Daniel Upham, Chief, Microenterprise Development Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; or send an email to *communityadvantage@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Daniel Upham, Chief, Microenterprise Development Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, (202) 205–7001, *daniel.upham@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

#### 1. Background

As part of its efforts to increase the number of SBA-guaranteed 7(a) loans made to small businesses in underserved markets, on February 18, 2011, SBA issued a notice and request for comments introducing the CA Pilot Program (76 FR 9626). That notice provided an overview of the CA Pilot Program requirements and, pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, modify or waive certain regulations in establishing and testing pilot loan initiatives, SBA modified or waived as appropriate certain regulations which otherwise apply to 7(a) loans for the CA Pilot Program.

Subsequent notices have made changes to the CA Pilot Program to improve the program experience for participants, improve their ability to deliver capital to underserved markets, and appropriately manage risk to the Agency. These notices were issued on the following dates: September 12, 2011 (76 FR 56262), February 8, 2012 (77 FR 6619), November 9, 2012 (77 FR 67433), December 28, 2015 (80 FR 80872), and September 12, 2018 (83 FR 46237). In the notice published September 12, 2018 (the ''September 2018 Notice''), SBA extended the pilot program to September 30, 2022, placed a moratorium on the acceptance of applications for new Community Advantage Lenders (''CA Lenders''), modified the requirements for refinancing non-SBA guaranteed, same institution debt, and revised other program requirements. SBA is issuing this Notice to further revise program requirements as described more fully below.

#### 2. Comments

Although the changes are effective March 2, 2020, comments are solicited from interested members of the public on all aspects of the CA Pilot Program. Comments must be submitted on or before the deadline for comments listed in the **DATES** section. SBA will consider these comments and the need for making any revisions as a result of these comments.

#### 3. Changes to the Community Advantage Pilot Program

*(a) Non-SBA Guaranteed, Same Institution Debt Refinancing Requirements*

Based on comments received in response to the September 2018 Notice, SBA is modifying the requirements for refinancing non-SBA guaranteed, same institution debt. SBA has learned that the applicants for refinancing are often small businesses that, for one reason or another, have obtained financing with terms that are onerous and unsustainable for the applicant, such as loans with high compound interest rates, draw fees, late fees, and/or substantial prepayment penalties. When a CA Lender receives such an application for refinancing, the CA Lender may opt to make an interim, non-SBA guaranteed loan to immediately restructure the financing on more reasonable terms, in anticipation of providing a permanent solution. SBA recognizes the importance of improving cash flow to a small business as soon as possible with a loan on more reasonable terms, and of providing a small business applicant with the additional time and technical assistance it may need to complete a successful SBA-guaranteed loan application. Therefore, SBA is modifying the restrictions on refinancing non-SBA guaranteed, same institution debt to permit the CA Lender to pay off certain interim loans with an SBA-guaranteed CA loan when beneficial to the small business applicant under certain circumstances. (It is important to note, however, that extension of an interim loan by a CA Lender is made entirely at the CA Lender's risk as there is no assurance that the interim loan will be eligible to be refinanced with a CA loan.)

In order to refinance its own interim, non-SBA guaranteed same institution loan with a CA loan, the CA Lender must comply with all of the following:

i. The sole purpose of the interim loan must have been to refinance debt that was on onerous terms (*e.g.,* the refinancing will improve the Applicant's cash flow by at least 15%), including necessary out-of-pocket costs.

ii. The Annual Percentage Rate (''APR'') on the interim loan must not

exceed the maximum interest rate allowable under the CA Pilot Program.

iii. The interim loan must not have been made more than 6 months prior to the submission in E–TRAN of the SBA-guaranteed CA loan application.

iv. The CA Lender must provide a transcript showing the due dates and when payments were received for the entire term of the interim loan. If there are any late payments and/or late charges on the interim loan, the CA Lender must explain in its credit memorandum the late payments and late charges and substantiate how the CA Lender has determined that SBA will not be in a position to sustain a loss from refinancing the interim loan.

v. The CA Lender may not charge any fees on the interim loan except for necessary out-of-pocket costs associated with closing the loan, such as filing or recording fees. There must be no prepayment penalty or other charge for prepayment of the interim loan.

vi. The CA loan that refinances the interim loan must be submitted to SBA for non-delegated processing and may not be approved under a CA Lender's delegated authority.

vii. The CA Lender must address in its credit memorandum how the original debt meets the requirements set forth in SOP 50 10 for debt refinancing (currently, Subpart B, Chapter 2, Paragraph V.E.).

*(b) Delegated Authority*

Currently, a CA Lender that is determined to be eligible for delegated authority may not process loans using its delegated authority until (i) it closes and makes an initial disbursement on at least seven non-delegated CA loans, and (ii) the Office of Credit Risk Management (''OCRM'') determines, in consultation with the Loan Guaranty Processing Center (''LGPC''), that it has satisfactory knowledge of SBA Loan Program Requirements. SBA is increasing the number of CA loans that must be initially disbursed before a CA Lender may receive approval to process applications under delegated authority. Effective March 2, 2020, the number of loans is increased to ten.

*(c) Loan Guaranty Agreement (SBA Form 750CA) Expiration and Renewal*

On September 12, 2018, SBA extended the Community Advantage Pilot Program from March 31, 2020, to September 30, 2022. Currently, most CA Lenders have a Loan Guaranty Agreement (SBA Form 750CA) that expires on March 31, 2020. As set forth in the CA Participant Guide, OCRM will conduct a review of each CA Lender prior to March 31, 2020. The review will include, but not be limited to, an assessment of the CA Lender's compliance with SBA Loan Program Requirements, including the requirement to make 60 percent of its loans to small businesses in the CA underserved markets, satisfactory SBA performance as determined by SBA in its discretion, and other risk-related criteria. Based on the results of a CA Lender's review, OCRM may: (1) Renew the CA Lender's SBA Form 750CA until the expiration date of the pilot program (September 30, 2022); (2) renew the CA Lender's SBA Form 750CA for a shorter period; or (3) not renew the CA Lender's SBA Form 750CA beyond March 31, 2020. In the latter two cases, OCRM will provide an explanation for the shortened renewal or non-renewal, as appropriate.

*(d) Limited Moratorium Exception*

As stated in the September 2018 Notice, SBA believes there are a sufficient number of CA Lenders for SBA to perform a proper evaluation of the pilot program. In order to maintain a sufficient number of CA Lenders, SBA will accept new applications from qualified eligible entities to replace CA Lenders that voluntarily withdraw from the program, are not renewed, or are otherwise removed from the pilot program. SBA will provide further information on this process after March 31, 2020, when it expects to know the number of CA Lenders that will not be continuing in the pilot program. In accordance with the September 2018 Notice, SBA is not increasing the total number of CA Lenders.

**4. General Information**

The changes in this Notice are limited to the CA Pilot Program only. All other SBA Loan Program Requirements and regulatory waivers or modifications related to the CA Pilot Program remain unchanged.

SBA has provided more detailed guidance in the form of a Participant Guide, which will be updated to reflect these changes and will be available on SBA's website at *http://www.sba.gov.* SBA may provide additional guidance, through SBA notices, which may also be published on SBA's website at *http://www.sba.gov/category/lender-navigation/forms-notices-sops/notices.* Questions regarding the CA Pilot Program may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at *http://www.sba.gov/about-offices-list/2.*

**Authority:** 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Dated: February 11, 2020.

**Jovita Carranza,**

*Administrator.*

[FR Doc. 2020–03241 Filed 2–28–20; 8:45 am]

**BILLING CODE P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2020–0005]**

### Notice Announcing Addresses for Service of Process

**AGENCY:** Social Security Administration.

**ACTION:** Notice announcing addresses for summons and complaints.

**SUMMARY:** Our Office of the General Counsel (OGC) is responsible for processing and handling summonses and complaints in lawsuits involving judicial review of our final decisions on individual claims for benefits under titles II, VIII, and XVI of the Social Security Act (Act), and individual claims for a Medicare Part D subsidy under title XVIII of the Act. This notice sets out the names and current addresses of those offices and the jurisdictions for which each office has responsibility.

**FOR FURTHER INFORMATION CONTACT:** Michael Haar, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6404, (410) 965–2521. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:** You should mail summonses and complaints in cases involving judicial review of our final decisions on individual claims for benefits under titles II, VIII, and XVI of the Act and individual claims for a Medicare Part D subsidy under title XVIII of the Act directly to the OGC location responsible for the jurisdiction in which the complaint has been filed. This notice replaces the notice we published on October 28, 2019 (84 FR 57799), and reflects the jurisdictional assignments for our Regional Chief Counsels' Offices and our Office of Program Law for cases filed on or after January 1, 2020. The changes in this notice from our 2019 notice reflect that the Office of the Regional Chief Counsel, Region I will assume responsibility for the District of Vermont and the Northern District of New York, and the Office of the Regional Chief Counsel, Region VII will assume responsibility for the District of Connecticut and the Eastern District of New York. The

jurisdictional responsibilities, names, and addresses of our OGC offices are as follows:

**Alabama**

U.S. District Court—Middle District of Alabama: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Alabama: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Alabama: Office of the Regional Chief Counsel, Atlanta (Region IV)

**Alaska**

U.S. District Court—Alaska: Office of the Regional Chief Counsel, Seattle (Region X).

**Arizona**

U.S. District Court—Arizona: Office of the Regional Chief Counsel, San Francisco (Region IX).

**Arkansas**

U.S. District Court—Eastern District of Arkansas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Arkansas: Office of the Regional Chief Counsel, Dallas (Region VI).

**California**

U.S. District Court—Central District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Eastern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Northern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Southern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

**Colorado**

U.S. District Court—Colorado: Office of the Regional Chief Counsel, Denver (Region VIII).

**Connecticut**

U.S. District Court—Connecticut: Office of the Regional Chief Counsel, Kansas City (Region VII).

**Delaware**

U.S. District Court—Delaware: Office of the Regional Chief Counsel, Philadelphia (Region III).

**District of Columbia**

U.S. District Court—District of Columbia: Office of the Regional Chief Counsel, Philadelphia (Region III).

**Florida**

U.S. District Court—Middle District of Florida: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Florida: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Florida: Office of the Regional Chief Counsel, Atlanta (Region IV).

**Georgia**

U.S. District Court—Middle District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

**Guam**

U.S. District Court—Guam: Office of the Regional Chief Counsel, San Francisco (Region IX).

**Hawaii**

U.S. District Court—Hawaii: Office of the Regional Chief Counsel, San Francisco (Region IX).

**Idaho**

U.S. District Court—Idaho: Office of the Regional Chief Counsel, Seattle (Region X).

**Illinois**

U.S. District Court—Central District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Northern District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Southern District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

**Indiana**

U.S. District Court—Northern District of Indiana: Office of Program Law, Baltimore.

U.S. District Court—Southern District of Indiana: Office of the Regional Chief Counsel, Chicago (Region V).

**Iowa**

U.S. District Court—Northern District of Iowa: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Iowa: Office of the Regional Chief Counsel, Dallas (Region VI).

**Kansas**

U.S. District Court—Kansas: Office of the Regional Chief Counsel, Denver (Region VIII).

**Kentucky**

U.S. District Court—Eastern District of Kentucky: Office of the Regional Chief Counsel, Denver (Region VIII).

U.S. District Court—Western District of Kentucky: Office of the Regional Chief Counsel, Chicago (Region V).

**Louisiana**

U.S. District Court—Eastern District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Middle District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

**Maine**

U.S. District Court—Maine: Office of the Regional Chief Counsel, Boston (Region I).

**Maryland**

U.S. District Court—Maryland: Office of Program Law, Baltimore.

**Massachusetts**

U.S. District Court—Massachusetts: Office of the Regional Chief Counsel, Boston (Region I).

**Michigan**

U.S. District Court—Eastern District of Michigan: Office of the Regional Chief Counsel, Boston (Region I).

U.S. District Court—Western District of Michigan: Office of the Regional Chief Counsel, Kansas City (Region VII).

**Minnesota**

U.S. District Court—Minnesota: Office of the Regional Chief Counsel, Dallas (Region VI).

**Mississippi**

U.S. District Court—Northern District of Mississippi: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Mississippi: Office of the Regional Chief Counsel, Dallas (Region VI).

**Missouri**

U.S. District Court—Eastern District of Missouri: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court Western District of Missouri: Office of the Regional Chief Counsel, Kansas City (Region VII).

**Montana**

U.S. District Court—Montana: Office of the Regional Chief Counsel, Seattle (Region X).

**Nebraska**

U.S. District Court—Nebraska: Office of the Regional Chief Counsel, Dallas (Region VI).

**Nevada**

U.S. District Court—Nevada: Office of the Regional Chief Counsel, San Francisco (Region IX).

**New Hampshire**

U.S. District Court—New Hampshire: Office of the Regional Chief Counsel, Boston (Region I).

**New Jersey**

U.S. District Court—New Jersey: Office of the Regional Chief Counsel, Philadelphia (Region III).

**New Mexico**

U.S. District Court—New Mexico: Office of the Regional Chief Counsel, Denver (Region VIII).

**New York**

U.S. District Court—Eastern District of New York: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Northern District of New York: Office of the Regional Chief Counsel, Boston (Region I).

U.S. District Court—Southern District of New York: Office of the Regional Chief Counsel, New York (Region II).

U.S. District Court—Western District of New York: Office of the Regional Chief Counsel, New York (Region II).

**North Carolina**

U.S. District Court—Eastern District of North Carolina: Office of Program Law, Baltimore.

U.S. District Court—Middle District of North Carolina: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of North Carolina: Office of Program Law, Baltimore.

**North Dakota**

U.S. District Court—North Dakota: Office of the Regional Chief Counsel, Dallas (Region VI).

**Northern Mariana Islands**

U.S. District Court—Northern Mariana Islands: Office of the Regional Chief Counsel, San Francisco (Region IX).

**Ohio**

U.S. District Court—Northern District of Ohio: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Southern District of Ohio: Office of the Regional Chief Counsel, Chicago (Region V).

**Oklahoma**

U.S. District Court—Eastern District of Oklahoma: Office of the Regional Chief Counsel, Denver (Region VIII).

U.S. District Court—Northern District of Oklahoma: Office of the Regional Chief Counsel, Denver (Region VIII).

U.S. District Court—Western District of Oklahoma: Office of the Regional Chief Counsel, Denver (Region VIII).

**Oregon**

U.S. District Court—Oregon: Office of the Regional Chief Counsel, Seattle (Region X).

**Pennsylvania**

U.S. District Court—Eastern District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Middle District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

**Puerto Rico**

U.S. District Court—Puerto Rico: Office of the Regional Chief Counsel, New York (Region II).

**Rhode Island**

U.S. District Court—Rhode Island: Office of the Regional Chief Counsel, Boston (Region I).

**South Carolina**

U.S. District Court—South Carolina: Office of the Regional Chief Counsel, Philadelphia (Region III).

**South Dakota**

U.S. District Court—South Dakota: Office of the Regional Chief Counsel, Dallas (Region VI).

**Tennessee**

U.S. District Court—Eastern District of Tennessee: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Middle District of Tennessee: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Western District of Tennessee: Office of the Regional Chief Counsel, Kansas City (Region VII).

**Texas**

U.S District Court—Eastern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Northern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

**Utah**

U.S. District Court—Utah: Office of the Regional Chief Counsel, Denver (Region VIII).

**Vermont**

U.S. District Court—Vermont: Office of the Regional Chief Counsel, Boston (Region I).

**Virgin Islands**

U.S. District Court—Virgin Islands: Office of the Regional Chief Counsel, New York (Region II).

**Virginia**

U.S. District Court—Eastern District of Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

**Washington**

U.S. District Court—Eastern District of Washington: Office of the Regional Chief Counsel, Seattle (Region X).

U.S. District Court—Western District of Washington: Office of the Regional Chief Counsel, Seattle (Region X).

**West Virginia**

U.S. District Court—Northern District of West Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Southern District of West Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

**Wisconsin**

U.S. District Court—Eastern District of Wisconsin: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Western District of Wisconsin: Office of the Regional Chief Counsel, Chicago (Region V).

**Wyoming**

U.S. District Court—Wyoming: Office of the Regional Chief Counsel, Denver (Region VIII).

**Addresses of OGC Offices**

Office of the Regional Chief Counsel, Region I, Social Security Administration, JFK Federal Building, Room 625, 15 New Sudbury Street, Boston, MA 02203–0002.

Office of the Regional Chief Counsel, Region II, Social Security Administration, 26 Federal Plaza, Room 3904, New York, NY 10278–0004.

Office of the Regional Chief Counsel, Region III, Social Security Administration, 300 Spring Garden

Street, 6th Floor, Philadelphia, PA 19123–2932.

Office of the Regional Chief Counsel, Region IV, Social Security Administration, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, Suite 20T45, Atlanta, GA 30303–8910.

Office of the Regional Chief Counsel, Region V, Social Security Administration, 200 West Adams Street, 30th Floor, Chicago, IL 60606–5208.

Office of the Regional Chief Counsel, Region VI, Social Security Administration, 1301 Young Street, Ste. 340, Mailroom 104, Dallas, TX 75202–5433.

Office of the Regional Chief Counsel, Region VII, Social Security Administration, Richard Bolling Federal Building, 601 E 12th Street, Room 965, Kansas City, MO 64106–2898.

Office of the Regional Chief Counsel, Region VIII, Social Security Administration, 1961 Stout Street, Suite 4169, Denver, CO 80294–4003.

Office of the Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear Street, Suite 800, San Francisco, CA 94105–1545.

Office of the Regional Chief Counsel, Region X, Social Security Administration, 701 Fifth Avenue, Suite 2900 M/S 221A, Seattle, WA 98104–7075.

Office of Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Altmeyer Building, Room 617, Baltimore, MD 21235–6401.

**Andrew Saul,**

*Commissioner of Social Security.*

[FR Doc. 2020–04246 Filed 2–28–20; 8:45 am]

**BILLING CODE 4191–02–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2020–0002]**

### Announcing Our Guidance Document Portal

**AGENCY:** Social Security Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces our new guidance document portal established under Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (E.O. 13891) and the Office of Management and Budget's (OMB) memorandum, M–20–02, ''Guidance Implementing Executive Order 13891, Titled 'Promoting the Rule of Law Through Improved Agency Guidance Documents.' ''

**FOR FURTHER INFORMATION CONTACT:** Jennifer Dulski, Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–2341. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:** On October 9, 2019, the President of the United States issued E.O. 13891.[1] E.O. 13891 states that it is the policy of the executive branch, to the extent consistent with applicable law, to require that agencies treat guidance documents as non-binding both in law and in practice, except as incorporated into a contract; take public input into account when appropriate in formulating guidance documents; and make guidance documents readily available to the public. In order to make guidance documents readily available to the public, E.O. 13891 requires that each agency or agency component, as appropriate, establish or maintain on its website a single, searchable, indexed portal that contains or links to all guidance documents in effect from such agency or component. It also requires that the guidance document portal include a statement informing the public that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract. Each agency or agency component, as appropriate, must establish its guidance document portal by February 28, 2020.

We are announcing our new guidance document portal, which is available at *www.socialsecurity.gov/guidance.* By February 28, 2020, you will be able to access from our portal all of our guidance documents remaining in effect. We will also make this notice available on the portal.

Dated: February 24, 2020.

**Andrew Saul,**

*Commissioner of Social Security.*

[FR Doc. 2020–04177 Filed 2–28–20; 8:45 am]

**BILLING CODE 4191–02–P**

[1] 84 FR 55235, available at *https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents.*

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket Number USTR–2020–0009]**

### Request for Comments Concerning the Extension of Particular Exclusions Granted Under the May 2019 Product Exclusion Notice From the $34 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and request for comments.

**SUMMARY:** Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $34 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 initiated the exclusion process in July 2018 and granted multiple sets of exclusions. The fourth set of exclusions was granted in May 2019, and are scheduled to expire on May 14, 2020. The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted in May 2019. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

**DATES:**

March 12, 2020 at 12:01 a.m. ET: The docket (USTR–2020–0009) will open for comments on the possible extension of particular exclusions.

April 12, 2020 at 11:59 p.m. ET: To be assured of consideration, submit written comments by this deadline.

**ADDRESSES:** Submit public comments through the Federal eRulemaking Portal: *https://www.regulations.gov.* The docket number is USTR–2020–0009. USTR strongly encourages all commenters to use Form A to submit comments. If applicable, Form B (which requests Business Confidential Information (BCI)), along with a copy of the corresponding Form A, must be submitted via email at *301bcisubmissions@ustr.eop.gov.* See the submission instructions below.

**FOR FURTHER INFORMATION CONTACT:** USTR Assistant General Counsels Philip Butler or Benjamin Allen at (202) 395–5725.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 40823 (August 16, 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 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 69447 (December 18, 2019), and 85 FR 3741 (January 22, 2020).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. 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 8-digit HTSUS subheading covered by the $34 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 32181 (the July 11 notice).

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. The U.S. Trade Representative granted multiple sets of exclusions. The fourth set of exclusions was granted in May 2019, and are scheduled to expire on May 14, 2020. *See* 84 FR 21389 (May 14, 2019) (May 2019 notice).

**B. Possible Extensions of Particular Product Exclusions**

The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted in the May 2019 notice. Accordingly, USTR invites public comments on whether to extend particular exclusions granted in the May 2019 notice. At this time, USTR is not considering comments concerning possible extensions of exclusions granted under any other product exclusion notice.

USTR will evaluate the possible extension of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the first imposition of these additional duties in July 2018, the particular product remains available only from China. In addressing this factor, commenters specifically should address:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since July 2018 with respect to the particular product or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

USTR strongly encourages that commenters complete Form A (which will be posted on USTR's website by the time the docket opens) and submit the completed Form A to *https://www.regulations.gov.* The docket number is USTR–2020–0009. USTR will post completed Form A's on the public docket.

In addition to submitting Form A, commenters who are importers and/or purchasers of the products covered by the exclusion also should complete Form B (which will be posted on USTR's website by the time the docket opens) and submit it, along with a copy of their completed Form A, via email at *301bcisubmissions@ustr.eop.gov.* Form A must be submitted via email with Form B and submitted as a single document (without Form B) to docket USTR–2020–0009 at *https://www.regulations.gov.*

Form B requests BCI information, and will not be posted on the public docket. To facilitate advance preparation of submissions, facsimiles of Forms A and B are annexed to this notice and will be available electronically at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/34-billion-trade-action.*

Set forth below is a summary of the information to be entered on Form A:

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.,* law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.
- The publication date of the **Federal Register** notice containing the exclusion on which you are commenting. Since USTR at this time only is considering exclusions granted by the May 2019 notice, this field must specify May 14, 2019.
- The full article description for the exclusion you are commenting on and the 10-digit code, as provided in the **Federal Register** notice granting the exclusion. Please indicate if the exclusion is a 10-digit HTSUS code (covering all products under a single 10-digit HTSUS number).
- Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether you support or oppose extending the exclusion and an explanation of your rationale. Commenters must provide a public version of their rationale, even if the commenter also is submitting a Form B with more detailed, confidential information.
- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries. Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.
- Whether the commenter will be submitting Form B.

As indicated above, information submitted on Form B will not be publically available. Form B requires commenters who are importers and/or purchasers of the products covered by the exclusion to provide the following information:

- The efforts you have undertaken since July 2018 to source the product from the United States or third countries.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018, the first half of 2018, and the first half of 2019. Whether these purchases are from a related company, and if so, the name of and relationship to the related company.
- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018, the first half of 2018, and the first half of 2019.
- If applicable, the commenter's gross revenue for 2018, the first half of 2018, and the first half of 2019.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether the imposition of duties on the products covered by the exclusion

will result in severe economic harm to the commenter or other U.S. interests.

- Any additional information in support or in opposition of the extending the exclusion.

Commenters also may provide any other information or data that they consider relevant.

### C. Submission Instructions

To be assured of consideration, you must submit your comment between the opening of the docket on March 12, 2020, and the April 12, 2020 submission deadline. By submitting a comment, you are certifying that the information provided is complete and correct to the best of your knowledge.

### D. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 and its implementing regulations, the Office of Management and Budget has assigned control number 0350–0015, which expires January 31, 2023, to this information collection.

**Joseph Barloon,**

*General Counsel, Office of the U.S. Trade Representative.*

BILLING CODE 3290–F0–P

OMB Control Number: 0350-0015 Expiration Date: January 31, 2023

# Exclusion Extension Comment Form A

**Submit information in Form A on the Public Docket at https://www.regulations.gov.**

**1. Submitter Information**

| | |
|---|---|
| Full Organization Legal Name **(Public)** | |
| Commenter First Name **(Public)** | |
| Commenter Last Name **(Public)** | |
| Contact Email Address **(Public)** | |

*Note: If you do not wish to provide a public email address, a private email address may be provided when you submit this form on Regulations.gov. Please check the box that reads "I want to provide my contact information" and enter your email address in the designated field.*

**Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? (Public)**

*Note: If you are submitting on behalf of an organization/industry, the information below is required.*

| | |
|---|---|
| Third Party Firm/Association Name **(Public)** | |
| Third Party First Name **(Public)** | |
| Third Party Last Name **(Public)** | |

**2. a) Please provide the publication date of the Federal Register notice containing the exclusion you are commenting on. (Public)**

**b) Please provide the 10-digit subheading of the HTSUS applicable to the exclusion you are commenting on. *A 10-digit HTSUS number is required.* (Public)**

**c) From the Federal Register notice, please provide the full article description for the exclusion. If the exclusion is a 10-digit code, please indicate. (Public)**

**d) Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? (Public)**

3. **Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale, even if you are also submitting a Form B with more detailed, confidential information.) (Public)**

4. **Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product or any other relevant industry developments.) (Public)**

5. **Please explain whether the products covered by the exclusion, or a comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.) (Public)**

6. **Will you be submitting Form B? (Public)**

**Note: Submit responses to Form A to the Public Docket at Regulations.gov (Information submitted in Form A will be posted on the Public Docket).**

OMB Control Number: 0350-0015 Expiration Date: January 31, 2023

# Exclusion Extension Comment Form B

**Form B should be completed by Importers and Purchasers of the products covered by the exclusion. Form B should be submitted via email at 301bcisubmissions@ustr.eop.gov and will not be available to the public. Please include Form A with your email submission of Form B.**

**NOTE: Submit Form A both on regulations.gov and with Form B, via email. Please include your Regulations.gov tracking number when submitting Form B.**

**1.**

**a.) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)**

| | | | |
|---|---|---|---|
| **2018 Value:** | | **2018 Quantity:** | |
| **2018 (Jan-Jun) Value:** | | **2018 (Jan-Jun) Quantity:** | |
| **2019 (Jan-Jun) Value:** | | **2019 (Jan-Jun) Quantity:** | |

**Are the provided figures estimates? (BCI)**

**Are any of these purchases from a related company? (BCI)**

**Please list the name and relationship of the related company. (BCI)**

| | | | |
|---|---|---|---|
| **Name:** | | **Relationship:** | |

**b.) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)**

**2. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)**

| | | | |
|---|---|---|---|
| **2018 Value:** | | **2018 Quantity:** | |
| **2018 (Jan-Jun) Value:** | | **2018 (Jan-Jun) Quantity:** | |
| **2019 (Jan-Jun) Value:** | | **2019 (Jan-Jun) Quantity:** | |

**Are the provided figures estimates? (BCI)**

**3. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)**

| | | | |
|---|---|---|---|
| **2018 Value:** | | **2018 Quantity:** | |
| **2018 (Jan-Jun) Value:** | | **2018 (Jan-Jun) Quantity:** | |
| **2019 (Jan-Jun) Value:** | | **2019 (Jan-Jun) Quantity:** | |

**Are the provided figures estimates? (BCI)**

**4. Please discuss any efforts you have undertaken since July 2018 to source this product from United States or third countries. (BCI)**

**5. Please provide information regarding your company's gross revenue in USD for 2018, the first half of 2018, and the first half of 2019. (BCI)**

| | |
|---|---|
| **2018 Gross Revenue:** | |
| **First Half (Jan-Jun) 2018:** | |
| **First Half (Jan-Jun) 2019:** | |
| **Are the provided figures estimates? (BCI)** | |

**6. Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? (BCI)**

**7. Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)**

**8. Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice. (BCI)**

**9. Please provide the Regulations.gov tracking number for your Form A submission (e.g. 1kx-xx-xxxx). (BCI)**

[FR Doc. 2020–04207 Filed 2–28–20; 8:45 am]
BILLING CODE 3290–F0–C

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of the 2020 Generalized System of Preferences (GSP) Annual Review and the Deadline for Filing Petitions

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of available statistics and announcement of the 2020 GSP Annual Review.

**SUMMARY:** The Office of the United States Trade Representative (USTR) will consider petitions to modify the GSP status of GSP beneficiary developing countries (BDCs) because of country practices; add products to GSP eligibility; remove products from GSP eligibility for one or more countries; waive competitive need limitations (CNLs); deny *de minimis* waivers for eligible products; or redesignate currently excluded products. This review will include separate hearings on accepted country practice review and product petitions, which USTR will announce in the **Federal Register** at a later date.

**DATES:** March 26, 2020 at 11:59 p.m. EST: Deadline for submission of petitions to modify the GSP status of GSP BDCs because of country practices; add products to GSP eligibility; remove products from GSP eligibility for one or more countries; waive CNLs; deny *de minimis* waivers for eligible products; or redesignate currently excluded products. USTR will not consider petitions submitted after the deadline. USTR will announce the petitions accepted for review, along with a schedule for any related public hearings, and the opportunity for the public to provide comments at a later date.

**ADDRESSES:** USTR strongly prefers electronic submissions made through the Federal eRulemaking portal: *http://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting petitions in section III below. For alternatives to online submissions, please contact Claudia Chlebek in advance of the submission deadline at *gsp@ustr.eop.gov,* or 202–395–2974.

**FOR FURTHER INFORMATION CONTACT:** Claudia Chlebek at *gsp@ustr.eop.gov,* or 202–395–2974.

**SUPPLEMENTARY INFORMATION:** The GSP program provides for the duty-free treatment of designated articles when imported from designated BDCs. The GSP program is authorized by Title V of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2461–2467), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

### I. 2019 Import Statistics Related to CNLs, *De Minimis* Waivers, and Product Redesignations

USTR has posted the 2019 import statistics relating to CNLs, *de minimis* waivers, and product redesignations on the USTR website at *https://ustr.gov/sites/default/files/IssueAreas/gsp/2020_GSP_Annual_Review-2019_Import_Statistics.pdf.* These statistics include three lists:

List I identifies GSP-eligible articles from BDCs that exceeded a CNL in 2019 by having been imported into the United States in a quantity valued in excess of $190 million, or in a quantity equal to or greater than 50 percent of the total U.S. import value for this product in 2019. Unless the President grants a waiver in response to a petition filed by an interested party, these products automatically will be removed from GSP eligibility on November 1, 2020.

List II identifies GSP-eligible articles from BDCs that are above the 50 percent CNL but are eligible for a *de minimis* waiver since total U.S. imports of the product in 2019 were less than $24.5 million. Articles eligible for *de minimis* waivers automatically are considered in the GSP annual review process without the filing of a petition. As described below, USTR only will accept petitions in opposition to a potential *de minimis* waiver for a particular product.

List III identifies GSP-eligible articles from certain BDCs that currently are not receiving GSP duty-free treatment but may be considered for GSP redesignation based on 2019 trade data and consideration of certain statutory factors. Note that products exceeding the 50 percent CNL may be considered for redesignation if there was no U.S. production of a like or directly competitive product in the last three years.

List IV identifies GSP-eligible articles from BDCs that currently have a CNL waiver but where imports of the article have exceeded 150 percent of the CNL or 75 percent of the appraised value of total imports of that article. Unless the President grants a continuation of the waiver in response to a petition filed by an interested party, these products will be removed from GSP eligibility on November 1, 2020.

### II. 2020 GSP Annual Review

*A. Country Practice Review Petitions*

An interested party may submit a petition to review the GSP eligibility of any BDC with respect to any of the designation criteria listed in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)). The docket number is USTR–2020–0003.

*B. Product Review Petitions*

An interested party may submit the following petitions:

*Product addition petitions:* Petitions to designate additional articles as eligible for GSP benefits, including designating articles as eligible only for countries designated as least-developed beneficiary developing countries (LDBDCs), or as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA). Petitioners seeking to add products to

eligibility for GSP benefits should note that, as provided in section 503(b) of the Trade Act (19 U.S.C. 2463(b)), certain articles may not be designated as eligible articles under GSP. The docket number is USTR–2020–0004.

*Product removal petitions:* Petitions to remove, suspend, or limit the application of duty-free treatment accorded under GSP with respect to any article. The docket number is USTR–2020–0005.

*CNL waiver petitions:* Any interested party may submit a petition seeking a waiver of the 2020 CNL for individual BDCs with respect to specific GSP-eligible articles (these limits, however, do not apply to LDBDCs or AGOA beneficiary countries). Interested parties filing CNL waiver petitions should indicate whether there was production of a like or directly competitive product in the United States during the previous three calendar years (that is, 2017 to 2019). The docket number is USTR–2020–0006.

*Petitions for denial of de minimis waivers:* USTR automatically will consider all *de minimis* waivers. Thus, USTR will only accept petitions to deny *de minimis* waivers for particular products. The docket number is USTR–2020–0007.

*Petitions for redesignation:* Interested parties may file petitions to grant redesignation of products for which import quantities are below the dollar value CNL ($190 million for 2019) and below 50 percent of total U.S. imports. If a petitioner believes there has been no U.S. production of a like or directly competitive product in the past three years, USTR also will consider petitions to grant redesignation of products for which imports are below the dollar value CNL ($190 million for 2019) but that exceed 50 percent of total U.S. imports. The docket number is USTR–2020–0008.

## III. Requirements for Submissions

### *A. Docket Numbers*

To submit petitions, use the following docket numbers:

*Country Practice Review Petitions:* Docket number USTR–2020–0003.

*Product Addition Petitions:* Docket number USTR–2020–0004.

*Product Removal Petitions:* Docket number USTR–2020–0005.

*CNL Waiver Petitions:* Docket number USTR–2020–0006.

*Petitions for Denial of De Minimis Waivers:* Docket number USTR–2020–0007.

*Petitions for Redesignation:* Docket number USTR–2020–0008.

### *B. General Requirements*

All submissions for the 2020 GSP annual review must conform to the GSP regulations set forth at 15 CFR part 2007 (*https://www.ecfr.gov/cgi-bin/text-idx?SID=2688e93e7a801d4294d011d7afcc7347&mc=true&node=pt15.3.2007&rgn=div5*), except as modified below.

All submissions must be in English and submitted electronically via *Regulations.gov* using the docket number for the type of petition listed in section III.A above. USTR will not accept hand-delivered submissions.

To make a submission via *Regulations.gov*, enter the corresponding docket number for the type of petition in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.' For additional information on using the *Regulations.gov* website, please consult the resources provided on the website by clicking on 'how to use this site' on the left side of the home page.

The *Regulations.gov* website allows users to provide comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. USTR prefers that you provide submissions in an attached document.

Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files.

Submissions should follow the following format:

In the top left corner of the first page, the following information should appear:

- 2020 GSP Annual Review.
- Petition type (*e.g.,* Petition for continuation of a CNL waiver, Country Practice Review Petition, etc.).
- *For product petitions:* The eight or ten digit Harmonized Tariff Schedule of the United States (HTSUS) subheading number in which the product is classified.
- *For country practice petitions:* The name of the country.
- If the product petition is for a specific BDC, the name of the BDC.
- Name of the entity submitting the petition.

You should save your petition with a title similar to the bullets above, *e.g.,* petition type—the eight or ten digit HTSUS number or country name—if needed for product petition, country name—name of entity submitting the petition. To meet length constraints, you can use acronyms and abbreviations in submission titles.

You will receive a tracking number confirming that your submission was received into *Regulations.gov* that you should keep for your records.

USTR is not responsible for any delays in a submission due to technical difficulties, and is unable provide any technical assistance for *Regulations.gov*. USTR may not consider documents that you do not submit in accordance with these instructions.

If you cannot provide submissions as requested, please contact Claudia Chlebek in advance of the submission deadline at *gsp@ustr.eop.gov* or (202) 395–2974 to arrange for an alternative method of transmission.

### *C. Business Confidential Petitions*

You must clearly designate business confidential information (BCI) by marking the submission 'BUSINESS CONFIDENTIAL' at the top and bottom of the cover page and each succeeding page, and indicating, via brackets, the specific information that is confidential.

A submitter requesting that USTR treat information in a submission as BCI must certify that the information is business confidential and would not customarily be released to the public by the submitter.

You must include 'business confidential' in the 'type comment' field, and must add 'business confidential' to the end of your file name for any attachments.

For any submission containing BCI, you also must attach a separate non-confidential version (*i.e.,* not as part of the same submission with the BCI version), indicating where confidential information has been redacted. USTR will place the non-confidential version in the docket and it will be available for public inspection.

USTR may not accept BCI submissions that do not have the required markings, or are not accompanied by a properly marked non-confidential version, and may consider the submission to be a public document.

### *D. Public Viewing of Review Submissions*

Submissions responding to this notice, except for information granted BCI status under 15 CFR part 2003.6, will be available for public viewing at *Regulations.gov* upon completion of processing. You can view submissions by entering the relevant docket number

listed in section III.A in the search field at *Regulations.gov*.

**Laura Buffo,**

*Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.*

[FR Doc. 2020–04220 Filed 2–28–20; 8:45 am]

**BILLING CODE 3290–F0–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2019–0946]**

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Pilot Records Improvement Act of 1996/Pilot Record Database

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 26, 2019. This collection involves the pilot/applicant's name, home address which is provided by the applicant, and his/her FAA certificate number. In most cases, the certificate number is one that has been assigned by Airmen Certification. The information collected is imperative to be able to identify the airman in order to process the required background check for the potential hiring air carrier employer.

**DATES:** Written comments should be submitted by April 1, 2020.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Christopher Morris by email at *christopher.morris@faa.gov* or by calling 405–954–4646.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120–0607.

*Title:* Pilot Records Improvement Act of 1996/Pilot Record Database.

*Form Numbers:*

FAA 8060–10 FAA RECORDS REQUEST (PRIA)

FAA 8060–10 AIRMAN NOTICE AND RIGHT TO RECEIVE COPY—FAA RECORDS (PRIA)

FAA 8060–11 AIR CARRIER AND OTHER RECORDS REQUEST (PRIA)

FAA 8060–11A AIRMAN NOTICE AND RIGHT TO RECEIVE COPY—AIR CARRIER AND OTHER RECORDS (PRIA)

FAA 8060–12 AUTHORIZATION FOR RELEASE OF DOT DRUG AND ALCOHOL TESTING RECORDS UNDER PRIA AND MAINTAINED UNDER TITLE 49 CODE OF FEDERAL REGULATIONS (49 CFR) PART 40

FAA 8060–13 NATIONAL DRIVER REGISTER RECORDS REQUEST (PRIA)

FAA FORM 8060–XX PILOT CONSENT/REVOCATION FOR AIR CARRIER ACCESS TO PILOT RECORDS DATABASE

*Type of Review:* Revision of an information collection.

*Background:* The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 26, 2019 (2019–27707). This notice includes an updated burden analysis. The Pilot Records Improvement Act of 1996 (PRIA) as amended, was enacted to ensure that part 121, 125 and 135 air carriers and air operators adequately investigate a pilot's background before allowing that pilot to conduct commercial air carrier flights for their company. Under PRIA, a hiring employer cannot place a pilot into service until they obtain, review and approve the pilot's background and other safety-related records for the past 5 year period as specified in PRIA. The FAA information disclosed under PRIA are medical and airman certificate verifications as well as any closed enforcement and revocation data. The air carrier information disclosed under PRIA are those concerning pilot performance and training, disciplinary actions and removal from service, and drug and alcohol testing records. Records from the Department of Motor Vehicles of any particular State would include records of drug and alcohol convictions. PRIA request forms can be received by fax or mail; however, the most common method is by email attachment, one pilot/applicant per form. Each 8060–10 form will include all information needed to process the requested PRIA report. FAA Form 8060–xx is being added to this collection to allow pilots to release their FAA records to a hiring aviation employer when they cannot release the records themselves via the PRD website. Use of FAA Form 8060–xx is not required if FAA Form 8060–10 is used or if the pilot releases the records themselves via the PRD website. The specific form number is not yet determined. In addition to the forms, information is collected via a website to allow interested persons to register in MyAccess. MyAccess is a user-management and identity verification service used to control who has access to the PRD.

*Respondents:* The PRIA representative at each part 121, 125 and 135 air carrier is responsible for completing, forwarding, receiving and providing the air carrier with the completed PRIA report so the air carrier can make a more informed hiring decision concerning each pilot/applicant. One complete PRIA package is required for every pilot/applicant. The FAA processes approximately 24,120 PRIA packages per year from respondents.

*Frequency:* On occasion.

*Estimated Average Burden per Response:* 2.13 hours.

*Estimated Total Annual Burden:* 96,871 hours.

Issued in Oklahoma City, OK, on February 25, 2020.

**Christopher Morris,**

*PRD/PRIA Program Manager, Regulatory Support Division, Flight Standards Service, Office of Aviation Safety AFS–620.*

[FR Doc. 2020–04172 Filed 2–28–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in Utah

**AGENCY:** Utah Department of Transportation (UDOT), Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Notice of limitations on claims for judicial review of actions by UDOT.

**SUMMARY:** The FHWA, on behalf of UDOT, is issuing this notice to announce actions taken by UDOT that are final Federal agency actions. The final agency actions relate to a proposed highway project, a southbound frontage road along Interstate 215 (I–215) between 4100 South and 4700 South in Taylorsville City, Salt Lake County, State of Utah. Those actions grant licenses, permits and/or approvals for the project. The UDOT's Environmental Assessment and Finding of No Significant Impact, provide details on the Selected Alternative for the proposed improvements.

**DATES:** By this notice, FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 30, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Elisa Albury, Environmental Program Manager, UDOT Environmental Services, PO Box 143600, Salt Lake City, UT 84114; (801)–965–4000; email: *ealbury@udot.gov.* UDOT's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except State and Federal holidays.

**SUPPLEMENTARY INFORMATION:** Effective January 17, 2017, FHWA assigned to UDOT certain responsibilities of FHWA for environmental review, consultation, and other actions required by applicable Federal environmental laws and regulations for highway projects in Utah, pursuant to 23 U.S.C. 327. Actions taken by UDOT on FHWA's behalf pursuant to 23 U.S.C. 327 constitute Federal agency actions for purposes of Federal law. Notice is hereby given that UDOT has taken final agency actions subject to 23 U.S.C. § 139(*l*)(1) by issuing licenses, permits, and approvals for the I–215 Southbound Frontage Road project in the State of Utah.

The project proposes to construct a transportation solution to improve connectivity from I–215 to the local roadway network by constructing an approximate 1-mile frontage road between 4100 South and 4700 South and associated local roadway improvements between 2200 West and 2700 West in Taylorsville City, Salt Lake County, Utah. These improvements were identified in the Environmental Assessment (EA) prepared for the project by UDOT as Alternative 1. The project is included in UDOT's adopted 2020–2025 State Transportation Improvement Plan (STIP) as project number F–I215(196)16; PIN 17953. The project is also included in the Wasatch Front Regional Council's 2019–2050 Regional Transportation Plan.

The actions by UDOT and the laws under which such actions were taken are described in the EA approved on February 18, 2020, the UDOT FONSI (Finding of No Significant Impact for I–215 Southbound Frontage Road in Salt Lake County, Utah, Project No. F–I215(188)16 approved on February 18, 2020), and other documents in the UDOT project records. The EA and the FONSI are available for review by contacting UDOT at the address provided above. In addition, these documents can be viewed and downloaded from the UDOT project website at *https://www.udot.utah.gov/projectpages/f?p=250:2007:0::NO:2007:P2007_EPM_PROJ_XREF_NO,P2007_PROJECT_TYPE_IND_FLAG:13061.* This notice applies to the EA, the FONSI, the Section 4(f) determination, the NHPA Section 106 review, the Endangered Species Act determination, the noise review and noise abatement determination, and all other UDOT and other federal agency decisions and other actions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; MAP–21, the Moving Ahead for Progress in the 21st Century Act [Pub. L. 112–141].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; The Bald and Golden Eagle Protection Act [16 U.S.C. 668].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(M, 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Noise:* Federal-Aid Highway Act of 1970, Public Law 91–605 [84 Stat. 1713]; 23 U.S.C. 109(h) & (i).

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139 (*l*)(1))

Dated: February 25, 2020.

**Ivan Marrero,**

*Division Administrator, Federal Highway Administration, Salt Lake City, Utah.*

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**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Announcement of Fiscal Year 2019 Grants for Buses and Bus Facilities Program Project Selections

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice; announcement of project selections. Grants for Buses and Bus Facilities Program.

**SUMMARY:** The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the allocation of $423,329,839 to projects under the Fiscal Year (FY) 2019 Grants for Buses and Bus Facilities Program (Bus Program) and provides administrative guidance on project implementation.

**FOR FURTHER INFORMATION CONTACT:** Successful applicants should contact the appropriate FTA Regional Office for information regarding applying for the funds or program-specific information. A list of Regional Offices can be found at *www.transit.dot.gov/.* Unsuccessful applicants may contact Mark G. Bathrick, Office of Program Management at (202) 366–9955, email: *Mark.Bathrick@dot.gov,* within 30 days of this announcement to arrange a proposal debriefing. A TDD is available at 1–800–877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:** Federal public transportation law (49 U.S.C. 5339(b)) authorizes FTA to make competitive grants for buses and bus facilities. Federal public transportation law (49 U.S.C. 5338) authorized $263,219,530 for competitive allocations in FY 2019. The Consolidated Appropriations Act, 2019 (Pub. L. 116–6) appropriated an additional $160 million for the Bus Program for FY 2019. An additional $130,710 of unawarded FY 2018 funding was also made available. After the statutory set aside for oversight, $423,350,240 was made available for competitive grants under the Bus Program.

On May 15, 2019, FTA published a Notice of Funding Opportunity (NOFO) (84 FR 21899) announcing the availability of $423,350,240 in competitive funding under the Bus Program. These funds will provide financial assistance to states and eligible public agencies to replace, rehabilitate, purchase, or lease buses, vans, and related equipment, and for capital projects to rehabilitate, purchase, construct, or lease bus-related facilities. In response to the NOFO, FTA received 318 eligible project proposals from 43 States and the District of Columbia, totaling approximately $1.89 billion in Federal funds. Project proposals were evaluated based on each applicant's responsiveness to the program evaluation criteria outlined in the NOFO.

Based on the criteria in the NOFO, FTA is funding 94 projects, as shown in Table 1, for a total of $423,329,839. Recipients selected for competitive funding are required to work with their FTA Regional Office to submit a grant application in FTA's Transit Award Management System (TrAMS) for the projects identified in the attached table to quickly obligate funds. Grant applications must only include eligible activities applied for in the original project application. Funds must be used consistent with the competitive proposal and for the eligible capital purposes described in the NOFO.

In cases where the allocation amount is less than the proposer's total requested amount, recipients are required to fund the scalable project option as described in the application. If the award amount does not correspond to the scalable option, the recipient should work with the Regional Office to reduce scope or scale the project such that a complete phase or project is accomplished. Recipients may also provide additional local funds to complete a proposed project. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TrAMS application.

Selected projects are eligible to incur costs under pre-award authority no earlier than the date projects were publicly announced, November 25, 2019. Pre-award authority does not guarantee that project expenses incurred prior to the award of a grant will be eligible for reimbursement, as eligibility for reimbursement is contingent upon other requirements, such as planning and environmental requirements, having been met. For more about FTA's policy on pre-award authority, please see the FTA Fiscal Year 2019 Apportionments, Allocations, and Program Information and Interim Guidance (84 FR 31984). Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in TrAMS (see FTA.C.5010.1E). Recipients must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out the project supported by the FTA grant. FTA emphasizes that recipients must follow all third-party procurement requirements set forth in Federal public transportation law (49 U.S.C. 5325(a)) and described in the FTA Third Party Contracting Guidance Circular (FTA Circular 4220.1). Funds allocated in this announcement must be obligated in a grant by September 30, 2023.

*Technical Review And Evaluation Summary:* The FTA assessed all project proposals that were submitted under the FY 2019 Bus Program competition according to the following evaluation criteria. The specific metrics for each criterion were described in the May 15, 2019, NOFO:

1. Demonstration of Need
2. Demonstration of Benefits
3. Planning/Local Prioritization
4. Local Financial Commitment
5. Project Implementation Strategy
6. Technical, Legal, and Financial Capacity

For each project, a technical review panel assigned a rating of Highly Recommended, Recommended, or Not Recommended for each of the six criteria. The technical review panel then assigned an overall rating of Highly Recommended, Recommended, Not Recommended, or Ineligible to the project proposal.

Projects were assigned a final overall rating of Highly Recommended if they were rated Highly Recommended in at least four categories overall, with no Not Recommended ratings. Projects were assigned a final overall rating of Recommended if the projects had three or more Recommended ratings and no Not Recommended ratings. Projects were assigned a rating of Not Recommended if they received a Not Recommended rating in any criteria. A summary of the final overall ratings for all 318 eligible project proposals is shown in the table below.

OVERALL PROJECT RATINGS

[Eligible submissions]

| | |
|---|---|
| Highly Recommended | 188 |
| Recommended | 96 |
| Not Recommended | 34 |
| Total | 318 |

As outlined in the NOFO, FTA made the final selections based on the technical ratings as well as geographic diversity, percentage of local cost share, departmental objectives, location in an opportunity zone, and/or receipt of other recent competitive awards.

As further outlined in the NOFO, in some cases, due to funding limitations, proposers that were selected for funding received less than the amount originally requested.

**K. Jane Williams,**

*Acting Administrator.*

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| AK | Chickaloon Native Village | D2020–BUSC–001 | The Chickaloon Native Village will receive funding for a replacement accessible minivan for the Chickaloon Area Transit System (CATS). This project will improve safety, reliability and mobility for tribal residents in Southcentral Alaska. | $53,966 | Highly Recommended. |
| AK | Kenaitze Indian Tribe (IRA). | D2020–BUSC–002 | The Kenaitze Indian Tribe will receive funding to rehabilitate a facility for transit vehicle maintenance needed to extend useful bus life and maintain a state of good repair in this rural, sub-arctic region of Alaska. This project will improve safety, state of good repair and improve service reliability for tribal residents on the Kenai Peninsula in Southcentral Alaska. | 1,600,000 | Highly Recommended. |
| AK | Nulato Village | D2020–BUSC–003 | The Nulato Village will receive funding to purchase a bus to provide tribal residents and members of the public with safe and reliable transit to the Nulato Airport. The project will improve safety and allow residents to stay out of extreme weather while traveling to and from the airport in rural Alaska. | 179,885 | Recommended. |
| AL | Tuscaloosa County Parking and Transit Authority. | D2020–BUSC–004 | The Tuscaloosa County Parking and Transit Authority will receive funding to replace buses that are at the end of their useful life. This project will improve safety, support state of good repair, and accommodate ridership. | 2,018,750 | Recommended. |
| AZ | Northern Arizona Intergovernmental Public Transportation Authority. | D2020–BUSC–005 | The Northern Arizona Intergovernmental Public Transportation Authority, which operates Mountain Line transit service in Flagstaff, will receive funding for essential projects, including construction of a Downtown Connection Center and the purchase of all-electric buses to replace diesel and hybrid buses that have exceeded their useful life. The projects will improve safety, support state of good repair, and accommodate growing ridership, including students at Northern Arizona University. | 17,275,000 | Highly Recommended. |
| AZ | White Mountain Apache Tribe. | D2020–BUSC–006 | The White Mountain Apache Tribe, which operates the Fort Apache Connection transit service on the Fort Apache Indian Reservation in the east central region of Arizona, will receive funding to purchase new vehicles and expand transit service. The project will improve safety and reliability and ensure continued transit service for tribal residents on the Indian Reservation, which includes parts of Navajo, Gila, and Apache counties. | 160,000 | Highly Recommended. |
| CA | California Department of Transportation on behalf of Full Access and Coordinated Transportation, Inc (FACT). | D2020–BUSC–007 | Full Access and Coordinated Transportation, Inc (FACT), which provides specialized transportation services for residents of San Diego County, will receive funding to purchase accessible vehicles that will replace vehicles that have exceeded their useful life. The new vehicles will improve access, mobility and service reliability for people with disabilities, seniors and others who use the service. | 466,883 | Highly Recommended. |
| CA | California Department of Transportation on behalf of Redwood Coast Transit Authority (RCTA). | D2020–BUSC–008 | Redwood Coast Transit Authority (RCTA) will receive funding to purchase new buses that will replace buses that have exceeded their useful life. The new buses will improve safety, reliability and state of good repair for the system, which provides transit service for residents in rural Del Norte County in northern California. | 260,000 | Highly Recommended. |
| CA | California Department of Transportation on behalf of Tehama County Transit Agency Board. | D2020–BUSC–009 | Tehama County Transit Agency Board will receive funding to renovate existing buildings at the Tehama Rural Area Express (TRAX) transit facility in Red Bluff, California. The renovations will help improve transit service and reliability for rural residents of Tehama County in northern California. | 592,998 | Highly Recommended. |
| CA | California Department of Transportation on behalf of Yosemite Area Regional Transportation System. | D2020–BUSC–010 | Yosemite Area Regional Transportation System (YARTS) will receive funding to purchase battery-electric over-the-road coach buses equipped with ADA lifts and restrooms. The new vehicles will improve access and transit service for residents and visitors to Yosemite National Park and the surrounding communities. | 4,335,000 | Highly Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| CA | Fresno Council of Governments (Fresno County Rural Transit Agency). | D2020–BUSC–011 | The Fresno Council of Governments will receive funding for the Fresno County Rural Transit Agency to construct a new state-of-the-art bus maintenance and operations facility. The new facility will improve safety, reliability and state of good repair for the transit system, which provides service to residents throughout the rural areas of Fresno County. | 5,145,281 | Highly Recommended. |
| CA | Kings County Area Public Transit Agency. | D2020–BUSC–012 | Kings County Area Public Transit Agency will receive funding to purchase new buses that will replace buses that have exceeded their useful life. The new buses will improve safety, reliability and state of good repair for the system, which provides transit service for residents in the Central San Joaquin Valley. | 3,279,570 | Highly Recommended. |
| CA | Solano County Transit | D2020–BUSC–013 | Solano County Transit will receive funding to plan, construct, and install electrical charging infrastructure to accommodate an all-electric bus fleet that is planned for the future. The project will improve safety and reliability for residents who use the transit service to travel in Solano County, which is part of the San Francisco Bay Area. | 1,800,000 | Highly Recommended. |
| CA | Transit Joint Powers Authority for Merced County (The Bus). | D2020–BUSC–014 | The Transit Joint Powers Authority for Merced County (The Bus) will receive funding to purchase zero-emission electric buses and associated charging equipment to replace the agency's gasoline-fueled buses that have exceeded their useful life. The new buses will improve safety and reliability for residents who use the service to travel in Merced County, which is located in the San Joaquin Valley of California. | 2,000,000 | Highly Recommended. |
| CO | City of Colorado Springs (Mountain Metropolitan Transit). | D2020–BUSC–015 | Mountain Metropolitan Transit in Colorado Springs will receive funding to purchase battery electric buses and charging stations to expand transit service on one of its busiest routes. The buses will allow MMT to accommodate growing ridership and provide a responsive transit service for people accessing jobs, school and community services. | 1,621,500 | Highly Recommended. |
| CO | Colorado Department of Transportation (Breckenridge Free Ride). | D2020–BUSC–016 | The Colorado Department of Transportation will receive funding on behalf of the Town of Breckenridge to replace diesel buses that have exceed their useful life with battery-electric vehicles and charging infrastructure. The fleet helps Breckenridge, home to one of Colorado's largest ski resorts, provide access to jobs, services and tourist sites. | 2,015,775 | Highly Recommended. |
| CO | Colorado Department of Transportation (Laradon Hall Society for Exceptional Children and Adults). | D2020–BUSC–017 | The Colorado Department of Transportation will receive funding on behalf of Laradon Hall Society for Exceptional Children and Adults in Denver to replace transit vans that transport people with disabilities to and from campus. The vehicles will replace vans that have exceeded their useful life, improving safety and reliability. | 199,500 | Highly Recommended. |
| CO | Colorado Department of Transportation (Roaring Fork Transportation Authority). | D2020–BUSC–018 | The Colorado Department of Transportation will receive funding on behalf of the Roaring Fork Transportation Authority to replace buses that have exceeded their useful life. The replacement buses will enhance the rural transit agency's network throughout the Roaring Fork Valley of Central Colorado and help accommodate growing ridership. | 1,788,312 | Highly Recommended. |
| CO | Colorado Department of Transportation (Snowmass Village Shuttle). | D2020–BUSC–019 | The Colorado Department of Transportation will receive funding on behalf of Snowmass Village in rural Pitkin County to replace buses that have exceed their useful life. The replacement vehicles will reduce maintenance costs and improve reliability for the Snowmass Village Shuttle, which provides residents access to jobs and services. | 400,000 | Recommended. |
| CO | Colorado Department of Transportation (Winter Park Lift). | D2020–BUSC–020 | The Colorado Department of Transportation will receive funding on behalf of Winter Park Lift in Colorado's Grand County, to build a maintenance facility for its bus fleet. The infrastructure investment will help the three-year-old transit system house administrative offices and dispatching services, with additional space for future new buses and electric charging facilities. | 12,000,000 | Highly Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| DC | Washington Metropolitan Area Transit Authority (WMATA). | D2020–BUSC–021 | The Washington Metropolitan Area Transit Authority (WMATA) will receive funding to upgrade its farebox system on its fleet of buses with modern, supported technologies. This technology upgrade will enhance operational reliability, while enabling WMATA to introduce new buses to their fleet. | 11,040,000 | Recommended. |
| FL | Broward County Transit | D2020–BUSC–022 | Broward County Transit will receive funding to rehabilitate its existing operations and maintenance buildings, construct new administration/operations and training buildings and add infrastructure for electric buses. This project will improve safety and state of good repair for facilities that were originally built in the 1980's. | 17,275,000 | Highly Recommended. |
| FL | Hillsborough Area Regional Transit Authority (HART). | D2020–BUSC–023 | Hillsborough Area Regional Transit Authority (HART) will receive funding to purchase new CNG buses to replace diesel buses that have exceeded their useful life. This project will improve safety, state of good repair and ensure continued transit services for residents of Hillsborough County, Florida. | 4,300,000 | Highly Recommended. |
| GA | University of Georgia | D2020–BUSC–024 | The University of Georgia, which provides transit service to the residents of Athens, Georgia and the University of Georgia campus, will receive funding to purchase new electric buses to replace older buses that have exceeded their useful life. The new vehicles will improve safety, state of good repair and service reliability. | 7,462,000 | Highly Recommended. |
| HI | State of Hawaii Department of Transportation. | D2020–BUSC–025 | The State of Hawaii Department of Transportation will receive funding to purchase new accessible vehicles and buses to replace those that have exceeded their useful life for the County of Hawai'i and the County of Kaua'i. The new vehicles will improve safety and reliability for residents who use public transit to commute to work on long commuter routes such as the Hilo-to-South Kohala Resort route (approximately 200 miles round trip) and East Hawaii-to-West Hawaii commuter route (approximately 160 miles round trip). | 6,586,650 | Recommended. |
| IA | Des Moines Area Regional Transit Authority (DART). | D2020–BUSC–026 | The Des Moines Area Regional Transit Authority (DART) will receive funding to construct a new operations and maintenance facility to replace an outdated and undersized facility. The new building will be located in downtown Des Moines, away from the current facility's flood-prone area. | 17,275,000 | Highly Recommended. |
| IA | Iowa Department of Transportation. | D2020–BUSC–027 | The Iowa Department of Transportation will receive funding to replace rural buses throughout the state that have exceeded their useful life Iowa. DOT estimates that more than half of its statewide transit bus fleet is in need of replacement. | 9,414,785 | Highly Recommended. |
| ID | City of Lewiston | D2020–BUSC–028 | The City of Lewiston in northern Idaho will receive funding to construct a transit center at the Lewiston Community Center, which currently does not have any infrastructure designed specifically for transit needs. The project will repurpose the west side of the parking lot to construct a small transit center where passengers have access to amenities and where transit activities can take place more safely and reliably. | 64,000 | Recommended. |
| IL | Bloomington-Normal Public Transit System (DBA Connect Transit). | D2020–BUSC–029 | Connect Transit will receive funding to improve bus stops by adding shelters and benches as well as infrastructure that complies with the Americans with Disabilities Act. The upgrades will enhance safety for riders, better accommodate passenger transfers between buses, and attract new customers. | 500,000 | Highly Recommended. |
| IL | Champaign-Urbana Mass Transit District. | D2020–BUSC–030 | The Champaign-Urbana Mass Transit District will receive funding to renovate and expand the Illinois Terminal, a transportation hub with local and intercity buses and passenger rail. The project will improve safety and accommodate rising demand at the terminal, which is part of a joint development project that includes plans for a hotel and conference center as well as residential and commercial development. | 17,275,000 | Highly Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| IL | Illinois Department of Transportation. | D2020–BUSC–031 | The Illinois Department of Transportation (IDOT) will receive funding to replace buses, improve maintenance facilities and purchase bus equipment in the downstate region. The funding will allow transit providers in rural areas and small cities to accommodate growing ridership, improve safety and reliability, address state of good repair needs and reduce maintenance costs. | 8,046,999 | Highly Recommended. |
| IN | Bloomington Public Transportation Corporation (Bloomington Transit). | D2020–BUSC–032 | Bloomington Transit will receive funding to replace and upgrade the fare collection system on its fixed-route service buses. The new fare collection system will allow Bloomington Transit to expand fare payment options for riders, reduce farebox maintenance costs and obtain more accurate fare counts. | 1,125,000 | Highly Recommended. |
| KS | City of Wichita | D2020–BUSC–033 | Wichita Transit will receive funding to build a replacement transit center to meet current and future regional transportation needs. The building will connect 17 bus routes, four circulator trolleys and commuter transit and boost economic development in the West Bank area of the Arkansas River. | 14,232,816 | Recommended. |
| KY | Transit Authority of River City (TARC). | D2020–BUSC–034 | The Transit Authority of River City (TARC) will receive funding to purchase new buses to replace older buses that have exceeded their useful life. This project will improve safety, state of good repair and improve service reliability for residents who rely on bus service in the Greater Louisville area. | 17,275,000 | Highly Recommended. |
| LA | Jefferson Parish, Inc (Jefferson Transit). | D2020–BUSC–035 | Jefferson Transit will receive funding to build a new operations center to replace an aging, makeshift operations facility. The new center will be double the size of the current facility in order to accommodate critical safety, dispatch and training functions while providing passengers seeking to purchase passes and fare cards with a modern facility that complies with the Americans with Disabilities Act. | 4,300,000 | Highly Recommended. |
| LA | New Orleans Regional Transit Authority (RTA). | D2020–BUSC–036 | The New Orleans Regional Transit Authority (RTA) will receive funding to purchase biodiesel buses to replace buses that RTA purchased after Hurricane Katrina destroyed the authority's bus fleet in 2005. Those buses have reached the end of their useful life, and new buses will allow RTA to enhance safety, improve service and reduce vehicle breakdowns. | 7,246,315 | Highly Recommended. |
| MA | Montachusett Regional Transit Authority. | D2020–BUSC–037 | The Montachusett Regional Transit Authority in north central Massachusetts will receive funding to replace buses that have exceeded their useful life. The new buses will improve safety through the installation of security cameras, boost reliability and lower maintenance costs. | 4,500,000 | Highly Recommended. |
| MD | Baltimore County, Maryland. | D2020–BUSC–038 | Baltimore County, Maryland, will receive funding to purchase new buses and new infrastructure for the proposed Towson Circulator project. This project will improve access and mobility for the transit riding public through the creation of a new transit service. | 1,651,720 | Highly Recommended. |
| MD | Maryland Transit Administration (MTA) on behalf of Delmarva Community Services. | D2020–BUSC–039 | Delmarva Community Services will receive funding to purchase new vehicles and support infrastructure. This project will improve safety, state of good repair and enhance mobility for riders in Kent, Caroline, Talbot and Dorchester Counties. | 248,000 | Recommended. |
| MD | Maryland Transit Administration (MTA) on behalf of St. Mary's Transit System. | D2020–BUSC–040 | The St. Mary's Transit System, which provides service in St. Mary's County, Maryland, will receive funding to expand its vehicle maintenance facility for its bus fleet. | 76,500 | Recommended. |
| MD | Maryland Transit Administration (MTA) on behalf of Tri-County Council for the Lower Eastern Shore of Maryland (Shore Transit). | D2020–BUSC–041 | The Tri-County Council for the Lower Eastern Shore of Maryland (Shore Transit) will receive funding to purchase new vehicles to replace older vehicles that have exceeded their useful life. This project will improve safety, state of good repair and service reliability for riders in Maryland's lower eastern shore counties of Somerset, Wicomico, and Worcester. | 850,000 | Highly Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| ME | Biddeford-Saco-Old Orchard Beach Transit Committee. | D2020–BUSC–042 | The Biddeford-Saco-Old Orchard Beach Transit Committee, operating four bus routes and six seasonal trolley routes near Portland, Maine, will receive funding to replace buses that have exceeded their useful life. The replacement vehicles will improve safety, reduce maintenance costs and improve reliability. | 880,000 | Highly Recommended. |
| ME | City of Bangor | D2020–BUSC–043 | The City of Bangor will receive funding for construction of a new Bangor Transportation Center to replace an aging bus depot that has exceeded its useful life. The new transportation center will boost ridership and serve as a multi-modal facility for the City's Community Connector fixed route, shared ride services, intercity buses and other active transit. | 1,286,000 | Highly Recommended. |
| ME | Maine Department of Transportation. | D2020–BUSC–044 | The Maine Department of Transportation will receive funding to replace buses for three regional transit providers spanning eight Maine counties. The new buses will improve the fleets' state of good repair, reduce maintenance costs and improve the passenger experience. | 1,057,567 | Highly Recommended. |
| MI | City of Detroit Department of Transportation (DDOT). | D2020–BUSC–045 | The City of Detroit Department of Transportation (DDOT) will receive funding to purchase new fareboxes to modernize its fare collection system. The new fareboxes will reduce the frequency and cost of repairs, improve boarding times and schedule adherence, and expand fare payment options for passengers. | 8,494,812 | Highly Recommended. |
| MI | Flint Mass Transportation Authority (MTA). | D2020–BUSC–046 | The Flint Mass Transportation Authority (MTA) will receive funding to purchase propane transit buses and CNG commuter buses to replace diesel buses that have exceeded their useful life. The new buses will allow MTA to improve safety, efficiency and service reliability, especially on MTA's peak hour and regional routes that transport passengers to work and school. | 4,300,000 | Highly Recommended. |
| MN | Red Lake Band of Chippewa Indians. | D2020–BUSC–047 | The Red Lake Band of Chippewa Indians will receive funding so that Red Lake Public Transit can purchase new buses and equipment, allowing it to expand its bus fleet to accommodate growing ridership. Red Lake Public Transit provides on-demand bus service on the Red Lake Indian Reservation, which is located in a rural area of northwest Minnesota. | 211,944 | Recommended. |
| MO | Bi-State Development Agency. | D2020–BUSC–048 | The Bi-State Development Agency of St. Louis will receive funding to transform bus stops into mobility hubs to improve safety and create a more welcoming experience for riders. The hubs will improve accessibility and include amenities such as benches, lighting and community information, at key transit transfer points. | 350,000 | Highly Recommended. |
| MO | Missouri Department of Transportation. | D2020–BUSC–049 | The Missouri Department of Transportation will receive funding to construct two storage and maintenance facilities for rural transit providers. The facilities will save operational costs compared to using contract services, add efficiencies and help keep transit buses in a state of good repair. | 5,120,000 | Highly Recommended. |
| MS | Coast Transit Authority | D2020–BUSC–050 | Coast Transit Authority will receive funding to construct a bridge structure between the Gulfport Transit Center and the Jones Park Bus Station in Gulfport, MS. This project will provide pedestrian safety and improved mobility between these two locations. | 5,351,155 | Highly Recommended. |
| MS | Mississippi Department of Transportation. | D2020–BUSC–051 | The Mississippi Department of Transportation will receive funding to purchase new buses. This project will support service expansion throughout the state and help meet the needs of Mississippi residents who rely on transportation services to get to employment opportunities and an increasing demand for health care destinations. | 5,680,000 | Highly Recommended. |
| MT | City of Billings Metropolitan Transit System. | D2020–BUSC–052 | The City of Billings Metropolitan Transit System will receive funding to replace buses that have exceeded their useful life. The buses will help the agency increase safety, maintain its bus fleet in a state of good repair and ensure safe and reliable service to the residents of Billings, Montana's largest city. | 840,000 | Highly Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| MT | Montana Department of Transportation (North Central Montana Transit). | D2020–BUSC–053 | The Montana Department of Transportation will receive funding on behalf of North Central Montana Transit to replace buses that have exceeded their useful life and purchase the bus maintenance facility it has been renting. The agency, which provides service to two tribal governments—Chippewa Cree Tribe of the Rocky Boy's Reservation and the Fort Belknap Indian Community Council—in north central Montana, provides trips to healthcare, grocery stores and tribal colleges. | 510,088 | Highly Recommended. |
| NC | City of Salisbury | D2020–BUSC–054 | The City of Salisbury, on behalf of the Salisbury Transit System, will receive funding to purchase new vehicles to replace older vehicles that have exceeded their useful life, and purchase bus equipment. This project will improve safety and state of good repair with new buses that will be more reliable and reduce maintenance costs. | 480,000 | Highly Recommended. |
| NC | North Carolina Department of Transportation. | D2020–BUSC–055 | The North Carolina Department of Transportation, on behalf of several rural transit systems, will receive funding to replace vehicles, as well as construct and renovate public transportation facilities throughout the state. These projects will address safety, state of good repair and critical transit needs throughout the state. | 17,275,000 | Highly Recommended. |
| NC | Piedmont Authority for Regional Transportation. | D2020–BUSC–056 | The Piedmont Authority for Regional Transportation will receive funding to purchase new vehicles to replace older vehicles that have exceeded their useful life. The new vehicles will increase reliability and safety for passengers in Burlington, Greensboro, High Point and Winston-Salem, NC. | 6,768,000 | Highly Recommended. |
| NE | Transit Authority of the City of Omaha. | D2020–BUSC–057 | The Transit Authority of the City of Omaha will receive funding to replace buses that have exceeded their useful life. The buses will help improve reliability and help maintain the 98-vehicle fleet in a state of good repair. | 4,709,375 | Highly Recommended. |
| NJ | New Jersey Transit | D2020–BUSC–058 | New Jersey Transit (NJT) will receive funding to purchase new 60-foot buses to help expand capacity in Northern New Jersey. The project will allow NJT to meet growing demand for its services. | 17,275,000 | Highly Recommended. |
| NM | New Mexico Department of Transportation. | D2020–BUSC–059 | The New Mexico Department of Transportation (NMDOT) will receive funding to enable the North Central Regional Transit District (NCRTD) to design and construct a new operations and maintenance facility in Taos. The new facility will feature more space and house more functions than the current facility, allowing NCRTD to more efficiently maintain its buses and improve service reliability. | 5,251,090 | Highly Recommended. |
| NM | Rio Metro Regional Transit District (RMRTD). | D2020–BUSC–060 | The Rio Metro Regional Transit District (RMRTD), which provides bus service in central New Mexico, will receive funding to construct a new bus administration and operations facility in Los Lunas, New Mexico. The new facility will enable RMRTD to consolidate its administrative and operations functions, increasing safety and security for staff and improving operational efficiency. | 5,984,955 | Highly Recommended. |
| NV | Carson Area Metropolitan Planning Organization (CAMPO). | D2020–BUSC–061 | Carson Area Metropolitan Planning Organization (CAMPO) will receive funding to purchase new buses and replace aging vehicles that have exceeded their useful life. The new buses will improve transit service and reliability for the Jump Around Carson (JAC) transit system, the largest transit provider in Carson City, Nevada. | 455,000 | Highly Recommended. |
| NV | Fallon Paiute-Shoshone Tribe of the Fallon Reservation and Indian Colony. | D2020–BUSC–062 | The Fallon Paiute-Shoshone Tribe of the Fallon Reservation and Indian Colony will receive funding to purchase a new passenger bus equipped with a camera and fare box. It will also purchase a camera and fare box for their current transit bus. The project will improve transit service for people living within the boundaries of the reservation and Indian colony, located in rural Churchill County, Nevada. | 59,525 | Highly Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| NV | Regional Transportation Commission of Southern Nevada (RTC). | D2020–BUSC–063 | The Regional Transportation Commission of Southern Nevada (RTC), which provides transit service in Las Vegas and southern Nevada, will receive funding to replace camera systems on fixed route, paratransit and alternative transportation vehicles to improve safety and operating efficiencies. RTC also will receive funding to install a new paratransit bus wash and upgrade the existing fixed route bus wash system at its Sunset Maintenance Facility, which will also improve maintenance and operations. | 7,475,000 | Highly Recommended. |
| NY | Nassau County (Nassau Inter-County Express). | D2020–BUSC–064 | The Nassau Inter-County Express (NICE) will receive funding to provide safety, infrastructure and passenger upgrades to its intermodal transit facility in Hempstead, New York. This project will improve safety and state of good repair for transit riders utilizing the intermodal facility. | 2,000,000 | Highly Recommended. |
| NY | New York City Department of Transportation. | D2020–BUSC–065 | The New York City Department of Transportation will receive funding for the Safe Routes to Transit project to make infrastructure, pedestrian safety and accessibility improvements for transit riders along 86th Street in Brooklyn. This project will improve safety and state of good repair for the transit public utilizing bus service in this section of Brooklyn, NY. | 9,000,000 | Highly Recommended. |
| OH | Greater Dayton Regional Transit Authority. | D2020–BUSC–066 | The Greater Dayton Regional Transit Authority (RTA) will receive funding to purchase new buses to replace buses that have exceeded their useful life. The new buses will be more reliable than the current buses, allowing the transit authority to reduce maintenance costs, and improve service reliability and on-time performance. | 2,971,592 | Highly Recommended. |
| OH | Laketran | D2020–BUSC–067 | Laketran in Northeast Ohio will receive funding to purchase battery electric buses and equipment as well as to reconstruct a park and ride facility. The funding will allow Laketran to replace diesel buses that have exceeded their useful life and rehabilitate the park and ride facility to accommodate electric buses and improve access and facilities for passengers. | 4,300,000 | Highly Recommended. |
| OH | Western Reserve Transit Authority. | D2020–BUSC–068 | Western Reserve Transit Authority will receive funding to upgrade its maintenance bays for repairing vehicles and updating the parts storage room. The upgrades will help improve safety and transit service for residents in the City of Youngstown and Mahoning County. | 600,104 | Highly Recommended. |
| OK | Choctaw Nation of Oklahoma. | D2020–BUSC–069 | The Choctaw Nation of Oklahoma will receive funding to purchase vans to replace vehicles that have exceeded their useful life and expand the free transit service it provides to elderly, disabled and low income residents of rural southeastern Oklahoma. The new vehicles will improve mobility and access to healthcare for riders who need transportation to non-emergency medical treatment such as chemotherapy and dialysis. | 1,378,403 | Highly Recommended. |
| OK | Oklahoma Department of Transportation (ODOT). | D2020–BUSC–070 | The Oklahoma Department of Transportation will receive funding to purchase new buses and vans to expand rural service and replace vehicles that have exceeded their useful life. The new vehicles will allow rural transit providers in the state to reduce maintenance costs, improve safety and meet rising demand for transit service. | 4,020,576 | Highly Recommended. |
| OK | Oklahoma Department of Transportation (ODOT). | D2020–BUSC–071 | The Oklahoma Department of Transportation will receive funding on behalf of rural transit providers in the state to rehabilitate and expand operations and maintenance facilities. The improved facilities will allow the transit providers to enhance safety, maintain vehicles in a state of good repair and improve service for riders. | 129,240 | Recommended. |
| OR | Oregon Department of Transportation (City of Woodburn). | D2020–BUSC–072 | The Oregon Department of Transportation (ODOT) will receive funding on behalf of the City of Woodburn to replace the oldest bus in the city's fleet with a new heavy-duty transit bus, significantly reducing transit repair and maintenance costs. The new bus will improve access, mobility and transit service for riders who use the service in Woodburn. | 300,000 | Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| OR | Oregon Department of Transportation (Mid-Columbia Economic Development District). | D2020–BUSC–073 | The Oregon Department of Transportation (ODOT) will receive funding on behalf of the Mid-Columbia Economic Development District to replace LINK buses that have exceeded their useful life. The new LINK buses will improve access, mobility and transit service for riders who use the service in Wasco County. | 150,126 | Recommended. |
| OR | Oregon Department of Transportation (Yamhill County Transit). | D2020–BUSC–074 | The Oregon Department of Transportation (ODOT) will receive funding on behalf of Yamhill County Transit to replace several buses that have exceeded their useful life. The new buses will improve access, mobility and transit service for riders who use the service in northern Oregon. | 999,968 | Highly Recommended. |
| OR | Oregon Department of Transportation. | D2020–BUSC–075 | The Oregon Department of Transportation (ODOT) will receive funding to purchase a new bus for a new rural public transportation bus route between the communities of Eugene and Florence, Oregon. The route will link the valley with the coast and provide a needed public transportation option between these two communities that are 60 miles apart. | 110,500 | Recommended. |
| OR | Salem Area Mass Transit District. | D2020–BUSC–076 | Salem Area Mass Transit District, which operates ''Cherriots'' transit service in Salem, Keizer, and the mid-Willamette Valley, will receive funding to implement Intelligent Transportation System (ITS) improvements including Transit Signal Priority technology and Real Time Passenger Information systems. In partnership with the City of Salem and the Oregon Department of Transportation, the agency will equip intersections and transit buses with GPS receivers to prioritize traffic signals to optimize efficient transit routes in congested corridors. The project will also deploy a Real Time Passenger Information system to improve transit system efficiency and the customer experience. | 1,054,240 | Highly Recommended. |
| PA | Erie Metropolitan Transit Authority. | D2020–BUSC–077 | The Erie Metropolitan Transit Authority will receive funding to replace diesel buses with compressed natural gas (CNG) buses in the City and County of Erie, Pennsylvania. The new buses will help the agency replace aging buses that have exceeded their useful life. | 2,031,580 | Highly Recommended. |
| PA | Southeastern Pennsylvania Transportation Authority (SEPTA). | D2020–BUSC–078 | The Southeastern Pennsylvania Transportation Authority (SEPTA) will receive funding to construct new bus stations to extend its Roosevelt Boulevard Direct Bus Service from Frankford Transportation Center to Wissahickon Transportation Center. This project will improve safety and state of good repair with new infrastructure and passenger amenities. | 2,000,000 | Highly Recommended. |
| RI | Rhode Island Public Transit Authority. | D2020–BUSC–079 | The Rhode Island Public Transit Authority (RIPTA) will receive funding to construct two mobility hubs with improved rider amenities at the University of Rhode Island and the Community College of Rhode Island to improve service and access to major destinations. The hubs will feature up to eight bus bays, interior waiting space and fare machines. | 8,040,000 | Highly Recommended. |
| SC | Berkeley-Charleston-Dorchester Council of Governments. | D2020–BUSC–080 | The Berkeley-Charleston-Dorchester Council of Governments will receive funding on behalf of the Charleston Area Regional Transportation Authority (CARTA) to replace older diesel buses with new, all-electric vehicles and associated support infrastructure. This project will support CARTA's state of good repair needs, while reducing the agency's operating costs. | 8,321,700 | Highly Recommended. |
| SC | Greenville Transit Authority (Greenlink). | D2020–BUSC–081 | The Greenville Transit Authority (Greenlink) will receive funding to purchase new buses to help expand service. The new buses will improve transit service for residents of the Greenville and Mauldin/Simpsonville areas in South Carolina. | 2,040,000 | Highly Recommended. |
| SD | SD Department Of Transportation. | D2020–BUSC–082 | The South Dakota Department of Transportation on behalf of Community Transit will receive funding to create a call and dispatch center that centralizes the communications activities of five transit agencies under one umbrella in Watertown. The remodeled facility and enhanced technology will increase communication, safety and reliability for Community Transit and partner agencies in eastern South Dakota. | 68,402 | Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| TN | Tennessee Department of Transportation, Division of Multimodal Transportation Resources. | D2020–BUSC–083 | The Tennessee DOT Division of Multimodal Transportation Resources will receive funding on behalf of rural and urban transit agencies to purchase new vehicles and specialized vehicles to replace older vehicles that have exceeded their useful life. This will ensure vehicles are available for accessible transportation services throughout the state. | 16,228,197 | Recommended. |
| TX | Corpus Christi Regional Transportation Authority. | D2020–BUSC–084 | The Corpus Christi Regional Transportation Authority (CCRTA) will receive funding to rehabilitate and build bus transfer stations and reconstruct a bus maintenance facility parking lot. The projects will allow the transportation authority to improve safety for passengers and employees, comply with Americans with Disabilities Act requirements and meet the transit needs of a growing population. | 7,231,023 | Highly Recommended. |
| TX | Texas Department of Transportation. | D2020–BUSC–085 | The Texas Department of Transportation (TxDOT) will receive funding on behalf of rural transit providers throughout the state to replace transit vehicles that have exceeded their useful life. The grants also will fund new and rehabilitated maintenance and other facilities, allowing the rural transit providers to improve safety and efficiency and meet growing demand for service. | 13,815,200 | Highly Recommended. |
| UT | Utah Department of Transportation (Park City Transit). | D2020–BUSC–086 | The Utah Department of Transportation will receive funding on behalf of Park City Transit to upgrade bus communications technology. The software and hardware upgrades will replace outdated systems, including on-board driver communications, dispatch, scheduling, data storage, reporting and web servers that provide real-time bus location information. | 400,000 | Highly Recommended. |
| UT | Utah Transit Authority (UTA). | D2020–BUSC–087 | The Utah Transit Authority (UTA) will receive funding to improve more than 100 bus stops that serve riders in Salt Lake City and seven surrounding counties. The enhanced bus stops will be compliant with the Americans with Disabilities Act, improve safety and provide amenities such as shelters, benches, lighting and bike racks to improve the rider experience. | 3,220,250 | Highly Recommended. |
| WA | City of Longview | D2020–BUSC–088 | The City of Longview will receive funding to purchase new low-floor biodiesel buses to replace older buses that have exceeded their useful life. The new buses will be operated by RiverCities Transit and will improve access, mobility and transit service for residents of Kelso and Longview. | 1,560,000 | Highly Recommended. |
| WA | Intercity Transit | D2020–BUSC–089 | Intercity Transit, which serves Washington State's capital city, Olympia, and neighboring cities will receive funding to complete a bus yard expansion and install its own propane fueling station to support increased transit service. This project is the last element of Intercity Transit's Pattison Street maintenance facility upgrade, a complete overhaul of a well-used facility and restoring it to fully serviceable conditions to support the next generation of transit services for the Thurston region. | 4,956,000 | Highly Recommended. |
| WA | Washington State Department of Transportation. | D2020–BUSC–090 | Washington State Department of Transportation (WSDOT) will receive funding for replacement and expansion vehicles and equipment for four transit agencies providing rural service in Clallam, Grant, Island and Kittitas counties. The new vehicles will improve safety, access and mobility for transit riders in rural Washington. | 3,932,622 | Highly Recommended. |
| WI | City of Janesville, WI | D2020–BUSC–091 | The City of Janesville will receive funding to purchase new low floor, accessible transit buses to replace aging buses that have exceeded their useful life. The new clean diesel buses will improve transit service and reliability for those who travel by transit throughout the city. | 800,000 | Highly Recommended. |
| WI | City of Madison | D2020–BUSC–092 | The City of Madison will receive funding to purchase several local buildings to use for bus storage and maintenance. The project will relieve crowding at the city's current storage and maintenance facility, allow for future fleet and service expansions and enable the city to meet growing demand for transit. | 7,000,000 | Highly Recommended. |

TABLE 1—FY 2019 GRANTS FOR BUSES AND BUS FACILITIES COMPETITION PROJECT SELECTIONS—Continued

| State | Applicant | Project ID | Project description | Funded amount | Overall rating |
|---|---|---|---|---|---|
| WI | Wisconsin Department of Transportation. | D2020–BUSC–093 | The Wisconsin Department of Transportation (WisDOT) will receive funding to replace transit vehicles that have exceeded their useful life. The new vehicles will allow rural transit providers in the state to improve the state of good repair of their fleets, reduce operating and maintenance expenses, enhance safety and increase service reliability. | 838,400 | Highly Recommended. |
| WV | Eastern Panhandle Transit Authority (EPTA). | D2020–BUSC–094/ D2020–BUSC–095. | The Eastern Panhandle Transit Authority (EPTA) will receive funding to design and construct a new maintenance facility that will replace an older facility. The new facility will help improve transit service throughout Berkeley and Jefferson Counties. | 6,080,000 | Highly Recommended. |
| Total | | | | 423,329,839 | |

[FR Doc 2020–04168 Filed 2–28–20; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Family, Caregiver, and Survivor Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory

Committee Act (FACA) that the Veterans' Family, Caregiver, and Survivor Advisory Committee will meet on March 25–26, 2020. The meeting will be held at the American Red Cross, 430 17th Street NW, Washington, DC 20006. The meeting sessions will begin and end as follows:

| Date: | Time: |
|---|---|
| March 25, 2020 .. | 9 a.m. to 4:30 p.m. EST. |
| March 26, 2020 .. | 9 a.m. to 2:00 p.m. EST. |

The meetings are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters related to: The need of Veterans' families, caregivers, and survivors across all generations, relationships, and Veterans status; the use of VA care, benefits and memorial services by Veterans' families, caregivers, and survivors, and opportunities for improvements to the experience using such services; VA policies, regulations, and administrative requirements related to the transition of Servicemembers from the Department of Defense (DoD) to enrollment in VA that impact Veterans' families, caregivers, and survivors; and factors that influence access to, quality of, and accountability for services, benefits and memorial services for Veterans' families, caregivers, and survivors.

On March 25 and March 26, the agenda will include opening remarks from the Committee Chair and the Chief Veterans Experience Officer. There will be updates on the Center of Excellence for Veteran and Caregiver Research, Program of Comprehensive Assistance for Family Caregivers, and caregiver research conducted by the Elizabeth Dole Foundation. On March 25, 2019, public comments will be received at 3:30 p.m. to 4:30 p.m.

Individuals wishing to speak should contact Ms. Toni Bush Neal (Alternate Designated Federal Official) at *VEOFACA@va.gov* to submit a 1–2 page summary of their comments for inclusion in the official meeting record. In accordance with FACA guidelines, each speaker will be held to a 5-minute time limit.

Members of the public interested in attending should submit their name to *VEOFACA@va.gov* by March 20, 2020 to help expedite the sign-in process. To prevent delays, members of the public should allow an additional 30 minutes for parking and access to the facility. Any member of the public seeking additional information should contact Betty Moseley Brown (Designated Federal Official) at *Betty.MoseleyBrown@va.gov* or (210) 392–2505.

Dated: February 26, 2020.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2020–04240 Filed 2–28–20; 8:45 am]

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# FEDERAL REGISTER

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Part II

## Federal Reserve System

12 CFR Parts 225 and 238
Control and Divestiture Proceedings; Final Rule

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 225 and 238**

**[Regulations Y and LL; Docket No. R–1662]**

**RIN 7100–AF 49**

## Control and Divestiture Proceedings

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

**ACTION:** Final rule.

**SUMMARY:** The Board is adopting a final rule to revise the Board's regulations related to determinations of whether a company has the ability to exercise a controlling influence over another company for purposes of the Bank Holding Company Act or the Home Owners' Loan Act. The final rule expands the number of presumptions for use in such determinations. By codifying the presumptions in the Board's Regulation Y and Regulation LL, the Board's rules will provide substantial additional transparency on the types of relationships that the Board generally views as supporting a determination that one company controls another company. The final rule is largely consistent with the proposal and includes certain targeted adjustments to the Board's historical practice, as described in detail in the **SUPPLEMENTARY INFORMATION**.

**DATES:** The final rule is effective on April 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Laurie Schaffer, Deputy General Counsel, (202) 452–2272, Alison Thro, Deputy Associate General Counsel, (202) 452–3236, Mark Buresh, Senior Counsel, (202) 452–5270, Greg Frischmann, Senior Counsel, (202) 452–2803, or Brian Phillips, Senior Attorney, (202) 452–3321, Legal Division; Melissa Clark, Lead Financial Institution Policy Analyst, (202) 452–2277, or Sheryl Hudson, Lead Financial Institution Policy Analyst, (202) 912–7839, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

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## I. Background and Summary of the Proposal

In May 2019, the Board issued a proposal seeking comment on revisions to its rules regarding the definition of control in the Bank Holding Company Act (''BHC Act''),[1] and the Home Owners' Loan Act (''HOLA'').[2] The proposal was published in the **Federal Register** on May 14, 2019, and the period for public comment ended on July 15, 2019.[3] The proposal was intended to provide bank holding companies, savings and loan holding companies, depository institutions, investors, and the public with a better understanding of the facts and circumstances that the Board considers most relevant when assessing control and thereby increase transparency around the Board's views on control under the BHC Act and HOLA.

Under the BHC Act, control is defined by a three-pronged test: A company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors or trustees of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.[4] HOLA includes a substantially similar definition of control.[5] While the first two prongs of the definition of control are easily understood bright-line standards, the third prong of the definition of control requires a facts and circumstances determination by the Board. As a result, it is often difficult for an investor that does not meet either of the first two prongs of the definition of control to determine whether it will be considered controlling or noncontrolling by the Board under the third prong.

In practice, large minority investors often seek to protect or enhance their investments through multiple forms of engagement with the target company that provide the investor with an opportunity to monitor and influence the target company. This situation in particular frequently has raised questions regarding whether the investor will be able to exercise a controlling influence over the management or policies of the target company when the investment and all other aspects of the relationship are considered in the aggregate. These issues arise for both companies seeking to invest in banking organizations and banking organizations seeking to make investments in other companies.

Under the statutory framework, the determination of whether a company has the ability to exercise a controlling influence over another company is a factual determination. The Board's experience has shown that the variety of equity investments, negotiated investment terms, and business and other arrangements between companies makes it difficult to prescribe a set of rigid rules that determine whether one company exercises a controlling influence over another company in all situations. As a result, Board determinations regarding the presence or absence of a controlling influence have taken into account the specific facts and circumstances of each case.[6] Nonetheless, the Board has developed over time a number of factors and thresholds that the Board believes generally are indicative of the ability or inability of a company to exercise a controlling influence over another company.

The Board believes that the final rule, which is largely consistent with the proposal, will increase the transparency and consistency of the Board's control framework. As a result, the final rule should help to facilitate permissible investments in banking organizations and by banking organizations.

[1] 12 U.S.C. 1841 *et seq.*

[2] 12 U.S.C. 1461 *et seq.*

[3] 84 FR 21634 (May 14, 2019).

[4] 12 U.S.C. 1841(a)(2); 12 CFR 225.2(e).

[5] *See* 12 U.S.C. 1467a(a)(2); 12 CFR 238.2(e).

[6] *See* 12 CFR 225.143; Policy Statement on equity investments in banks and bank holding companies (September 22, 2008), *www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm.*

The final rule includes certain targeted adjustments relative to historical practice that the Board believes are appropriate based on its experience over the past few decades. The specific provisions of the final rule, including the targeted adjustments, are described in detail in this preamble.

*A. Description of ''Control'' Under the Bank Holding Company Act*

Control is a foundational concept under the BHC Act and related statutes.[7] Most notably, control is used to determine the scope of application of the BHC Act because a company is defined to be a bank holding company if the company directly or indirectly controls a bank or bank holding company.[8] Accordingly, a company that controls a bank or bank holding company is subject to the Board's regulations and supervisory oversight, which includes examinations,[9] regular financial reporting,[10] capital and liquidity requirements,[11] source of strength obligations,[12] activities restrictions,[13] and restrictions on affiliate transactions.[14]

In assessing control, the Board historically has focused on two key purposes of the BHC Act to guide its understanding of the meaning of control and controlling influence. First, the BHC Act was intended to ensure that companies that acquire control of banks have the financial strength and managerial ability to exercise control in a safe and sound manner. Second, the BHC Act was intended to separate banking from commerce by preventing companies with commercial interests from exercising control over banking organizations and by restricting the nonbanking activities of banking organizations.[15]

Congress enacted the BHC Act in 1956. In the original BHC Act, Congress defined ''bank holding company'' to mean any company that (1) ''directly or indirectly owns, controls, or holds with power to vote, 25 per centum or more of the voting shares of each of two or more banks or of a company which is or becomes a bank holding company by virtue of this Act, or (2) which controls in any manner the election of a majority of the directors of each of two or more banks.'' [16]

In 1970, Congress made significant amendments to the BHC Act, including revisions to the definition of control. Specifically, Congress added to the existing two prongs of the definition of control a new third prong. This third prong provided that a company has control over a bank or other company if the ''Board determines after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.'' [17] Congress added the controlling influence prong to address concerns that a company could structure an investment in a bank below the two bright-line thresholds of control while still having the ''power directly or indirectly to direct or cause the direction of the management or policies of any bank.'' [18]

*B. Summary of the Board's Historical Interpretation of ''Control'' Under the Bank Holding Company Act*

Since the 1970 amendments to the BHC Act, the Board has had numerous occasions to interpret and apply the controlling influence prong of the BHC Act. The Board historically has interpreted controlling influence not to require that an investor is able to exercise complete domination or absolute control over all aspects of the management and policies of a company. Instead, the Board has found that a controlling influence is possible at lower levels of influence, including where a company is not able to determine the outcome of a significant matter under consideration.[19] In other words, control requires only ''the mere potential for manipulation of a bank.'' [20]

In assessing the controlling influence prong, the Board has considered a number of factors, including the size of a company's voting and total equity investment in the other company; the presence of countervailing shareholders of the other company; a company's representation on the board of directors or board committees of the other company; covenants or other agreements that allow a company to influence or restrict the management decisions of the other company; and the nature and scope of the business relationships between the companies.[21] The Board's regulations include procedures for determining controlling influence, as well as certain standards for identifying controlling influence. The Board also has issued guidance documents related to control on several occasions. For example, the Board issued a limited set of regulatory presumptions of control for use in control proceedings in 1971 and updated these presumptions in 1984.[22] In addition, the Board issued policy statements regarding the controlling influence prong of the BHC Act in 1982 and 2008.[23]

*C. Summary of the Proposal*

The proposal established tiered presumptions of control in the Board's regulations. The proposal also provided several additional presumptions of control and noncontrol, along with

[7] The following discussion is limited to the BHC Act because much of the Board's experience with control has arisen in the context of the BHC Act, rather than HOLA. The final rule generally applies the same standards in the context of the BHC Act and HOLA, though the final rule is different in each context where appropriate to recognize the limited differences between the BHC Act and HOLA with respect to the definition of control.

[8] 12 U.S.C. 1841(a)(1).

[9] 12 U.S.C. 1844(c); 12 CFR 225.5(c).

[10] 12 U.S.C. 1844(c); 12 CFR 225.5(b).

[11] *See, e.g.,* 12 CFR part 217; 12 CFR 225 app. C; 12 CFR part 249.

[12] 12 U.S.C. 1831*o*–1.

[13] 12 U.S.C. 1843; 12 CFR 225 subpart C.

[14] 12 U.S.C. 371c and 371c–1; 12 CFR part 223.

[15] *Bank Holding Company Act Amendments: Hearing on H.R. 6778 Before H. Comm. on Banking & Currency,* 91st Cong. 85 (1969).

[16] Bank Holding Company Act of 1956, Public law 84–511, 70 Stat. 133 (May 9, 1956). The original BHC Act also defined ''bank holding company'' to include a company that holds 25 percent or more of the voting securities of two or more banks or bank holding companies, if such securities are held by trustees for the benefit of the shareholders or members of the company. This prong of control was repealed in 1966. *See* An Act to Amend the Bank Holding Company Act of 1956, Public Law 89–485, 80 Stat. 236 (July 1, 1966).

[17] An Act to Amend the Bank Holding Company Act of 1956, Public Law 91–607, 84 Stat. 1760, 1761 (December 31, 1970). HOLA, originally enacted in 1933, contains substantially similar language for its definition of control. As a corollary to the third prong in the BHC Act, HOLA's definition of control of a savings association or other company includes ''if the Board determines after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.'' 12 U.S.C. 1467a(a)(2)(D).

[18] *Bank Holding Company Act Amendments: Hearing on H.R. 6778 Before H. Comm. on Banking & Currency,* 91st Cong. 87 (1969).

[19] *Patagonia Corp.,* 63 *Federal Reserve Bulletin* 288 (1977) (citing *Detroit Edison Co.* v. *SEC,* 119 F.2d 738, 739 (6th Cir. 1941) (interpreting ''controlling influence'' in the Public Utility Holding Company Act, which has a nearly identical definition of control as in the BHC Act, to not ''necessarily [require] those exercising a controlling influence [to] be able to carry their point.'' Rather a controlling influence can be effective ''without accomplishing the purpose fully'')).

[20] *Interamericas Investments, Ltd.* v. *Bd. of Governors of the Fed. Reserve Sys.,* 111 F.3d 376, 383 (5th Cir. 1997).

[21] A relationship between two companies may raise supervisory or other concerns whether or not the relationship raises controlling influence concerns.

[22] 36 FR 18945 (Sept. 24, 1971); 49 FR 794, 817, 828–29 (Jan. 5, 1984).

[23] *See* 68 Federal Reserve Bulletin 413 (July 1982) (codified at 12 CFR 225.143); Policy Statement on equity investments in banks and bank holding companies (September 22, 2008). The Board has issued two additional policy statements that are also relevant to the meaning of control and controlling influence: ''Statement of policy concerning divestitures by bank holding companies'' (12 CFR 225.138) and ''Presumption of continued control under section 2(g)(3) of the Bank Holding Company Act'' (12 CFR 225.139). These policy statements remain in effect to the extent not superseded by the final rule.

various ancillary provisions such as definitions of terms used in the proposed presumptions.

As noted, the BHC Act and HOLA provide that control due to controlling influence arises once the Board determines, based on the facts presented and after notice and opportunity for a hearing, that a company controls another company. The proposal established presumptions intended to assist the Board in conducting such a hearing or other proceeding and to provide additional information to the public regarding the circumstances in which the Board believes that controlling influence is likely to exist.[24]

The proposal—like this final rule—related solely to the issue of whether an investment, alone or in combination with other relationships, raises control concerns. The Board may have safety and soundness or other concerns arising out of either controlling or noncontrolling relationships of a banking organization. Thus, that an investment is not presumed to be controlling does not mean that the investment and all other aspects of a relationship are necessarily consistent with safe and sound banking practices or other expectations or requirements of the Board.[25] The Board retains the right to review investments involving banking organizations under its jurisdiction for potential safety and soundness or other concerns.

*D. Summary of Comments Received on the Proposal*

General Comments

Many commenters were supportive of the Board's overall efforts to bring increased transparency, clarity, and consistency to the Board's views regarding controlling influence. Some commenters noted that the additional clarity provided by the proposal would improve the speed with which banking institutions can raise capital.

Certain commenters argued that the Board's presumptions of control presumed control at levels too low to be supported by the underlying statutes.[26] Several of these commenters contended that Congress intended the controlling influence prong of the BHC Act to cover only situations with higher levels of influence than the Board has traditionally considered controlling, which some commenters referred to as situations of ''actual control.'' Many commenters who supported higher thresholds for the presumptions of control argued that unduly low thresholds would inhibit investments into and by banking organizations and, in particular, would inhibit investments by banking organizations into start-up technology companies. These commenters generally argued that there was no public benefit to limiting such investments and that there could be a negative impact on the economy. At least one commenter also suggested that a higher threshold for control would be appropriate in order to mitigate the extraterritorial application of the BHC Act on the foreign operations of foreign firms.

In support of a higher threshold for control, several commenters suggested that the Board look to its treatment of merchant banking investments, as well as the definition of banking entity under the Volcker Rule. These commenters argued that the Board had established looser definitions of control in these areas that should be applied to control more generally. Other commenters argued that the Board should separate control in general under the BHC Act from the definition of banking entity under the Volcker Rule. In addition, certain commenters provided suggestions for revising the Board's rules related to merchant banking to separate merchant banking from questions of control.

A few commenters objected to the proposal on the basis that the Board's current standards and processes around controlling influence have functioned well. Such commenters asserted that the proposal may have various negative effects by weakening the existing framework. Several commenters objected to the elements of the proposal that they viewed as raising the threshold for control for several reasons, including concern that the proposal could lead to greater concentration in the banking industry or to greater concentration in the shareholder base of the banking industry. At least one commenter expressed concern that the proposal might allow companies to have greater influence over banking organizations without being subject to the bank regulatory framework and noted that retaining discretion to review each case on the facts and circumstances presented was necessary to address the wide variety of potential relationships among companies. At least one commenter stated that the Board should consider the economic and competitive impact of these types of increased consolidation and should update its analysis of competitive issues more generally. At least one commenter also stated that the Board should carefully consider the impact of the control proposal on smaller banking organizations and the ability of banking organizations to sponsor and advise investment funds.

The Board believes that the proposal reflected an appropriate interpretation of the controlling influence prong of the BHC Act and generally conformed to historical Board practice implementing and interpreting the statute. The Board's historical practice is consistent with the underlying statutes, the legislative history, and relevant case law. The Board has made several changes in the final rule compared to the proposal, as described in more detail in the applicable sections of this preamble, but the Board is issuing the final rule in a form substantially consistent with the proposal. As indicated in the proposal, the final rule contains certain targeted adjustments from current practice in light of the Board's experience administering the statute. These changes are generally technical in nature rather than fundamental changes to the Board's substantive standards for controlling influence. As the final rule is generally consistent with current practice, significant changes in outcomes are not anticipated and, therefore, no major impact on the banking industry is expected. Importantly, the final rule significantly improves the transparency and predictability around questions of controlling influence.

Some commenters expressed concern that certain of the presumptions could have extraterritorial reach by attributing control over companies outside the United States, especially by foreign banking organization. Commenters recommended that the Board clarify that lawful home country activities and relationships currently in existence should not be upset by the proposal. A few commenters argued for different control standards for qualifying foreign banking organizations, or for foreign companies more generally. At least one commenter argued that the Board's rules should take foreign control standards

[24] Under the final rule, the Board retains the ability to find a controlling influence based on the facts and circumstances presented by a particular case. However, the Board generally does not expect to find that a company controls another company unless the first company triggers a regulatory presumption of control with respect to the second company.

[25] For example, contractual covenants and business relationships between a banking organization and a company may raise safety and soundness or other concerns whether or not the relationship raises control concerns. In particular, a contractual provision may not allow a company to restrict substantially the discretion of a banking organization, but may impose financial obligations on the banking organization that are inconsistent with safe and sound operation of the banking organization.

[26] Specific suggestions from commenters are described in the appropriate sections of this preamble on specific presumptions.

into account when considering relationships involving foreign entities or that the Board should revise its control standards to not apply to relationships that are wholly outside the United States.

The statutory framework for control does not contemplate different definitions of control for companies in different jurisdictions. For this reason, neither the proposal nor the Board's historical practice contains such distinctions. The final rule is consistent with the proposal in this regard. As noted, the final rule is generally consistent with the Board's current practice and, as a result, the final rule is not expected to result in substantially different outcomes for questions of controlling influence involving foreign companies.

Comments on Scope of Application

Some commenters suggested that the final rule should make it clear that an investment that does not trigger a presumption of control and is less than 5 percent of any class of voting securities should be considered passive for purposes of section 4(c)(6) of the BHC Act. The final rule is intended to apply to questions of control under the BHC Act and HOLA. As a result, the control framework in the final rule applies for purposes of section 4(c)(6) and, in particular, the Board's interpretation of section 4(c)(6) located in section 225.137 of the Board's Regulation Y.[27]

Comments on Interaction With Other Regulations

Several commenters suggested that the Board apply the proposed control standards to control under the Change in Bank Control Act (''CIBCA'').[28] Several commenters also recommended that the Board apply the proposed control standards to the Board's Regulation O and Regulation W.[29] Commenters suggested that applying the control standards in the proposal to these other contexts would improve the simplicity and efficiency of the Board's regulations by establishing a uniform, trans-regulatory concept of control. Some commenters noted that, in certain cases, this could result in a more permissive control standard than currently applies under CIBCA, Regulation O, and Regulation W.

A few commenters also argued that the threshold for filing a notice under CIBCA was too low and that the Board should streamline the CIBCA notice process—in coordination with the FDIC and OCC—to reduce the burden of CIBCA filings. These commenters asserted that the existing CIBCA regulations restricted investment into banking organizations and therefore recommended that the Board revise its regulations to reduce the number of filings and the information required in a filing. Specific recommendations for reduced burden included creating a process for investors to rebut the 10 percent presumption of control under the CIBCA regulations, reducing the required content of a CIBCA notice, and increasing reliance on public information such as public filings with the Securities and Exchange Commission (''SEC''). At least one commenter stated that the Board should reduce the scope of CIBCA filing requirements to remove or limit, for example, CIBCA filing requirements for investments in predominantly non-financial grandfathered savings and loan holding companies.

Other commenters argued against applying the proposed control framework to contexts other than control under the BHC Act and HOLA. These commenters noted that the control concept under the BHC Act and HOLA serves a different purpose than under CIBCA, Regulation O, and Regulation W. For example, control under CIBCA requires filing a one-time notice, while control under the BHC Act results in a permanent regulatory status that comes with activity restrictions, prudential regulation, approval requirements for major transactions, periodic examinations, and reporting requirements. Some commenters also encouraged the Board to provide additional clarity about the operation of the presumptions of control under the regulations implementing CIBCA.

The final rule applies to questions of control under the BHC Act and HOLA; it does not extend to CIBCA, Regulation O, and Regulation W. The Board may in the future consider conforming revisions to other elements of its regulatory framework, including CIBCA, Regulation O, and Regulation W. While common control standards across the Board's regulatory framework may provide efficiency benefits, each of the regulations identified by commenters arises out of different provisions of law and is intended to address different concerns in specific contexts.

Some commenters suggested that the Board provide additional guidance for investments in non-corporate entities, such as partnerships and limited liability companies. In certain sections, the proposal provided for the special characteristics of non-corporate entities. The final rule retains these provisions but does not contain further information regarding the treatment of non-corporate entities because of the wide variety of forms such entities can take. The Board generally expects to apply equivalent control standards to all types of legal entities while taking into account the unique features of different entity types.

## II. Final Rule—Presumptions of Control and Noncontrol

### *A. Control Hearings and the Role of Presumptions of Control and Noncontrol*

The BHC Act provides that control due to controlling influence arises following a Board determination that a company controls another company. The presumptions of control in the final rule are intended to assist the Board in the context of such a determination and to provide additional public information regarding the Board's views on controlling influence.

Under the final rule, the Board, in its discretion, may issue a preliminary determination of control if it appears that a company has the power to exercise a controlling influence over a bank or other company. A company that receives a preliminary determination of control must respond within 30 days with (i) a plan to terminate the control relationship; (ii) an application for the Board's approval of the control relationship; or (iii) a response contesting the preliminary determination, setting forth supporting facts and circumstances, and, if desired, requesting a hearing or other proceeding. If a company contests a preliminary determination of control and requests a hearing or other proceeding, then the Board shall order a hearing or other appropriate proceeding if material facts are in dispute. The presumptions in the final rule would apply at such a hearing or other proceeding in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings. After considering all relevant facts and circumstances, including information gathered during any hearing or other proceeding, the Board would issue a final order stating its determination on controlling influence. Under the final rule, as under the proposal, the procedures differ from the existing procedures in the Board's regulations in only two modest ways. First, the final rule clarifies that failure to respond to a preliminary determination of control from the Board would constitute waiver of the right to present additional information to the Board and waiver of the opportunity to

[27] 12 CFR 225.137.

[28] 12 U.S.C. 1817(j).

[29] 12 CFR part 215; 12 CFR part 223.

request a hearing or other proceeding. Second, the final rule contains an express requirement to submit additional information in writing in response to a preliminary determination of control.

Some commenters recommended that the Board grant additional time to respond to preliminary determinations of control. The final rule maintains the existing 30-day timeframe because 30 days should generally be sufficient time to respond to a preliminary determination of control. Thirty days is consistent with, or, in some cases, longer than, the procedural timeframes provided by the Board for similar administrative processes.[30] In addition, the final rule provides that the Board may allow for additional time in its discretion, so firms that need additional time may request additional time. The procedures for control proceedings in the final rule are consistent with the proposal.

*B. Description of the Tiered Presumptions*

As discussed, a core consideration for control established by Congress in the BHC Act is the percentage of voting securities that one company controls of a second company. Under the statute, a company that controls 25 percent or more of any class of voting securities of a second company controls the second company.[31] Similarly, under the statute, a company that controls less than 5 percent of any class of voting securities of a company is presumed not to control the second company.[32] This statutory framework leaves a space between 5 percent and 25 percent of a class of voting securities where a company does not have clear statutory control and is not presumed not to control. For companies within this range of voting securities of 5 percent to less than 25 percent voting, the Board considers the full facts and circumstances of the relationship between the two companies when determining whether the first company controls the second company, consistent with the controlling influence prong of the BHC Act.[33]

The framework established by Congress implies that a company with a level of voting securities at the higher end of the range—closer to 25 percent—is more likely to control the second company, while a company at the lower end of the range—closer to 5 percent—is less likely to control the second company. The Board's experience supports these implications. As a result, where a company's voting securities percentage falls within this range is one of the most salient considerations for determining whether the first company controls the second company.

The final rule, like the proposed rule, establishes a series of tiered presumptions of control. These presumptions are arranged in tiers based on the level of voting securities of the first company in the second company. Each of these presumptions applies where the first company has at least a specified level of voting securities in a second company, and another specified relationship with the second company. The presumptions use three thresholds for voting securities: 5 percent, 10 percent, and 15 percent.

Consistent with the proposal, many of the other control factors referenced in the final rule also vary in magnitude. For instance, business relationships between two companies can range from minimal to very significant, and more significant business relationships provide a greater means of exercising (and a greater incentive to exercise) a controlling influence than less significant business relationships. In recognition of this, the presumptions in the final rule effectively assume that higher levels of business relationships, combined with higher levels of voting securities, increase the likelihood of the ability to exercise a controlling influence.

Director Representation

The Board has long considered a company's level of representation on the board of directors of a second company as an important factor for controlling influence. The importance of director representation to controlling influence is supported by the second prong of the definition of control in the BHC Act, which provides that control over the election of a majority of the board of directors of a company constitutes control of the company. Traditionally, the board of directors of a company is the body that makes strategic decisions and establishes major policies for the company. One of the most important issues that holders of voting securities can vote on is the selection of the members of the board of directors of a company.

For a company that controls 5 percent or more of any class of voting securities of a second company, the proposal presumed control if the first company controlled a quarter or more of the board of directors of the second company. This presumption reflected the view that the combination of a material level of voting power combined with control over a quarter or more of the board of directors is generally enough to constitute a controlling influence. This element of the proposal reflected a modest liberalization of practice. Under the Board's precedents, a noncontrolling company that controlled more than 10 percent of a class of voting securities of another company often was limited to one or two director representatives at the second company (regardless of the size of the board of directors at the second company).[34]

In addition, the proposal presumed that a company that controls 5 percent or more of any class of voting securities of a second company controls the second company if the first company has director representatives that are able to make or block the making of major operational or policy decisions of the second company. This presumption was intended to address supermajority voting requirements, individual veto rights, or any similar unusual provision that would allow a minority of the board of directors of the second company to control effectively major operational or policy decisions of the second company.

Commenters generally supported the proposal to allow a company to have up to a quarter of the representatives on the board of directors of another company without triggering a presumption of control. Commenters generally also confirmed that they preferred the proposal to a standard where companies with higher levels of voting securities must have reduced levels of director representation to avoid triggering a presumption of control. The final rule is consistent with the proposal with respect to the total share of director representatives that a company may have on the board of directors of another company before triggering a presumption of control.

In addition to the share of director representatives that one company has on the board of directors of a second company, the proposed presumptions considered particular director representatives to have outsized ability to affect the decisions of the second company. For instance, the chair of the board of directors of a company is generally recognized as a leader of the company and its board of directors, and the chair may have additional powers, such as the ability to set the agenda for meetings of the board of directors. Similarly, certain committees of the board of directors may have the power to take actions that bind the company without the need for approval by the

[30] *See, e.g.,* 12 CFR part 263.

[31] 12 U.S.C. 1841(a)(2)(A).

[32] 12 U.S.C. 1841(a)(3).

[33] 12 U.S.C. 1841(a)(2)(C).

[34] Policy Statement on equity investments in banks and bank holding companies (September 22, 2008).

full board of directors. In these circumstances, such a committee is nearly equivalent to the full board of directors with respect to those decisions that it is empowered to make unilaterally.

To recognize the enhanced power wielded by directors in the positions described in the paragraph above, the proposal included a presumption of control if a company controls 15 percent or more of any class of voting securities of a second company and if any director representative of the first company also serves as the chair of the board of directors of the second company. In addition, the proposal included a presumption of control if a company controls 10 percent or more of any class of voting securities of a second company and the director representatives of the first company occupy more than a quarter of the positions on any board committee of the second company that has the power to bind the company without the need for additional action by the full board of directors.

With respect to the presumption of control for a director representative serving as chair of the board, commenters suggested that different standards should apply depending on whether the company was publically traded, on the basis that public companies are subject to heightened governance standards compared to private companies. Commenters also suggested that the Board take the presence of independent directors into account because independent directors could limit the influence of the chair of the board.

With respect to the presumption of control for director representatives serving on certain committees, commenters generally supported the distinction drawn in the proposal between committees with power to act independently and committees with only advisory powers. Some commenters suggested that the presumption of control should apply only if the director representatives occupied 50 percent or more of an independent committee. At least one commenter suggested clearly excluding advisory committees from the committee presumption.

The final rule is consistent with the proposal with respect to the presumptions of control for director representatives serving as chair of the board or serving on certain committees. Distinguishing between public and private companies, or between companies that have a high versus low proportion of independent directors, would add substantial complexity to the framework. In addition, incorporating such distinctions may increase uncertainty with respect to control because the proportion of independent directors or the public status of a company may change without action by an investor. Moreover, as noted above, the presumption of control related to director representatives occupying more than 25 percent of a committee that has the power to take action to bind the company is premised on the concern that such a committee is nearly equivalent to the full board of directors with respect to those items that the committee can act on unilaterally. As a result, the final rule retains the 25 percent committee standard contained in the proposal to correspond to the 25 percent entire-board standard for director representatives. With respect to the questions on advisory committees, the standard under the final rule is whether a committee has the ability to take action that binds the company or its subsidiaries. If an advisory committee does not have that ability, it is not a committee covered by the presumption.

The proposal also included a presumption regarding the solicitation of proxies for the election of directors, consistent with Board precedent. Under the proposal, the Board would have presumed control if a company that controls 10 percent or more of any class of voting securities of a second company solicits proxies to appoint a number of directors that equals or exceeds a quarter of the total directors on the board of directors of the second company. This 25 percent standard aligned the presumption for proxy solicitations to elect directors with the proposed presumption for having director representatives.

The Board did not receive comments specifically on the presumption of control related to the solicitation of proxies to elect directors. The final rule is consistent with the proposal with respect to this presumption of control, though the final rule has been revised slightly to describe the standard more clearly.

Business Relationships

The Board has long believed that a company's business relationships with another company provide a mechanism through which the first company could exercise a controlling influence over the second company. For example, a business relationship between an investor and another company that accounts for a substantial portion of the revenues or expenses of the investor may create a financial incentive for the investor to attempt to influence the second company. Similarly, a business relationship between an investor and another company that accounts for a substantial portion of the revenues or expenses of the second company may create a powerful lever of influence for the investor over the second company.

Under the proposal, the Board presumed control in the following circumstances:

i. If a company controls 5 percent or more of any class of voting securities of a second company and has business relationships with the second company that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the first company or the second company;

ii. If a company controls 10 percent or more of any class of voting securities of a second company and has business relationships with the second company that generate in the aggregate 5 percent or more of the total annual revenues or expenses of the first company or the second company; or

iii. If a company controls 15 percent or more of any class of voting securities of a second company and has business relationships with the second company that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the first company or the second company.

In addition, the Board has long believed that if a company is able to enter into a business relationship with a second company on terms that are not market terms, it is likely that the first company has a significant level of influence over the second company. Thus, under the proposal, the Board presumed control if a company controls 10 percent or more of any class of voting securities of a second company and has business relationships with the second company that are not on market terms.

Many commenters suggested that the Board's proposed presumptions related to business relationships used revenue and expense thresholds that were too low. These commenters suggested that, as a consequence, the presumptions would capture business relationships that generally would be too small to provide a controlling influence and that the rule could therefore unnecessarily inhibit beneficial business relationships. Similarly, some commenters argued that the business relationship presumptions had the effect of conflating influence over a business relationship with influence over the management and policies of a company. A few commenters suggested that the thresholds established in the proposal for business relationships would create particular issues for banking organizations seeking to make minority investments in smaller companies, such

as recently formed financial technology firms.

Various commenters recommended different thresholds for the control presumptions based on business relationships. For example, some commenters recommended that the Board revise the business relationship presumptions such that an investor with less than 15 percent of any class of voting securities in a second company would not be presumed to have control regardless of the size of business relationships between the companies. Similarly, a few commenters recommended that the business relationship thresholds for a presumption of control be raised substantially at different levels of voting securities. For example, at least one commenter stated that the presumptions of control should be set at 50 percent of revenues and expenses for an investor with between 5 and 10 percent of voting securities, at 33 percent of revenues and expenses for an investor between 10 and 15 percent of voting securities, and at 25 percent of revenues and expenses for an investor between 15 and 25 percent of voting securities. Some commenters also suggested applying higher thresholds in certain circumstances, such as if there were a larger shareholder or a party with a larger business relationship.

A few commenters suggested that the Board abandon quantitative metrics for business relationships and instead presume control only if a company threatens to terminate or alter business relationships with another company for the purpose of exercising a controlling influence over the second company's management or policies.

As noted, the Board historically has viewed business relationships as an important mechanism through which one company can exercise control over the management or policies of another company. The Board's longstanding view has required business relationships to be quantitatively limited and qualitatively immaterial to avoid raising control concerns. Consistent with this principle, the proposal provided several presumptions based on voting securities and business relationships. The Board views the thresholds at which the proposed business relationship presumptions of control were set to be reasonable and generally consistent with its past practice. The final rule, therefore, retains the threshold levels that were included in the proposal. Further, the final rule includes the presumption related to business relationships that are not on market terms without change from the proposal, for the reasons described above.

Some commenters argued that the Board should modify the business relationships thresholds to focus only on the revenues (not expenses) of the two companies. These commenters contended that a business relationship that is a substantial expense to one party generally does not provide that party with any additional ability to exercise control over the counterparty. While commenters acknowledged uncommon exceptions to this general standard—such as a relationship that cannot be easily replaced—commenters asked that the rule not consider expenses or only consider expenses under circumstances likely to be relevant to control. A number of commenters further argued that the presumptions should only take into account the scale of business relationships from the perspective of the second company and not the first company. Specifically, these commenters contended that the fact that a relationship was significant to a first company did not mean that it was significant to a second company and only relationships that were significant from the perspective of the second company would provide the first company with an ability to exert influence over the second company.

In response to these comments, the final rule differs from the proposal in that the final presumptions of control related to business relationships only include thresholds based on the revenues and expenses of the second company. As commenters noted, the significance of business relationships from the perspective of a first company is not necessarily indicative of the first company's ability to control a second company, even though it may provide an incentive for the first company to attempt to exercise control over the second company. A business relationship that is significant to a second company as a source of revenue or expense, however, may be leveraged by the first company to exercise influence over the second company.[35]

As a result, under the final rule, a company would be presumed to control another company when:

i. The first company controls 5 percent or more of any class of voting securities of the second company and has business relationships with the second company that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the second company;

ii. The first company controls 10 percent or more of any class of voting securities of the second company and has business relationships with the second company that generate in the aggregate 5 percent or more of the total annual revenues or expenses of the second company; or

iii. The first company controls 15 percent or more of any class of voting securities of the second company and has business relationships with the second company that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the second company.

Some commenters sought clarification of concepts used in the business relationship presumptions, such as total annual revenues and total annual expenses, and encouraged the Board to rely on well-understood and widely available definitions of these concepts. Commenters suggested that the Board provide clear standards for measurement and attribution of revenues and expenses, and that the Board clarify what accounting standards could be relied upon for such measurements. Some commenters argued for a longer period of time over which to measure the companies' business relationships, such as two years or three years. A number of commenters argued that the thresholds for business relationships should only apply with respect to a company and its consolidated subsidiaries and should not include business relationships from unconsolidated subsidiaries.

A few commenters argued for an exception to the business relationship presumptions for a company that could not calculate both sides of the business relationship but had a good faith basis for believing that the relationships were within the limits of the presumptions. At least one commenter recommended that business relationships be measured based only on the financial statements of a company at the time of an investment in order to make it easier to comply with the business relationship thresholds.

Consistent with the proposal, the business relationship presumptions in the final rule include thresholds based on total consolidated annual revenues and expenses. Revenues and expenses are meant to be understood as these terms are commonly understood in the context of U.S. generally accepted

[35] Though the final rule is expected to cover most controlling influence concerns arising out of business relationships, the Board may raise controlling influence concerns under specific facts and circumstances consistent with historical precedent, such as relationships with special qualitative significance (for example, relationships that are difficult to replace and are necessary for core functions). In addition, the revised business relationship presumptions of control do not in any way limit the ability of the Board to take action to address business relationships that raise safety and soundness or other concerns.

accounting principles (''GAAP'').[36] Principles of consolidation are also meant to be applied as generally implemented in the context of GAAP. Thus, the general expectation is that a company's consolidated income statement for the preceding fiscal year should contain the necessary information to determine revenues and expenses for purposes of the presumptions. Further, the final rule maintains annual measurement of revenues and expenses for purposes of the presumptions as annual financials provide an existing and widely relied upon means to understand the significance of business relationships.

Many commenters sought specific exclusions from the business relationship presumptions. At least one commenter recommended that the final rule exclude certain types of business relationships, such as arm's-length lending and deposit relationships, or non-exclusive business relationships where alternative service providers are available. Some commenters sought clarification regarding specific contexts, such as whether management fees paid by limited partners to general partners should be included as business relationships. Similarly, commenters argued that readily marketable debt securities of a company owned by another company should not be included in business relationships if the terms were not negotiated by the two companies.

At least one commenter argued that the presumptions should not take into account business relationships between an investment fund and any company in which the fund makes an investment, to the extent such relationships are at arm's length and non-exclusive. Some commenters suggested that the business relationship presumption should take account of the special circumstances of start-up companies by measuring revenues over a longer period or not considering business relationships during the first several years of a company's existence. Several commenters argued that business relationships involving referrals should not be included for revenue purposes because the amount of referral fees can be volatile.

The final rule contains no specific exclusions from the presumptions for particular types of business relationships. The final rule establishes clear and generally applicable standards that rely on well-understood accounting principles that aim to capture the economic significance of business relationships between two companies. The introduction of exclusions for particular types of relationships or counterparties would add substantial complexity to the rule.

Some commenters argued that there should be a temporary transition or grace period, during which business relationships could exceed applicable thresholds without triggering a presumption of control. As discussed, the business relationship presumptions in the final rule are based on annual consolidated revenues and expenses. The use of annual measurement allows for some, but not excessive, day-to-day volatility in business relationships that should be sufficient for companies to manage. As a result, the final rule includes no additional transition or grace period.

In addition, consistent with the proposal, the final rule does not include a presumption of control based on threats to alter or terminate business relationships. Although such actions may be relevant to determinations of control, adding such a presumption would increase the complexity of the final rule.

Senior Management Interlocks

The officers of a company wield significant power over the company because they implement the major policies set by the board of directors, make all the ancillary policy decisions necessary for implementation, and operate the company on a day-to-day basis. In addition, officers often make influential recommendations to the board of directors regarding major policy decisions. As a result of this substantial degree of influence, the Board historically has viewed situations where an agent of a significant investor company serves as a management official of another company as providing a significant avenue for the first company to exercise a controlling influence over the second company.

The proposal included a presumption of control where a company that controls 5 percent or more of any class of voting securities of a second company has more than one senior management interlock with the second company. In addition, the proposal included a presumption of control where a company that controls 15 percent or more of any class of voting securities of a second company has any senior management interlock with the second company. In order to trigger either of these presumptions, the individual must serve as an employee or director at the first company and as a senior management official at the second company. The proposal defined a senior management official of a company as any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of the company.

In addition, the proposal included a presumption of control where a company that controls 5 percent or more of any class of voting securities of a second company has an employee or director who serves as the chief executive officer (or an equivalent role) of the second company. The chief executive officer of a company is generally the most powerful senior management official of the company.

Some commenters criticized the proposed presumption based on senior management interlocks on the basis that the scope of individuals treated as senior management officials was unclear. These commenters generally encouraged the Board to limit the scope of covered senior management officials to a clearly identifiable group, rather than using the qualitative standard included in the proposal. A few commenters also argued that larger companies should be permitted to have more senior management interlocks.

The final rule includes the proposed presumptions of control for senior management interlocks without revision. The Board has long recognized the potential for senior management interlocks to be a conduit by which one company can influence another company, and the final rule is consistent with this understanding. Consistent with the proposal, the presumptions related to senior management interlocks in the final rule include targeted adjustments to historical practice to refine the scope of relevant interlocks to focus on senior officers and, in particular, the chief executive officer. The focus on senior management officials leans against the types of interlocks most likely to raise controlling influence concerns, but also permits an investor to have multiple junior employee interlocks that would not increase the investor's ability to influence operations and policies at the investee company.

Also consistent with the proposal, the final rule defines ''senior management official'' to be any person with authority to participate (other than as a director) in major policy making functions of a company. This definition is based on the function that a person serves rather than a person's official title. The Board recognizes that this definition is not

[36] For purposes of the final rule, revenue is understood to mean gross income, not income net of expenses. If a company does not prepare financial statements according to GAAP, the Board expects to rely on the non-GAAP financial statements of the company, while taking differences in accounting standards into account as appropriate.

precise and will consider providing additional clarity around this definition after acquiring more experience with the senior management interlocks presumptions.

Contractual Limits on Major Operational or Policy Decisions

A company that controls a material amount of voting securities of a second company also may have contractual arrangements with the second company, such as investment agreements, debt relationships, service agreements, or agreements related to other business relationships. Often, these contractual rights do not raise controlling influence concerns because the rights, for example, are limited in scope or reinforce the protections provided to the investor under the law. However, the Board has viewed many other contractual provisions as raising controlling influence concerns when the agreement has the effect of substantially enhancing one company's influence over the discretion of another company.[37]

Contractual rights often raise controlling influence concerns when they provide an investor with the ability to direct or block major operational or policy decisions of another company, whether such decisions are made by management or by the board of directors of the other company. The ability of an investor effectively to veto an important business decision of a company generally provides the investor with the ability to exercise a significant influence over a major operational or policy decision of the company.

The Board also has long recognized that contracts governing business relationships, including many loan agreements, contain restrictive covenants and that the existence of these covenants has not been sufficient, in itself, to constitute a controlling influence. Thus, the Board generally has not viewed restrictive covenants in the context of loan transactions or commercial services to raise controlling influence concerns. However, when a company has both control over a material percentage of the voting securities of another company and covenants that significantly restrict the discretion of the second company, the covenants have raised controlling influence concerns. These concerns have been raised whether the covenants arise directly from the terms of the equity investment or from separate agreements between the companies.

Under the proposal, a company generally was presumed to control a second company if the first company (i) owns 5 percent or more of any class of voting securities of the second company; and (ii) has any contractual right that significantly restricts the discretion of the second company over major operational or policy decisions.[38] A company with less than 5 percent of each class of voting securities of a second company would not have triggered this presumption of control even if the first company had covenants that significantly restricted the discretion of the second company over major operational and policy decisions. Thus, the proposal both recognized the potentially significant influence that covenants can provide and recognized the normal use of restrictive covenants in loan agreements and other market-terms business relationships.

The presumption of control under the proposal introduced a new defined term, ''limiting contractual right,'' defined as a contractual right that allows a company to restrict significantly the discretion of a second company, including its senior management officials and directors, over major operational or policy decisions. The proposal also included a nonexclusive list of examples of contractual rights that are generally considered to be limiting contractual rights, as well as a nonexclusive list of examples of contractual rights that are generally not considered to be limiting contractual rights.

Commenters argued that the Board should either raise the voting securities threshold at which the presumption of control based on limiting contractual rights would apply or remove the presumption entirely. At least one commenter argued that the presumption related to limiting contractual rights should not apply to an investor that controls less than 10 percent of each class of voting securities. In addition, commenters raised concerns with some of the specific rights listed in the proposal as examples of limiting contractual rights. These comments are discussed later in this preamble in the section related to the definition of limiting contractual rights.

Consistent with the proposal, under the final rule, a company is presumed to control another company if the first company controls 5 percent or more of any class of voting securities of the second company and the first company has a limiting contractual right with respect to the second company. As discussed, limiting contractual rights can allow a company to exercise significant influence over another company, such as by providing the first company with an effective veto over decisions of the second company, overriding the discretion of the board of directors of the second company or the choices of its shareholders. However, limiting contractual rights are often important provisions in commercial agreements, including many loan agreements, and the Board has long recognized the importance of such contractual provisions in the context of commercial relationships. Thus, consistent with the proposal, under the final rule, a company must also control a material percentage of the voting securities of another company—specifically, at least 5 percent of any class of voting securities—in order to be presumed to control the other company due to a limiting contractual right. In other words, the final rule reflects that the Board's concern with limiting contractual rights generally arises from the combination of a limiting contractual right and control over a material share of voting securities.[39] This approach is intended to balance the normal use of restrictive covenants in standard lending and other commercial relationships, while also recognizing the power of limiting contractual rights to enhance the influence of a company that is a material equity investor in another company.

Total Equity

The Board has long subscribed to the view that the overall size of an equity investment, including both voting and nonvoting equity, is an important indicator of the degree of influence an investor may have. A company is likely to pay heed to its large shareholders in order to maintain stability in its capital base, enhance its ability to raise additional equity capital in the future, and to prevent the negative market signal that may be created by the sale of a large block of equity by an unhappy shareholder. All of these concerns are present independent of the ability of an investor to exercise the voting powers of

[37] Contractual covenants also may raise safety and soundness concerns, such as a covenant that impairs the ability of a banking organization to raise additional capital, or a covenant that imposes substantial financial obligations on a banking organization. Safety and soundness concerns may arise in the absence of, or in addition to, controlling influence concerns.

[38] The proposal provided an exclusion for limiting contractual rights in the context of a pending merger that are designed to ensure that the target company operates in the ordinary course while the merger is pending. The final rule includes this exclusion consistent with the proposal.

[39] This is different from management agreements, which raise control concerns regardless of the share of voting securities controlled.

equity to attempt to influence the investee company. Further, an investor with a large equity investment also has a powerful incentive to wield influence over the company in which it has invested due to the investor's substantial economic interest in the investee company. However, the Board also has recognized that nonvoting equity does not provide the same ability to exercise a controlling influence as voting equity.

Accordingly, under the proposal, a company was presumed to control another company if the first company controls less than 15 percent of the voting securities of the second company but one-third or more of the total equity of the second company. In addition, a company was presumed to control another company if the first company controls 15 percent or more of the voting securities of the second company and 25 percent or more of the second company's total equity. This element of the proposal was consistent with the total equity standard described in the Board's 2008 Policy Statement.

Some commenters argued that total equity on its own does not provide a company with a substantial ability to exercise a controlling influence and therefore recommended that the Board increase the amount of total equity the first company could control in the second company before triggering a presumption of control. A few commenters suggested that the Board permit all investors to own up to one-third of the total equity of a company (regardless of voting equity position) without triggering a presumption of control. Other commenters advocated for alternative tiered presumptions related to total equity, such as presumptions of control where a company (i) has 15 percent or more of the voting securities of the second company and one-third or more of the total equity; (ii) has between 10 percent and 15 percent voting and more than 40 percent total equity; and (iii) has under 10 percent voting and more than 50 percent total equity. Some commenters suggested that the Board have an exception to the total equity presumption if another shareholder has a significant block of voting securities in the second company that could prevent the first company from using total equity to exercise a controlling influence over the second company.

In the final rule, the Board is simplifying its total equity presumption so that a company will be presumed to control a second company when the first company controls one-third or more of the total equity of the second company. The threshold of one-third or more of total equity would apply without regard to the first company's voting securities percentage. In addition to simplifying, this adjustment to the proposal reflects that nonvoting equity, while a significant mechanism through which control may be exercised, should not be capped at the same 25 percent voting securities level that the statute identifies as control.

Commenters also raised a variety of issues around the Board's proposed methodology for calculating a company's total equity position in another company. These comments are discussed below in section III.D. of the preamble.

Proxies on Issues

The Board historically has raised controlling influence concerns if a company with control over 10 percent or more of a class of voting securities of a second company solicits proxies from the shareholders of the second company on any issue. The Board did not propose a presumption of control for a company that controls 10 percent or more of a class of voting securities of a second company and solicits proxies from the shareholders of the second company on any issue. Many commenters supported the Board's decision to not include a presumption of control based on soliciting proxies on issues presented to the shareholders.

Consistent with the proposal, the Board is not adopting a general presumption of control for a company that solicits proxies from the shareholders of another company.[40] Accordingly, under the final rule, a noncontrolling investor generally may act as a shareholder and engage with the target company and other shareholders on issues through proxy solicitations.

Threats To Dispose of Securities

Historically, the Board has viewed threats to dispose of large blocks of voting or nonvoting securities in an effort to try to affect the policy and management decisions of another company as presenting potential controlling influence concerns. As a result, the Board traditionally has raised controlling influence concerns if a company with control over 10 percent or more of a class of voting securities of a second company threatens to dispose of its investment if the second company refuses to take some action desired by the first company. However, the Board also has recognized that an investor that is unhappy or disagrees with the business decisions of the company in which it has invested should be able to exit its investment and that the possibility of investor exit imposes important discipline on management. The Board did not propose a presumption of control based on threats to dispose of securities.

Many commenters expressed support for the Board's decision to not include a presumption of control based on attempts to exercise control by threatening to dispose of securities.

Consistent with the proposal, the Board is not adopting a presumption of control based on one company attempting to exercise control over another company by threatening to dispose of its securities in the second company. By not adopting a presumption, the Board recognizes that investors generally should be able to exit investments without raising control concerns.

*C. Description of Additional Presumptions and Exclusions*

In addition to the tiered presumption framework described previously, the proposal included several additional presumptions of control. Several of these presumptions clarified presumptions already in Regulation Y and Regulation LL, and others of these presumptions related to standards that the Board historically has used to make control decisions but has not before included in regulation. This section of the preamble discusses these additional presumptions and how they are reflected in the final rule.

Management Agreements

The Board has long believed that management agreements under which a company can direct or exercise significant influence over the management or operations of another company raise significant controlling influence concerns.[41] The proposal expanded slightly the existing regulatory presumption to expressly identify additional types of agreements or understandings that allow a company to direct or exercise significant influence over the core business or policy decisions of another company. The proposal also clarified that a management agreement includes an agreement where a company is a managing member, trustee, or general partner of another company, or exercises similar functions.

[40] The final rule includes a presumption of control related to soliciting proxies for the election of directors, which is discussed in the section of this preamble related to the presumptions of control based on director representation.

[41] *See* 12 CFR 225.31(d)(2)(i); 12 CFR 238.21(d)(2)(i) (citations are to the Code of Federal Regulations prior to the amendments made by this final rule).

The Board did not receive comment specifically on the presumption of control arising from a management agreement. Accordingly, the Board is finalizing the presumption as proposed, including with the clarifications that expressly include agreements where a company is a managing member, trustee, or general partner of another company.

Investment Advice and Investment Funds

The proposal included a presumption of control where a company serves as investment adviser to an investment fund and controls 5 percent or more of any class of voting securities of the fund or 25 percent or more of the total equity of the fund. For purposes of this presumption, the proposal defined ''investment adviser'' to include any person registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), any person registered as a commodity trading adviser under the Commodity Exchange Act, or a foreign equivalent of such a registered adviser.[42] Similarly, ''investment fund'' included a wide range of investment vehicles, including investment companies registered under the Investment Company Act of 1940, investment companies that are exempt from registration under the Investment Company Act, and foreign equivalents of either registered investment companies or exempt investment companies.[43] Other investment vehicles, such as commodity funds and real estate investment trusts, generally also were included as investment funds.

However, the proposed presumption of control would not have applied if the investment adviser organized and sponsored the investment fund within the preceding twelve months. This provision allowed the investment adviser to avoid triggering the presumption of control over the investment fund during the initial seeding period of the fund.[44]

In addition, the proposal provided a limited exception from the presumptions of control where the investment fund was an investment company registered with the SEC under the Investment Company Act of 1940 and certain other criteria were satisfied.[45] In order to qualify for this exception:

- The only permitted business relationships between the investment adviser and the investment company were investment advisory, custodian, transfer agent, registrar, administrative, distributor, and securities brokerage services provided by the investment adviser to the investment company;
- Representatives of the investment adviser must occupy 25 percent or less of the board of directors or trustees of the investment company; and
- The investment adviser must control less than 5 percent of each class of voting securities of the investment company and less than 25 percent of the total equity of the investment company.

Corresponding to the seeding period in the investment adviser presumption, the last criteria in the registered investment company exception did not apply if the investment adviser had organized and sponsored the investment company within the preceding twelve months. This provision allowed the investment adviser to control greater percentages of securities of the investment company during the initial seeding period of the investment company.[46]

Commenters argued that the proposals with respect to investment funds and registered investment companies were inconsistent with prior Board precedent, most notably a single case where the Board allowed a bank holding company to retain up to 25 percent of the voting securities of an investment company under certain conditions.[47] Many commenters argued that the rule should follow this precedent and allow investment advisers to control up to 25 percent of the voting securities of an advised investment fund without triggering a presumption of control, rather than 5 percent as proposed.

Many commenters also suggested a one-year seeding period was too short and should be extended to three years to be consistent with the Volcker Rule. In addition, commenters suggested that the seeding periods should be available to authorized participants, not just organizers and sponsors. Some commenters advocated for an approach where no seeding period was specified in the rule and instead the seeding period would be a reasonable period determined by fund managers.

A few commenters recommended that the investment company exception apply to foreign equivalents of U.S. registered investment companies and certain other types of investment funds, such as exempt investment companies and business development companies. Some commenters also requested that registered investment companies be excluded from the presumptions of control without having to satisfy any conditions. Several commenters further argued that the Board should apply the standards of the SEC for independent directors rather than the Board's standards for director representatives for purposes of determining how many director representatives a company has on the board of directors of a registered investment company. At least one commenter suggested that the Board exclude any ordinary-course business relationships between investment companies and their advisers from consideration in the context of control.

The final rule retains the presumption of control for investment advisers of investment funds as proposed. The exception for registered investment companies is not included in the final rule. Both the control presumption and the exception were designed to align with Board precedent regarding control over investment funds and thus were intended to be complementary in scope. The registered investment company exception had minimal incremental information value beyond the general investment fund presumption, and the details of the exception raised many questions regarding how it would function. Thus, it has been removed from the final rule to simplify the rule.

The final rule retains the threshold of 5 percent of a class of voting securities for purposes of the investment adviser presumption of control. The single precedent identified by commenters that permitted ownership of up to 25 percent of the voting securities of a fund was an unusual case based in part on statutory provisions that are no longer in effect. In addition, in that precedent, the Board relied on additional constraints to mitigate control concerns and these additional constraints were not included in the proposal. The threshold of 5 percent of any class of voting securities is consistent with the preponderance of Board precedent in this area.

The final rule retains the one-year seeding period, consistent with the proposal. The one-year seeding period is consistent with the bulk of Board precedent related to organizing and sponsoring investment funds and

[42] 15 U.S.C. 80b–1 *et seq.;* 7 U.S.C. 1 *et seq.*

[43] 15 U.S.C. 80a *et seq.*

[44] The proposed presumption of control for service as an investment adviser to an investment fund was intended to be consistent with the Board's precedents regarding when an investment adviser controls an advised investment fund under the BHC.

[45] 15 U.S.C. 80a *et seq.*

[46] *See, e.g., Mellon Bank Corporation,* 79 Federal Reserve Bulletin 626 (1993); *The Chase Manhattan Corporation,* 81 Federal Reserve Bulletin 883 (1995); *Commerzbank AG,* 83 Federal Reserve Bulletin 678 (1997).

[47] *See* Letter to H. Rodgin Cohen, Esq., dated June 24, 1999, *https://www.federalreserve.gov/boarddocs/legalint/BHC_ChangeInControl/1999/19990624/.*

provides a reasonable amount of time for the seeding of most investment funds. The one-year seeding period is only available to the company that organizes and sponsors an investment fund and not to other early investors in an investment fund, because only the sponsor/organizer necessarily controls all the equity securities of the company when the fund is formed.[48]

At least one commenter recommended that the Board confirm the ongoing applicability of control letters from the General Counsel of the Board to mutual fund families, and investments made in accordance with those letters. The application of the final rule to existing structures is discussed in more detail elsewhere in this preamble. The Board does not intend to revisit existing structures that were previously reviewed by the Federal Reserve System and have not changed materially.

Accounting Consolidation

Under the proposal, the Board presumed that a company that consolidates a second company under GAAP controls the second company. The presumption was based on an understanding that GAAP generally calls for consolidation under circumstances where the consolidating entity has a controlling financial interest over the consolidated entity. Consolidation is typically required under GAAP due to ownership of a majority of the voting securities of a company, which would significantly exceed the voting security threshold for control under the BHC Act and HOLA. In addition, GAAP requires consolidation of companies under the variable interest entity standard (i) where a company has significant economic exposure to a variable interest entity and has the power to direct the activities of the entity that most significantly impact the entity's economic performance or (ii) where a company controls a variable interest entity by contract.[49]

Many commenters urged the Board to abandon the proposed presumption of control where a first company consolidates a second company for purposes of GAAP. Commenters also urged the Board not to expand the proposed consolidation presumption based on GAAP to consolidation under other accounting standards. These commenters argued that the standards for consolidation for variable interest entities did not conform to the Board's standards for controlling influence. Commenters also stated that presuming that consolidated variable interest entities are controlled could have unintended consequences for foreign banking organizations subject to the Board's U.S. intermediate holding company requirements.[50] In addition, commenters expressed concern that the accounting consolidation rules were promulgated by a different authority with different purposes and that the consolidation standards were subject to change outside of the control of the Board. Some commenters requested exclusions for variable interest entities in certain contexts, such as an exclusion for asset-backed commercial paper conduits or particular types of ownership or management relationships between a company and a variable interest entity.

The final rule establishes a presumption of control when one company consolidates a second company for purposes of GAAP. This presumption is consistent with the proposal. A company that consolidates another company due to control over a majority of the voting securities of the second company should control the second company under the voting securities control prong of the BHC Act and HOLA. A company that consolidates another company under the variable interest entity standard must have substantial ability to direct the activities of the second company (in addition to having a potentially significant economic exposure). A company that is consolidated under the variable interest entity standard often would be controlled under one of the other presumptions of control in the final rule such as the management agreement presumption. The inclusion of the GAAP consolidation presumption should reduce burden and uncertainty by allowing companies to identify presumptive control relationships based on existing accounting standards.

The presumption of control where one company consolidates a second company for purposes of GAAP covers, by its terms, only those companies that prepare financial statements under GAAP. The Board notes, however, that the Board is likely to have control concerns where a company consolidates another company on its financial statements under another accounting standard, particularly if the other accounting standard has consolidation standards that are similar to the consolidation standards under GAAP.

Regarding the interaction of the final rule and the intermediate holding company requirements of the Board's Regulation YY, a foreign banking organization that is required to form a U.S. intermediate holding company must hold all ownership interests in U.S. subsidiaries through its U.S. intermediate holding company.[51] In general, ownership interest under the intermediate holding company requirements does not include contractual relationships, including contractual relationships that result in consolidation of a company under the variable interest entity standard. Thus, for example, where a U.S. branch of a foreign bank has a contract with an asset-backed commercial paper conduit that causes the conduit to be consolidated by the branch under the variable interest entity standard, the contract is not an ownership interest and therefore may remain between the branch and the conduit.

The proposal sought comment on whether the Board should presume that a company controls a second company if the first company applies the equity method of accounting with respect to its investment in the second company. Many commenters opposed the introduction of this presumption. These commenters argued that the standards for the equity method of accounting were different than control under the BHC Act and HOLA and that the practical effect of such a presumption would be to presume control over a company due to control over 20 percent of a company's voting securities, substantially below the statutory threshold of 25 percent. Similar to comments regarding accounting consolidation, commenters also objected to the Board's control-based reliance on accounting standards designed for different purposes.

The final rule does not include a presumption of control when one company applies the equity method of accounting with respect to its investment in a second company. Although equity method accounting treatment indicates a substantial relationship between two companies, unlike consolidation, equity method accounting is not as closely linked to the Board's views on what constitutes a controlling influence.

Divestiture

The proposal substantially revised the Board's standards regarding divestiture of control. The Board historically has taken the position that a company that has controlled another company may be

[48] The one-year seeding period in the final rule does not alter the rules applicable to hedge fund and private equity fund investments under the Volcker Rule, including the rules addressing permissible seeding periods for such funds.

[49] *See, e.g.,* ASC 810–10.

[50] *See* 12 CFR 252.153.

[51] 12 CFR 252.153.

able to exert a controlling influence over that company even after a substantial divestiture.[52] As a result, the Board typically has applied a stricter standard for terminating control than for establishing new noncontrolling investments.[53]

The proposal provided that a company that previously controlled a second company during the preceding two years would be presumed to continue to control the second company if the first company owned 15 percent or more of any class of voting securities of the second company. The divestiture presumption did not apply if a majority of each class of voting securities of the second company would be controlled by a single unaffiliated individual or company after the divestiture by the first company. Further, the divestiture presumption generally did not apply in cases where a company sold a subsidiary to a third company and received stock of the third company as consideration for the sale.[54]

Many commenters supported the proposed divestiture presumption. Other commenters argued that the threshold for the divestiture presumption should be raised higher than 15 percent or that the divestiture presumption should be entirely removed from the rule. At least one commenter requested clarification as to the conditions required for the exception to the divestiture presumption to apply, specifically whether the other shareholder must control a majority of every class of voting securities of the second company, or only a majority of the securities of the class of voting securities that the divesting shareholder is selling. In addition, commenters asked the Board to clarify how the divestiture presumption interacts with the seeding period in the investment fund context.

The final rule includes the divestiture presumption substantially as proposed. As noted, the possibility of continued control in the context of a partial divestiture has been identified as a concern in Board precedent and case law. The final rule balances these concerns with the goal of providing greater transparency and certainty to the Board's consideration of controlling influence issues.

The final rule does not provide an exception to the presumption to facilitate the organization and sponsorship of investment funds. Such an exception is not necessary because an investment adviser must have less than 5 percent of each class of voting securities of an investment fund after the initial one-year seeding period in order to not trigger the investment fund presumption of control, and the divestiture presumption only applies where a company retains at least 15 percent of any class of voting securities.

Regarding the commenter requests for clarification of the exception to the divestiture presumption, the Board clarifies that the exception only applies when an unaffiliated person controls 50 percent or more of the outstanding securities of each class of voting securities of the company being divested.

### Presumption of Control for the Combined Ownership of a Company and Its Senior Management Officials and Directors

The proposal included a presumption that a company controls a second company when (i) the first company controls at least 5 percent of any class of voting securities of the second company and (ii) the senior management officials and directors of the first company, together with their immediate family members and the first company, own 25 percent or more of a class of voting securities of the second company (5–25 presumption). The proposed presumption reflected the Board's historical position that it is often appropriate to attribute securities held by management officials of a company to the company itself for purposes of measuring control by a company under the BHC Act. The management officials of a company are well positioned to coordinate their actions with each other and the company to act as a single voting bloc to advance the interests of the company.

The proposal differed from current practice, however, by providing an exception to this general presumption. Specifically, the presumption did not apply if (i) the first company controls less than 15 percent of each class of voting securities of the second company and (ii) the senior management officials and directors of the first company, together with their immediate family members, control 50 percent or more of each class of voting securities of the second company.

The proposed exclusion to the presumption reflected the Board's traditional understanding that, when individuals control an outright majority of a class of voting securities of a second company, it is likely the individuals who are truly exercising control over the second company, rather than any company that employs the individuals. Under these circumstances, the first company is generally not a significant conduit for control over the second company.[55]

At least one commenter requested that the Board clarify how the rule attributing ownership of securities held by senior management officials, directors, or controlling shareholders of a company to that company (proposed 12 CFR 225.9(c), 238.10(c)) would operate in conjunction with the 5–25 presumption (proposed 12 CFR 225.32(d)(6), 238.22(d)(6)).

The final rule does not include the 5–25 presumption of control of a company. Instead, this presumption of control of a company has been integrated into the standard for control by a company over voting securities. Specifically, the final rule provides that a company that controls 5 percent or more of any class of voting securities of another company also controls any securities issued by the second company that are controlled by the senior management officials, directors, or controlling shareholders of the first company, or immediate family members of such individuals. In addition, the final rule incorporates into this standard for control over securities the exclusion contained in the proposed 5–25 presumption, as described further in section III.C of this preamble.

### Closely Held Companies and Widely Held Companies

In developing the proposal, the Board considered whether there should be different presumptions for (i) companies

[52] *See, e.g.,* ''Statement of policy concerning divestitures by bank holding companies'' (divestiture policy statement). 12 CFR 225.138. The divestiture policy statement indicates that divestiture is a special consideration for purposes of control and that the Board's normal rules and presumptions regarding control may not always be appropriate in the context of divestiture. *See also Am. Gas & Elec. Co.* v. *SEC,* 134 F.2d 633, 643 (D.C. Cir. 1943) (holding that ''controls and influences exercised for so long and so extensively [under the Public Utilities Holding Company Act] are not severed instantaneously, sharply and completely, especially when powers of voting, consultation and influence such as have been retained remain'').

[53] *See, e.g.,* 12 CFR 225.139 (''2(g)(3) policy statement''). The 2(g)(3) policy statement describes the implementation of section 2(g)(3) of the BHC Act (Congress removed section 2(g)(3) from the BHC Act in 1996). Section 2(g)(3) created a rebuttable presumption that a transferor continued to control securities of a company transferred to a transferee if the transferee was indebted to the transferor or if there were certain director or officer interlocks between the transferor and transferee. The 2(g)(3) policy statement remains relevant because it reflects the Board's longstanding position that terminating control requires reducing relationships to lower levels than would be consistent with a new noncontrolling relationship.

[54] *See, e.g.,* Letter to Mark Menting, Esq., dated February 14, 2012, *https://www.federalreserve.gov/bankinforeg/LegalInterpretations/bhc_changeincontrol20120214.pdf.*

[55] *See Vickars-Henry Corp.* v. *Fed. Reserve Sys.,* 629 F.2d 629 (9th Cir. 1980).

that are widely held relative to companies that are closely held or (ii) companies that are majority owned by a third party. The Board considered these factors because it could be reasonable to assume that a major investor in a company that is otherwise widely held has outsized influence compared to a context where the major investor is one of several major investors in a closely held company. Similarly, in many cases, it could be reasonable to assume that a major investor has reduced influence over a company where another investor has an outright majority of the voting securities of the company. The proposal, however, did not include different presumptions for widely held companies versus closely held companies or for companies under the majority control of a third party because such distinctions increased the complexity of the proposal and could have made the presumptions more difficult to apply in practice.

Some commenters argued that the presence of a larger, third-party shareholder should create a presumption of non-control for any company with a lesser interest. Commenters provided several different proposals for how this might be implemented, ranging from an exemption from the presumptions of control where a third party controls a majority of the securities of a company to an exemption from the presumptions of control where a third party controls a sufficiently large plurality of the securities of a company. Some commenters suggested that the presence of a larger, third-party shareholder should raise the level of other relationships, particularly business relationships, that two companies could have before triggering a presumption of control. Commenters also argued that a majority shareholder should give rise to a presumption of noncontrol for all other shareholders.

Other commenters supported the Board's proposal not to create different presumptions depending on the shareholder composition of the second company because of the complexity this would add to the rule.

The presumptions in the final rule do not differentiate between closely held and widely held companies and generally do not turn on the presence of a majority third-party shareholder. Although a company's influence over another company may vary based on the shareholder structure of the second company, adding exceptions to certain presumptions of control because the second company is closely held or majority-controlled by a third party would significantly increase the complexity of the rule. Moreover, the Board notes that the statutory framework contemplates that multiple companies could control a single company even if there is one company that has predominant, or even majority, control over the voting securities of the company. Finally, having control determinations turn on the shareholder structure of the target company may create practical difficulties for investors. For example, a first company could establish a relationship that does not trigger a presumption of control over a second company, but the second company could subsequently become more widely held, leading the first company to trigger a presumption of control without any action of its own.

Fiduciary Exception

Under the proposal, the presumptions of control did not apply to the extent that a company controls voting or nonvoting securities of a second company in a fiduciary capacity without sole discretionary authority to exercise the voting rights. This exception for holding securities in a fiduciary capacity is currently in the control provisions of Regulation Y and was retained in full.[56]

Many commenters argued that the Board's proposed exclusion for securities held in a fiduciary capacity was overly restrictive because it included a requirement that the fiduciary not have sole discretionary voting authority over the securities. Commenters noted that, although not having sole discretionary voting authority was required for the fiduciary exemption in section 3 of the BHC Act, section 4 of the BHC Act excluded securities held in a fiduciary capacity without this additional requirement.

Commenters also sought clarification of when a company would be considered to have sole discretionary authority to exercise voting rights. At least one commenter asked that the Board provide that an investment adviser lacks sole discretionary voting authority where an investment fund has the right to revoke the adviser's voting authority.

In response to the issues raised by commenters, the fiduciary exception in the final rule only requires that the securities of a depository institution or a depository institution holding company be held without sole discretionary voting authority. Accordingly, the final rule's fiduciary exception would parallel the different fiduciary exceptions in section 3 and section 4 of the BHC Act. The same exception would apply for purposes of Regulation LL, to provide parallel treatment under the BHC Act and HOLA. The final rule also includes additional clarifying edits to the fiduciary exception.

The final rule does not provide broader clarity around the scope of the fiduciary exception. The Board notes, however, that the fiduciary exception in the final rule is intended to align with the Board's traditional understanding of the scope of the fiduciary exceptions in the BHC Act and Regulation Y. The primary example of the role covered by the fiduciary exception is that of the trust department of a depository institution that is authorized to engage in fiduciary activities. Companies may contact the Board or its staff to seek clarification as to whether any particular holding of securities would qualify for the fiduciary exception.

Rebuttable Presumption of Noncontrol

Under the proposal, a company was presumed not to control a second company if the first company (i) controls less than 10 percent of every class of voting securities of the second company and (ii) is not presumed to control the second company under any of the proposed presumptions of control. This provision of the proposal modestly expanded the statutory and pre-existing regulatory rebuttable presumption of noncontrol that applies where a first company controls less than 5 percent of any class of voting securities of a second company.[57]

Many commenters supported the proposed presumption of noncontrol, arguing that controlling influence would be especially unusual for companies with less than 10 percent of each class of voting securities of another company. Some commenters argued that the Board should expand the presumption of noncontrol further to cover any company that did not trigger a presumption of control. At least one commenter argued that a presumption of noncontrol should at least apply to foreign entities that do not trigger a presumption of control in order to mitigate extraterritorial application of the BHC Act. Commenters also raised concerns with the proposed exclusion from the presumption of noncontrol for any company that triggered a presumption of control, at least as applied to companies with less than 5 percent of any class of voting securities of another company.

[56] *See* 12 CFR 225.31(d)(2)(iv); *see also* 12 U.S.C. 1841(a)(5)(A).

[57] 12 U.S.C. 1841(a)(3), 12 CFR 225.31(e), and 238.21(e).

The final rule adopts the rebuttable presumption of noncontrol as proposed.[58] Thus, a company is presumed not to control a second company if the first company (i) controls less than 10 percent of every class of voting securities of the second company and (ii) is not presumed to control the second company under any of the presumptions of control. This approach and calibration of the noncontrol presumption reflects the Board's experience that a company with less than 10 percent of any class of voting securities of another company is unlikely to have a controlling influence over the second company, absent the indicia of control specified in the control presumptions. The additional changes supported by some commenters would increase the scope of the presumption of noncontrol significantly, well beyond both the presumption of noncontrol in the BHC Act and the Board's experience.

## III. Final Rule—Control-Related Definitions

The proposal proposed to amend Regulation Y and Regulation LL to update and clarify the definitions of various control-related terms. This section discusses in detail how the final rule addresses each of these definitions.

Some commenters indicated that the Board should define additional terms to provide further clarity regarding the application of the presumptions of control. For example, a commenter suggested that the Board clarify how the presumptions of control would apply to an agreement among shareholders that is designed to preserve a company's tax status under the Internal Revenue Code. In addition, a commenter stated that the Board should clarify whether a testamentary trust qualified as a ''company'' under the proposal.

The final rule does not introduce new defined terms compared to the proposal, though certain changes have been made to the proposed defined terms as described in detail in this section. Consistent with the proposal, the final rule includes defined terms to the extent appropriate to clarify the application of the rule, while avoiding over-prescription that could limit the Board's ability to respond appropriately to unusual facts and circumstances or to prevent evasion of the framework. Specifically with respect to agreements to preserve tax status under the Internal Revenue Code, the final rule, consistent with the proposal, clarifies that covenants to take reasonable steps to maintain a specific tax status generally are not limiting contractual rights and that agreements among shareholders to preserve a certain tax status generally do not constitute restrictions on securities that provide control over the covered securities. On the status of testamentary trusts as companies under the BHC Act, neither the proposal nor the final rule alters the Board's standards related to testamentary trusts.

### *A. First Company and Second Company*

The core of the proposal was the addition of a series of presumptions of control that apply in the context of the Board making a determination that one company has the ability to exercise a controlling influence over another company. To clarify the application of these presumptions, the proposal provided definitions of ''first company'' and ''second company.''

The proposal defined ''first company'' as the company whose control over a second company was the subject of a determination of control by the Board. The proposal defined ''second company'' as the company the control of which by a first company was the subject of a determination of control by the Board. For many of the proposed presumptions, the first company was presumed to control the second company if the first company, together with its subsidiaries, had particular relationships with the second company, together with its subsidiaries.

In addition, the proposal provided that, for purposes of the proposed presumptions, any company that was both a subsidiary of the first company and the second company should be treated as a subsidiary of the first company but not as a subsidiary of the second company. This provision prevented the second company's relationships with a joint venture subsidiary with the first company from being considered relationships with the first company for purposes of the presumptions of control.

Some commenters contended that it would be more appropriate to consider only relationships between top-tier parent companies. Relatedly, a few commenters stated that first company and second company should not be defined to include their subsidiaries. With respect to joint ventures, some commenters argued that the language of the proposal was difficult to apply and that it would be better not to consider any relationships with joint ventures when reviewing for control between joint venture partners.

The final rule adopts the definitions of first company and second company as proposed.[59] For purposes of controlling influence, the Board historically has considered the relationships between one company and its subsidiaries, on the one hand, and another company and its subsidiaries, on the other hand. Grouping a parent company with its subsidiaries reflects an understanding that a subsidiary generally will comply with directions from its parent company. Considering only direct relationships between two companies would ignore this dynamic and thus the economic realities of corporate structures. For example, an investing company may own securities in a top-tier bank holding company while having substantial business relationships with the bank holding company's subsidiary bank. Considering the investing company's relationships with the bank holding company alone and with the bank alone would exclude important aspects of the combined relationship between the investing company, on the one hand, and the bank holding company and the bank, on the other hand.

Regarding joint ventures, the Board historically has recognized that relationships with joint ventures can be significant for purposes of controlling influence analysis because such relationships can represent a significant connection between the joint venture partners. For this reason, the final rule does not completely exclude relationships with joint ventures. Instead, consistent with the proposal, the final rule provides that a company that is a subsidiary of both the first company and the second company is treated as a subsidiary of the first company and not of the second company for purposes of applying the presumptions of control. The Board believes that this is a reasonable standard for recognizing the potential importance of joint ventures without overstating such importance.

### *B. Voting Securities and Nonvoting Securities*

The BHC Act defines control to include the ownership, control, or power to vote 25 percent or more of any class of voting securities of a company.[60] In addition, several of the proposed presumptions required identifying the percentage of a class of

[58] As under the proposal, the filing requirements applicable to bank holding companies and savings and loan holding companies for investments in 5 percent or more of any class of voting securities of a company are not impacted as a result of the presumption of noncontrol.

[59] First company and second company could take a variety of legal entity forms, including a stock corporation, limited liability company, partnership, business trust, or foreign equivalents of such legal entities. *See* 12 U.S.C. 1467a(a)(1)(C) and 1841(b).

[60] 12 U.S.C. 1841(a)(2)(A).

voting securities controlled by a company in another company.

Regulation Y and Regulation LL previously included definitions of ''voting securities'' and ''nonvoting shares.'' [61] The proposal changed the defined term ''nonvoting shares'' to ''nonvoting securities'' and added to the definition of ''nonvoting securities'' equity instruments issued by companies other than stock corporations, such as limited liability companies and partnerships. In addition, the proposal revised the definition of ''nonvoting securities'' to clarify that common stock can be nonvoting securities.[62]

Regulation Y and Regulation LL also provide a nonexclusive list of examples of the types of voting rights that the Board has considered to be within the scope of the defensive voting rights that nonvoting securities may contain.[63] The proposal revised the definition of nonvoting securities to expressly permit certain additional defensive voting rights that are commonly found in investment funds that are organized as limited liability companies and limited partnerships. Specifically, the proposal provided that defensive voting rights that do not cause a security to be a voting security include the right to vote to remove a general partner or managing member for cause, the right to vote to replace a general partner or managing member that has been removed for cause or has become incapacitated, and the right to vote to dissolve the company or to continue operations following the removal of a general partner or managing member. Some commenters asked that the Board provide that certain securities—including limited partnership interests, REIT investment units, and trust beneficiary rights—are nonvoting securities.

The final rule is largely consistent with the proposal on the definitions of voting securities and nonvoting securities. To prevent evasion, the final rule does not categorically exclude any specific types of securities issued by certain legal entities from the definition of voting securities. Although there is substantial variability in the terms and structures of securities in the financial markets, the definitions of voting securities and nonvoting securities in the final rule have been drafted broadly to apply effectively to all forms of legal entities.

[61] 12 CFR 225.2(q).

[62] For safety and soundness reasons, the Board generally believes that voting common stockholders' equity should be the dominant form of equity for a banking organization. *See, e.g.,* 78 FR 62018, 62044 (Oct. 11, 2013).

[63] 12 CFR 225.2(q)(2)(i); 12 CFR 238.2(r)(2)(i).

*C. Control of Securities*

The proposed rule reflected the Board's current practice for determining whether a company's securities are owned, controlled, or held with power to vote by an investor and provided rules for determining the percentage of a class of a company's voting securities attributed to a person.

Ownership, Control, and Holding With Power To Vote

The proposal provided rules for determining whether a person ''controls'' a security.[64] Specifically, the proposal provided that a person controls a security if the person owns the security or has the power to sell, transfer, pledge, or otherwise dispose of the security. In addition, a person controls a security if the person had the power to vote the security, other than due to holding a short-term, revocable proxy. This proposed definition of control over securities is consistent with Board precedent and with the language of the BHC Act.[65]

Some commenters suggested that power to dispose of securities in certain circumstances should not provide control over the securities, such as securities held in a fiduciary capacity or as collateral that may be rehypothecated. A few commenters argued that securities held in a small business investment company or in a merchant banking portfolio company should not be considered controlled. Commenters also argued that securities held in an underwriting, dealing, or market making capacity should not be considered controlled for purposes of the presumptions of control.

The final rule makes minor revisions to the proposal's provisions on control over securities. The final rule is consistent with Board precedent and the statutory framework. However, the Board does recognize that securities held by an underwriter for a very limited period of time for purposes of conducting a bona fide underwriting generally do not raise control concerns. An underwriter generally would hold the securities only for a few days and only for the purpose of prompt resale to the market.[66]

The Board does not believe that the final control rule should make exceptions for small business investment company investments, merchant banking portfolio company investments, or any specific investment types. The Board's general regulatory framework addresses the permissibility of these investments, and there are no compelling reasons to treat these investments differently than other investments under the Board's control framework. For example, if a financial holding company owns 100 percent of the securities of a merchant banking portfolio company, the financial holding company controls the portfolio company for purposes of the BHC Act under the first prong of the definition of control. The financial holding company is able to have this ownership interest under its merchant banking authority, but must treat the portfolio company as a controlled subsidiary under Regulation Y.[67]

Options, Warrants, and Convertible Instruments

The proposal provided standards for deeming a person to control a security through control of an option or warrant to acquire the security or through control of a convertible instrument that may be converted into, or exchanged for, the security. Under the proposal's ''look-through'' approach, a person would control all securities that the person could control upon exercise of any options or warrants. In addition, a person would control all securities that the person could control as a result of the conversion or exchange of a convertible instrument controlled by the person. This approach was consistent with the Board's longstanding precedent of generally considering a person to control any securities (i) that the person has a contractual right to acquire now or in the future; or (ii) that the person would automatically acquire upon occurrence of a future event.[68]

In addition, the proposal provided that a person controls the maximum number of securities that could be obtained under the terms of the option, warrant, or convertible instrument. Thus, for example, if the number of securities that could be acquired upon exercise of an option varied based on some metric, such as the market price or book value of the securities, the person with the option was considered to control the highest percentage of the class of securities that could possibly be acquired under the terms of the option.

Moreover, for purposes of calculating a person's percentage of a class of voting securities or total equity, the proposal generally deemed a person to control

[64] These proposed standards effectively replaced the presumptions for control over voting securities currently in 12 CFR 225.31(d)(1). In this discussion, ''person'' has the meaning provided in 12 CFR 225.2(l) and 12 CFR 238.2(j).

[65] *See, e.g.,* 12 U.S.C. 1841(a)(2)–(3) and 1842(a).

[66] For example, the Board's capital rule provides a 5-day holding period for underwriting securities. 12 CFR 217.2.

[67] 12 CFR part 225, subpart J.

[68] *See, e.g.,* 2008 Policy Statement.

the percentage resulting from the exercise of the person's options, warrants, or conversion features, assuming that no other parties exercised their options, warrants, or conversion features. However, if, for example, a person is only able to exercise an option when all outstanding options in a class are simultaneously exercised by all holders, the percentage controlled by the person should reflect the exercise of all the outstanding options in the class, not just those options held by the person.

The proposal included several limited exceptions to this general look-through approach. Consistent with the 2008 Policy Statement, the proposal incorporated a limited exception for financial instruments that may convert into voting securities but by their terms may not become voting securities in the hands of the current holder or any affiliate of the current holder and may only convert to voting securities upon transfer to (i) the issuer or an affiliate of the transferor, (ii) in a widespread public distribution, (iii) in transfers where no transferee or group of associated transferees would receive 2 percent or more of any class of voting securities of the issuer, or (iv) to a transferee that controls 50 percent or more of every class of voting securities before the transfer.

The proposal also exempted from the general look-through approach a purchase agreement to acquire securities that had not yet closed. This exemption allowed parties to enter into securities purchase agreements pending regulatory approval, due diligence, and satisfaction of other conditions to closing.

In addition, the proposal exempted from the general look-through approach any options, warrants, or convertible instruments that permitted an investor to acquire additional voting securities only to maintain the investor's percentage of voting securities in the event the issuing company increased the number of its outstanding voting securities.

Many commenters suggested that the Board should apply the look-through approach only to narrow classes of options, warrants, and convertible instruments, or that the Board should not look through options, warrants, or convertible instruments at all. Some commenters suggested that the Board only look through options or convertible instruments if they could be freely exercised within 60 days, are in the money, or are not subject to a remote contingency trigger or condition outside of the holder's control. Some commenters argued that the look-through approach should not apply to options if the investor does not have control over the exercise of the option. A few commenters asked the Board to clarify the application of the standards from the 2008 Policy Statement under the proposal. A few commenters suggested that the Board clarify that nonvoting securities will remain nonvoting even if they have the right to elect directors after six quarterly dividend payments are missed, consistent with Board precedent.

The final rule is generally consistent with the proposal with respect to these provisions. However, the final rule includes an additional exception to the look-through approach that preferred securities that have no voting rights unless the issuer fails to pay dividends for six or more quarters are only considered to be voting securities if a sufficient number of dividends are missed and the voting rights are active. As noted by commenters, this additional narrow exception to the look-through approach is consistent with Board precedent and helps to address a fairly common feature of preferred securities. Securities with springing voting rights that do not fit into this exception generally will be considered to be voting securities under the look-through approach.

The final rule does not include any of the other limitations on the look-through approach supported by commenters. The look-through approach appropriately recognizes that options, warrants, and convertible instruments provide the holder of such instruments with the ability to control the underlying securities by exercising the option, warrant, or convertible instrument, or transferring the option, warrant, or convertible instrument. In addition, many of the suggested limitations on the look-through approach are not practicable. For example, looking through in-the-money options while not looking through out-of-the-money options could result in unpredictable moves from non-control to control of a bank without the ability of the investor to apply or receive prior approval under section 3 of the BHC Act. Moreover, excluding from the look-through approach options, warrants, and convertible instruments with remote contingency triggers would require the Board to adopt an impracticable measure of remoteness. The Board notes that the final rule's exception to the look-through approach based on transfer restrictions has been slightly revised to conform more precisely to the 2008 Policy Statement.

Control Over Securities Through Restrictions on Rights

Consistent with current regulations, the proposal provided that a person controls securities if the person is a party to an agreement or understanding under which the rights of the owner or holder of securities are restricted in any manner, unless the restriction falls under one of the exceptions specified in the rule.[69]

The proposal provided six exceptions to this general rule, each designed to accommodate certain common restrictions on securities that do not provide the type of control over securities relevant to this rulemaking. The first exception was for rights of first refusal, rights of last refusal, tag-along rights, drag-along rights, or similar rights that are on market terms and that do not impose significant restrictions on the transfer of the securities. Second, the proposal provided an exception for arrangements that restrict the rights of an owner or holder of securities when the restrictions are incidental to a bona fide loan transaction. Third, the proposal provided that an arrangement that restricts the ability of a shareholder to transfer securities pending the consummation of an acquisition of the securities does not provide the restricting party control over the securities of the restricted party. Fourth, the proposal generally provided that an arrangement that requires a current shareholder of a company to vote in favor of a proposed acquisition of the company would not result in the proposed acquirer controlling the securities of the current shareholder. Fifth, the proposal exempted arrangements among the shareholders of a company designed to preserve the tax status or tax benefits of a company, such as qualifying as a Subchapter S Corporation[70] or to preserve tax assets (such as net operating losses) against impairment.[71] Sixth, the proposal provided that a short-term revocable proxy would not provide the holder of the proxy with control over the securities governed by the proxy.[72]

[69] This standard could result in multiple persons being considered to have control over the same securities. This remains possible under the final rule.

[70] *See* 26 U.S.C. 1361.

[71] *See* 26 U.S.C. 382. In order to qualify for this exemption, the arrangement was required to not impose restrictions on securities beyond those reasonably necessary to achieve the goal of preserving tax status, tax benefits, or tax assets. Agreements of this type may raise significant safety and soundness concerns under certain circumstances, independent of whether control concerns are raised.

[72] The proposed treatment of short-term revocable proxies was consistent with the Board's current

The Board received very few comments on this framework and is adopting the framework as proposed.

Control of Securities Through Associated Individuals and Subsidiaries

The proposal provided that a company that owns, controls, or holds with power to vote 5 percent or more of any class of voting securities of a second company controls any securities issued by the second company that are owned, controlled, or held with power to vote by the senior management officials, directors, or controlling shareholders of the first company, or by the immediate family members of such individuals.[73] In addition, the proposal provided that a person controls all voting securities controlled by any subsidiaries of the person, and that a person generally does not control any voting securities controlled by any non-subsidiary of the person.

At least one commenter argued that the Board should not consider securities held in separate accounts by an insurance company to be controlled by the insurance company, or that the Board should clarify how separate accounts may be structured so that securities in such accounts are not treated as controlled by the insurance company. One commenter requested clarification regarding the attribution of voting securities held in a voting trust.

The final rule defines control over securities through associated individuals and subsidiaries in a manner substantially consistent with the proposal. The final rule has been revised, however, to integrate the standards for control over voting securities through associated individuals with the proposed 5–25 presumption. Specifically, the proposed 5–25 presumption substantially overlapped with the provision providing that a company should be attributed the securities of its senior management officials, directors, and controlling shareholders, as well as immediate family members of such individuals. As a result, as discussed above, the proposed 5–25 presumption is not necessary and is not included in the final rule. However, the Board is revising the provisions related to control over voting securities through associated individuals to incorporate the exception to the proposed 5–25 presumption when the company controls less than 15 percent of each class of voting securities of the other company and a majority of each class of voting securities of the other company are controlled by the first company's senior management officials, directors, and controlling shareholders, as well as immediate family members of such individuals.

The final rule does not include the express statement from the proposal that a company does not control securities that are controlled by a non-subsidiary of the company. Although the Board continues to believe that a company generally should not be deemed to control securities held by a non-subsidiary of the company, the Board has removed this provision from the final rule so as not to create an expectation that a company would never be deemed to control securities held by a non-subsidiary. For example, a company generally would be deemed to control securities held by a non-subsidiary if the company had an option to acquire those securities.

Reservation of Authority

The proposal included a reservation of authority to allow the Board to determine that securities that would otherwise be considered controlled by a person under the proposal are not controlled by the person. Similarly, the proposed reservation of authority allowed the Board to determine that securities that are not considered controlled by a person under the proposal are controlled by the person. The Board received no comments specifically on this reservation of authority provision and the final rule includes the reservation of authority consistent with the proposal. The reservation of authority is meant to allow the Board to deal with rare circumstances that do not align with the intent of the rule.

Percentage of a Class of Voting Securities

The proposal provided a rule for calculating the percentage of a class of voting securities controlled by a person. The proposed rule considered both the number of securities and the voting power of those securities. Specifically, the percentage of a class of voting securities controlled by a person was the greater of (i) the number of voting securities of the class controlled by the person divided by the number of issued and outstanding voting securities of the class (expressed as a percentage) and (ii) the number of votes that the person could cast divided by the total number of votes that may be cast under the terms of all the voting securities of the class that are issued and outstanding (expressed as a percentage).

Commenters argued that the Board should not include two voting ownership tests and should only calculate voting ownership based on voting power not on number of voting securities owned.

The final rule is generally consistent with the proposal. Considering both voting power and number of voting securities is consistent with the text of the BHC Act, the legislative history, and Board precedents. This method of calculation also prevents evasion through the use of securities with different voting power.

*D. Calculation of Total Equity Percentage*

The proposal provided a methodology for calculating a company's total equity percentage in a second company that was a stock corporation that prepared financial statements according to GAAP. The first step to calculate a company's total equity in a second company was to determine the percentage of each class of voting and nonvoting common or preferred stock issued by the second company that the first company controlled.[74] The second step was to multiply the percentage of each class of stock controlled by the first company by the value of shareholders' equity allocated to the class of stock under GAAP, with retained earnings allocated to common stock. The third and final step was to divide the first company's dollars of shareholders' equity by the total shareholders' equity of the second company, as determined under GAAP.

The proposal also provided adjustments to this general standard for more complex structures. For example, a first company was considered to control all equity securities controlled by its subsidiaries. The proposal also provided that a first company controls a pro rata share of equity securities controlled by a non-subsidiary of the first company.

Under the proposal, the total equity calculation methodology applied by its terms only to stock corporations that prepare financials under GAAP. However, the proposed rule indicated that the Board generally would apply the methodology in other circumstances as well, to the extent appropriate.

The proposal also included several anti-evasion provisions. Specifically, where a company controlled debt of a second company that was functionally

regulations regarding notices under the Change in Bank Control Act. *See* 12 CFR 225.41(d)(4); 12 CFR 225.42(a)(5).

[73] *See* 12 CFR 225.31(d)(2)(ii).

[74] For this purpose, all classes of common stock—whether voting or nonvoting—were treated as a single class. If certain classes of common stock had different economic interests per share in the issuing company, the number of shares of common stock was adjusted to equalize the economic interest per share.

equivalent to equity of the second company, the debt was counted as equity for purposes of the total equity calculation. The proposal provided a nonexclusive list of factors that the Board would examine in deciding whether to treat debt instruments as functionally equivalent to equity. These factors included treatment of the debt as equity under accounting, regulatory, or tax standards; subordination of the debt; or long maturity of the debt. Similarly, the proposal provided that other interests in a company beyond debt that were functionally equivalent to equity may be treated as equity.

In addition to a methodology for calculating total equity, the proposal provided a standard for the frequency of measurement of total equity. Under the proposal, an investing company was required to calculate its total equity in a second company each time the investing company acquired control over additional equity interests of the second company or divested control of equity interests of the second company.

Many commenters criticized the proposed total equity calculation methodology. In particular, commenters argued that it would lead to a first company being presumed to control a second company where the second company had negative retained earnings and the first company controlled preferred securities of the second company that included a liquidation preference. Several commenters recommended that retained earnings from start-up companies be excluded from the total equity calculation to avoid this problem. Some commenters alternatively recommended that the final rule include an exception for start-up companies where the total equity presumption would not apply for the first several years of a company's existence.

Certain commenters suggested that the Board calculate total equity using a common stock equivalent method as an alternative to the proposed methodology. Some commenters argued that the Board should establish more flexible rules for investments by and in investment funds.

Many commenters recommended that the Board not include debt instruments or other interests in the total equity calculation under the proposal's functional equivalence standard. Commenters argued that the standard was vague and could inhibit the use of certain common types of debt and other economic interests. At least one commenter suggested that the Board also provide that equity may be treated as functionally equivalent to debt under appropriate circumstances and thus excluded from total equity.

Various commenters urged the Board to eliminate or restrict the scope of the provisions of the total equity methodology that required a company to include a pro rata share of equity securities held by a non-subsidiary.

One commenter suggested that the Board revise the frequency of recalculation of total equity to require recalculation only if a company acquires control over additional voting equity, or only if a company controls five percent or more of a class of voting securities. Some commenters recommended that the final rule require recalculation of total equity only when a company acquires equity, never in the case of divestiture of equity.

The final rule's methodology for determining a company's total equity percentage in another company is largely consistent with the proposal. The Board believes that the GAAP-based core methodology of the final rule is effective, fit for purpose, well-understood, and easy to apply. The final rule includes a technical correction to the formula for total equity so that *pari passu* classes of preferred stock (*i.e.,* classes of preferred securities of the same seniority in liquidation) are treated as a single class.

The final rule includes without change the provision whereby debt or other interests may be treated as equity if the interests are functionally equivalent to equity. The Board expects to reclassify debt as equity under the rule only under unusual circumstances to prevent evasion of the rule. The list of debt features that support a reclassification as equity should not be understood to indicate that a debt instrument having any one of such features automatically would be treated as equity.

In response to concerns raised by commenters, the final rule provides flexibility for excluding nominally equity instruments from total equity if the equity instruments are determined to be functionally equivalent to debt. The final rule also includes a non-exclusive list of characteristics that could indicate that an equity instrument may be functionally equivalent to debt, such as protections generally provided to creditors, a limited term, a fixed rate of return or a variable rate of return linked to a reference interest rate, classification as debt for tax purposes, or classification as debt for accounting purposes.[75] This provision is intended to provide flexibility for unusual structures and is expected to be used rarely. Companies should consult with the Board or its staff in order to determine whether equity instruments would be excluded from total equity.

The final rule does not include the proposed provision that required a company to include a pro rata share of equity securities held by a non-subsidiary Accordingly, a company must include in the total equity calculation only equity securities it controls directly or indirectly through its subsidiaries.

Also in response to concerns raised by commenters, the final rule requires calculation of total equity only when a first company acquires control over additional equity of a second company. The first company is not required to recalculate its total equity when it sells or otherwise disposes of equity of the second company. This change will prevent a divestiture from causing an increase in total equity due to balance sheet changes at the second company.

*E. Limiting Contractual Rights*

Under the proposal, a company was presumed to control a second company if the first company had a contractual right that significantly restricts, or allows the first company to significantly restrict, the discretion of the second company over major operational or policy decisions.[76] Such contractual provisions was defined as a limiting contractual right.

The proposal provided examples of provisions that generally were considered limiting contractual rights and examples of provisions that generally were not considered limiting contractual rights. The examples included in the proposal were not intended to be a complete list of provisions that would or would not be considered limiting contractual rights. Rather, the provisions were meant as non-exclusive examples to provide transparency. The examples of limiting contractual rights listed in the proposal were:

- Restrictions on activities in which a company may engage, including a prohibition on (i) entering into new lines of business, (ii) making substantial changes to or discontinuing existing lines of business, (iii) entering into a contractual arrangement with a third party that imposes significant financial obligations on the company, or (iv) materially altering the policies or procedures of the company;

[75] *See, e.g.,* ASC 480–10.

[76] For purposes of this restriction, a contractual arrangement between the first company and a subsidiary of the second company, or between a subsidiary of the first company and the second company, could constitute a limiting contractual right of the first company over the second company.

• Requirements that a company direct the proceeds of the investment to effect any action, including to redeem the company's outstanding voting securities;
• Restrictions on hiring, firing, or compensating senior management officials of a company, or restrictions on significantly modifying a company's policies concerning the salary, compensation, employment, or benefits plan for employees of the company;
• Restrictions on a company's ability to merge or consolidate, or its ability to acquire, sell, lease, transfer, spin-off, recapitalize, liquidate, dissolve, or dispose of subsidiaries or major assets;
• Restrictions on a company's ability to make significant investments or expenditures;
• Requirements that a company achieve or maintain certain fundamental financial targets, such as a debt-to-equity ratio, a net worth requirement, a liquidity target, or a working capital requirement;
• Requirements that a company not exceed a specified percentage of classified assets or non-performing loans;
• Restrictions on a company's ability to pay or not pay dividends, change its dividend payment rate on any class of securities, redeem senior instruments, or make voluntary prepayment of indebtedness;
• Restrictions on a company's ability to authorize or issue additional junior equity or debt securities, or amend the terms of any equity or debt securities issued by the company;
• Restrictions on a company's ability to engage in a public offering or to list or de-list securities on an exchange;
• Restrictions on a company's ability to amend its articles of incorporation or by-laws, other than limited restrictions that are solely defensive for the investor;
• Restrictions on the removal or selection of any independent accountant, auditor, or investment banker; or
• Restrictions on a company's ability to alter significantly accounting methods and policies, or its regulatory, tax, or corporate status, such as converting from a stock corporation to a limited liability company.

The proposal's examples of contractual provisions that generally would not be limiting contractual rights were:

• A restriction on a company's ability to issue securities senior to the securities owned by the investor;
• A requirement that a company provide the investor with financial reports of the type ordinarily available to common stockholders;
• A requirement that a company maintain its corporate existence;
• A requirement that a company consult with the investor on a reasonable periodic basis;
• A requirement that a company comply with applicable statutory and regulatory requirements;
• A requirement that a company provide the investor with notice of the occurrence of material events affecting the company or its significant assets;
• A market standard ''most-favored nation'' requirement that the investor receive similar contractual rights as those held by other investors in a company; or
• Drag-along rights, tag-along rights, rights of first or last refusal, or stock transfer restrictions related to preservation of tax benefits of a company, such as S-corporation status and tax carry forwards, or other similar rights.

Commenters suggested that the scope of the definition of limiting contractual rights might be inconsistent with past precedent. Many commenters argued that the list of limiting contractual rights was overly broad and encompassed many standard investor protection rights. In addition, many commenters argued that the open-ended definition of limiting contractual right to include any right that restricts or allows one company to exert significant influence over another was overly vague.

In addition, commenters objected to including within the scope of limiting contractual rights various of the examples provided, including limits on: The second company's ability to enter into new lines of business; how the second company directs the proceeds of investments; the second company's ability to incur additional debt or raise additional equity; requirements that the second company maintain a particular financial ratio; the second company's ability to amend the terms of its debt or equity securities; the second company's ability to engage in a public offering, or to list or de-list securities on an exchange; the second company's ability to merge or consolidate with another company; the second company's ability to dispose of material subsidiaries or assets; and the second company's ability to alter its accounting methods or policies or its regulatory, tax, or liability status.

The final rule's definition of a limiting contractual right is generally consistent with the proposal. Limiting contractual rights are important indicia of controlling influence. In particular, limiting contractual rights provide a means for a company to cause or prevent otherwise permissible actions by another company, independent of the first company's exercise of its voting rights as a shareholder in the second company. Using such contractual rights, a company that has relatively low voting power may effectively control another company's decisions over important actions, or at least have influence over such decisions well beyond what the first company's voting power would provide.[77]

The variety of forms that limiting contractual rights may take makes the functional definition included in the final rule preferable to a prescriptive definition. The final rule, consistent with the proposal, includes lists of contractual rights that generally would or would not be considered limiting contractual rights in order to provide additional clarity around the specific application of the definition. The lists of contractual rights reflect a distillation of the Board's past practice and current understanding of the types of contractual restrictions that likely would or would not raise controlling influence concerns. The lists of contractual rights have not been changed from the proposal, though the introductory text of each list has been revised to make it clear that the listed provisions are examples of what generally would or would not be considered a limiting contractual right. Whether or not a particular contractual right is a limiting contractual right depends on whether the contractual right meets the functional regulatory definition of a limiting contractual right.

Commenters argued that a restriction on new lines of business should not be considered a limiting contractual right because such a restriction would help a bank holding company comply with the activity limitations in the BHC Act. Similarly, commenters argued that covenants to comply with the activities restrictions under the BHC Act or HOLA should not be treated as limiting contractual rights. Under the final rule, a contractual prohibition on engaging in particular activities is generally a limiting contractual right. However, the Board notes that a contractual provision that provides a reasonable and non-punitive mechanism for an investing company to reduce its investment to comply with the activities restrictions of the BHC Act or HOLA generally would not be a limiting contractual right.

One commenter asked the Board to clarify whether a contractual right restricting ''materially altering policies

[77] Such limiting contractual rights also may raise safety and soundness concerns by restricting the ability of a company to take appropriate actions to address supervisory issues.

or procedures'' would qualify as a limiting contractual right. A restriction of this type generally would be considered a limiting contractual right. It is similar to the example of a limiting contractual right provided in the final rule related to amendments to the articles or bylaws of a company.

Commenters suggested that the right to information available to shareholders should be expanded to include access to information that is necessary or appropriate to allow the first company to monitor its investment and to monitor regulatory, legal, or other requirements or standards, including the presumptions of control in the final rule. In the Board's view, an investor's right to access information regarding the relationship between the investor and the investee company, such as the information necessary to determine the application of the presumptions of control, generally would not be considered a limiting contractual right. In addition, the final rule has been revised to clarify that a contractual right to information ordinarily available to common shareholders, whether or not the information is financial in nature, is generally not a limiting contractual right.

Commenters also argued that the presumption of control based on limiting contractual rights should be revised so that the presumption does not apply if the first company cannot exercise the right unilaterally or if the first company is not the largest single decider of the exercise of the right. One commenter sought clarification as to whether, and in what circumstances, voting rights exercised by a group of investors (such as a voting right that can only be exercised by certain preferred shareholders) would be treated as a limiting contractual right. To avoid undue complexity, the final rule does not specifically address contractual provisions that incorporate elements of voting by requiring agreement of a certain percentage of certain parties. Companies with questions on a particular limiting contractual right may contact the Board or its staff to address the specific situation.

In addition, commenters expressed concern that the proposal would treat standard loan or bond covenants as limiting contractual rights. Commenters argued that treating loan covenants as limiting contractual rights would make it impossible for a bank to make a loan to another company if its affiliate had also made an equity investment in that company. Some commenters argued that standard loan covenants should not trigger a presumption of control when they are on market terms, there are multiple lenders, and the first company has less than 15 percent voting power in the second company. The final rule does not include any revisions in response to these comments. In the Board's view, a contractual provision that significantly restricts a company's discretion over operational and policy decisions ought to be treated as a limiting contractual right in the final rule. Whether or not the limiting contractual right is embedded in a market-standard loan agreement does not affect the influence the limiting contractual right provides the holder of the right. The Board generally has controlling influence concerns when a company, directly or indirectly, both controls a material amount of voting securities of another company and has the ability to significantly restrict the discretion of the other company over operational or policy decisions by contract.

*F. Director Representatives*

As discussed, the Board has long taken the position that director representatives of a company serving on the board of directors of a second company are an avenue through which the first company may exercise a controlling influence over the second company. To provide more clarity on when the Board deems an individual to be a director representative of a company, the proposal defined director representative to be any director who (i) is a current director, employee, or agent of the company; (ii) was a director, employee, or agent of the company within the preceding two years; or (iii) is an immediate family member of an individual who is a current director, employee, or agent of the company, or was a director, employee, or agent of the company within the preceding two years. In addition, the proposal provided that a director is a director representative of a first company if the director was proposed to serve as a director by the first company, whether by exercise of a contractual right or otherwise. The proposal also specified that a nonvoting observer is not a director representative.

Some commenters suggested that the definition of a director representative was too broad and could include directors over which the first company did not have substantial influence. In particular, some commenters contended that director representatives should not include individuals elected to the board of directors of a mutual fund by a first company if the director representatives are independent of the first company.

A few commenters expressed concern that the proposed definition might mean that the Board would attribute a director to a company if the company merely suggested the name of the director to a nominating committee. Some commenters also expressed concern about the ambiguity of treating ''agents'' of a company as director representatives and requested that the Board define the term agent in this context.

Several commenters argued that the definition of director representative should include only former directors of the first company and should not include former employees. Similarly, some commenters suggested that a company should only be attributed a former officer, director, or employee if the individual became a director of the second company while still an officer, director, or employee of the first company.

Some commenters argued that the inclusion of immediate family members of directors, employees, and agents of the first company was too broad and would create compliance difficulties, especially with respect to employees of large companies. These commenters argued that the immediate family member prong ought to be removed from the definition of director representative.

In response to the comments received, the Board is substantially amending the definition of a director representative to be more functional and more narrow. Specifically, under the final rule, ''director representative'' is defined as an individual that represents the interests of a first company through service on the board of directors of a second company. The final rule then provides a non-exclusive list of examples of persons who generally would be considered to be director representatives for purposes of the final rule: (i) Individuals who are officers, employees, or directors of the first company, (ii) individuals who were officers, employees, or directors of the first company within the preceding two years, and (iii) individuals who were nominated or proposed by the first company to be directors of the second company. Companies may contact the Board or its staff for guidance in determining whether or not a particular individual would be considered to be a director representative for purposes of the final rule.

*G. Investment Advisers*

The proposal defined investment adviser for purposes of the proposed presumptions to mean a company that is registered as an investment adviser with the SEC under the Investment Advisers Act,[78] a company registered

[78] 15 U.S.C. 80b–1 *et seq.*

with the Commodity Futures Trading Commission (''CFTC'') as a commodity trading adviser under the Commodity Exchange Act,[79] a company that is a foreign equivalent of an investment adviser or commodity trading adviser registered with the SEC or CFTC, respectively, or a company that engages in any of the activities set forth in section 225.28(b)(6)(i) through (iv) of the Board's Regulation Y.

The Board did not receive comments specifically on the definition of investment adviser, although the Board did receive comments on the presumption of control based on investment advisory relationships. The comments on the presumption of control based on investment advisory relationships are discussed earlier in this preamble. The final rule adopts the definition of investment adviser as proposed.

## IV. Application to Savings and Loan Holding Companies

As noted, the proposal applied equally to bank holding companies and savings and loan holding companies to the maximum extent permitted by law. HOLA defines control in a substantially similar manner as the BHC Act.[80] The Board previously recognized that the statutory control framework under the BHC Act and HOLA are nearly identical and determined to apply matching procedures for reviewing controlling influence cases involving savings and loan holding companies under Regulation LL as apply to bank holding companies under Regulation Y.[81] Consistent with this principle, the proposal incorporated the proposed control presumptions and related revisions into the Board's Regulation LL for savings and loan holding companies in essentially the same manner as into the Board's Regulation Y for bank holding companies. The Board is also amending portions of subpart A of Regulation LL to incorporate current § 238.9 into § 238.8. This does not any change requirements under these sections, but is merely a technical edit to make room for the new section § 238.9 adopted by this final rule.

### *A. Control Under HOLA Compared to the BHC Act*

Although controlling influence is defined similarly under HOLA and the BHC Act, there are several differences between the definitions of ''control'' in each statute. Under HOLA, the definition of control applies to both individuals and companies controlling other companies, while control is limited to companies controlling other companies under the BHC Act.[82] Under HOLA, a person controls a company if the person has more than 25 percent of any class of voting securities of the company, rather than 25 percent or more of any class of voting securities under the BHC Act.[83] Unlike the BHC Act, HOLA specifies that a general partner of a partnership controls the partnership, a trustee of a trust controls the trust, and a person that has contributed more than 25 percent of the capital of a company controls the company.[84] Further, HOLA does not include the BHC Act's presumption of noncontrol for a company with a less than 5 percent voting interest in another company.[85]

At least one commenter stated that the Board should confirm past decisions of the Office of Thrift Supervision indicating that contributed capital for purposes of HOLA was the same as total equity, or that the Board should otherwise clarify its interpretation of contributed capital for purposes of HOLA. One commenter suggested that the Board should seek additional public comment on its interpretation of contributed capital.

In response to comments received on the proposal, the final rule has been revised to reflect that contributed capital for purposes of HOLA generally has the same meaning as total equity as used by the Board in the context of control under the BHC Act. As a result, the final rule differs from the proposal in several respects. Specifically, the final rule omits the concept of total equity from subpart C of Regulation LL because subpart C relates to questions of controlling influence and contributed capital is a separate part of the statutory definition of control under HOLA. The rules for calculating total equity under subpart D of Regulation Y reflect how the Board generally expects to measure contributed capital for purposes of HOLA and Regulation LL.

### *B. Revisions to Regulation LL*

Under the proposal, the Board included in Regulation LL the same presumptions and related amendments made to Regulation Y, with limited changes to reflect the relevant differences between control under the BHC Act and HOLA. The proposed defined terms were located in § 238.2 of Regulation LL. The proposed provisions relating to the calculation of the percentage of a class of securities controlled by a person were located in § 238.9 of Regulation LL. The proposed provisions related to control proceedings, including the proposed presumptions of control and noncontrol, were located in subpart C of Regulation LL.

The Board did not receive any comments specifically on how the rule amended Regulation LL, other than the contributed capital issue described previously. Accordingly, other than the provisions related to total equity and the placement of proposed § 238.10 in § 238.9 instead, the final rule creates an essentially consistent control framework between Regulation Y and Regulation LL.

## V. Additional Implementation Matters

### *Use of Passivity Commitments*

Some commenters suggested that the Board abandon its use of passivity commitments and clarify that such commitments are not needed going forward. Other commenters requested that the Board clarify whether it intends to continue to seek either the general passivity commitments or any of the specialized types of similar commitments. A few commenters also requested that the Board provide a process under which companies that have provided passivity commitments may obtain relief from the commitments to align to the control framework. Some commenters suggested that investors that had previously submitted passivity commitments to the Board should be allowed to increase their relationships with the target company without seeking relief from commitments so long as the increased relationships would not trigger a presumption of control under the final rule.

The Board does not intend to obtain the standard-form passivity commitments going forward in the ordinary course. The Board will continue to obtain control-related commitments in specific contexts, such as commitments from employee stock ownership plans and mutual fund complexes, and in special situations.

In the wake of the final rule, companies that have provided the standard form of passivity commitments to the Board may contact the Board or the appropriate Federal Reserve Bank to seek relief from these commitments. Absent unusual circumstances, the

[79] 7 U.S.C. 1 *et seq.*

[80] *Compare* 12 U.S.C. 1467a(a)(2) (HOLA) *with* 12 U.S.C. 1841(a)(2) (BHC Act).

[81] 76 FR 56508, 56509 (Sept. 13, 2011).

[82] 12 U.S.C. 1467a(a)(2).

[83] 12 U.S.C. 1467a(2)(A)–(B) and 1841(a)(2)(A).

[84] 12 U.S.C. 1467a(2)(B)–(C).

[85] 12 U.S.C. 1841(a)(3).

Board expects to be receptive to such requests for relief.[86]

*Application of the Final Rule*

Several commenters suggested that the Board's new control framework should only apply prospectively. Similarly, some commenters suggested that the Board grandfather all existing investments or more narrowly grandfather existing investments that had been reviewed by the Board or its staff. Some commenters advocated for a three-year phase-in period for foreign banking organizations so that these firms could make adjustments to their business practices to account for the final rule.

The final rule provides additional information regarding the Board's views on questions of controlling influence, but it is generally consistent with the Board's current practice. As it is not a fundamental change to current practice, the final rule does not grandfather existing structures and does not provide a transition period to allow firms to conform existing investments. The Board does not expect to revisit structures that have already been reviewed by the Federal Reserve System unless such structures are materially altered from the facts and circumstances of the original review. To the extent that a company previously considered an existing relationship between two companies to not constitute control, the relationship was not reviewed by the Federal Reserve System, and the relationship would be presumed to be a controlling relationship under the final rule, the company may contact the Board or its staff to discuss potential actions.

## VI. Administrative Law Matters

*A. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the final rule and determined that it does not create any new or revise any existing collection of information under section 3504(h) of title 44.

*B. Regulatory Flexibility Act*

An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 603(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comment on the effect of the proposed rule on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments on the IRFA. The RFA requires an agency to prepare a final regulatory flexibility analysis unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Based on its analysis, and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.[87]

Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $600 million or less and trust companies with total assets of $41.5 million or less (small banking organization).[88] As of June 30, 2019, there were approximately 2,976 small bank holding companies, 133 small savings and loan holding companies, and 537 small SMBs. The final rule may also have implications for additional entities that have material relationships with banking organizations; however, the scope of potentially affected entities and thus the extent to which affected entities are small entities under the regulations of the Small Business Administration, is not known.

As discussed in the **SUPPLEMENTARY INFORMATION** section, the final rule establishes a more detailed framework for the Board to determine whether a company has control over another company for purposes of the BHC Act and HOLA. The final rule consists of a series of rebuttable presumptions of control, a rebuttable presumption of noncontrol, and various ancillary items such as definitions of terms used in the presumptions. The presumptions of control generally would be consistent with the Board's current practice with respect to controlling influence, with certain targeted adjustments.

A main impact of the final rule will be to enhance transparency to the public on the Board's views on controlling influence. The final rule most directly affects bank holding companies and savings and loan holding companies, though it also could impact state member banks and other companies with relationships with depository institutions and depository institution holding companies. However, the final rule generally will not impact banking organizations in the ordinary course; there are no regular compliance, recordkeeping, or reporting requirements associated with the final rule. Rather, the impact of the final rule will generally be in the context of certain types of significant transactions that companies may decide to engage in. In addition, any material impact would be concentrated in companies engaged in the particular types of investments where controlling influence is a concern for the parties involved, which is a narrow subset of all transactions banking organizations may be party to. For the reasons discussed above, the Board anticipates that any economic impact of the final rule, including on small banking organizations, will be a reduction of burden associated with structuring transactions to address control issues. Therefore, the Board does not expect the rule to have a significant economic impact on a substantial number of small entities.

*C. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act[89] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board have sought to present the final rule in a simple and straightforward manner, did not receive any comments on the use of plain language.

**List of Subjects**

*12 CFR Part 225*

Administrative practice and procedure, Banks, Banking, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

*12 CFR Part 238*

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Holding companies, Securities.

**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:

[86] Companies that have provided commitments in connection with TARP securities may also seek relief.

[87] 5 U.S.C. 605(b).

[88] *See* 13 CFR 121.201. Effective August 19, 2019, the SBA revised the size standards for banking organizations to $600 million in assets from $550 million in assets. 84 FR 34261 (July 18, 2019).

[89] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

### Subpart A—General Provisions

■ 2. In § 225.2:
■ a. Remove the words ''bank or other company'' and add in their place ''company'' wherever they occur in paragraphs (e) introductory text and (e)(1);
■ b. Revise paragraphs (e)(2) and (q)(2); and
■ c. Add paragraph (u).

The revisions and addition read as follows:

**§ 225.2 Definitions.**

* * * * *

(e) * * *

(2) A company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By the company, or by any subsidiary of the company;

(ii) That the company has power to vote or to dispose of;

(iii) In a fiduciary capacity for the benefit of the company or any of its subsidiaries;

(iv) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the company or any of its subsidiaries; or

(v) According to the standards under § 225.9 of this part.

* * * * *

(q) * * *

(2) *Nonvoting securities.* Common shares, preferred shares, limited partnership interests, limited liability company interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the securities are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The securities represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The securities do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company; except that limited partnership interests or membership interests in limited liability companies are not voting securities due to voting rights that are limited solely to voting for the removal of a general partner or managing member (or persons exercising similar functions at the company) for cause, to replace a general partner or managing member (or persons exercising similar functions at the company) due to incapacitation or following the removal of such person, or to continue or dissolve the company after removal of the general partner or managing member (or persons exercising similar functions at the company).

* * * * *

(u) *Voting percentage.* For purposes of this part, the percentage of a class of a company's voting securities controlled by a person is the greater of:

(1) The quotient, expressed as a percentage, of the number of shares of the class of voting securities controlled by the person, divided by the number of shares of the class of voting securities that are issued and outstanding, both as adjusted by § 225.9 of this part; and

(2) The quotient, expressed as a percentage, of the number of votes that may be cast by the person on the voting securities controlled by the person, divided by the total votes that are legally entitled to be cast by the issued and outstanding shares of the class of voting securities, both as adjusted by § 225.9 of this part.

■ 3. Section 225.9 is added to read as follows:

**§ 225.9 Control over securities.**

(a) *Contingent rights, convertible securities, options, and warrants.* (1) A person that controls a security, option, warrant, or other financial instrument that is convertible into, exercisable for, exchangeable for, or otherwise may become a security controls each security that could be acquired as a result of such conversion, exercise, exchange, or similar occurrence.

(2) If a financial instrument of the type described in paragraph (a)(1) of this section is convertible into, exercisable for, exchangeable for, or otherwise may become a number of securities that varies according to a formula, rate, or other variable metric, the number of securities controlled under paragraph (a)(1) of this section is the maximum number of securities that the financial instrument could be converted into, be exercised for, be exchanged for, or otherwise become under the formula, rate, or other variable metric.

(3) Notwithstanding paragraph (a)(1) of this section, a person does not control voting securities due to controlling a financial instrument if the financial instrument:

(i) By its terms is not convertible into, is not exercisable for, is not exchangeable for, and may not otherwise become voting securities in the hands of the person or an affiliate of the person; and

(ii) By its terms is only convertible into, exercisable for, exchangeable for, or may otherwise become voting securities in the hands of a transferee after a transfer:

(A) In a widespread public distribution;

(B) To the issuing company;

(C) In transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of the outstanding securities of any class of voting securities of the issuing company; or

(D) To a transferee that would control more than 50 percent of every class of voting securities of the issuing company without any transfer from the person.

(4) Notwithstanding paragraph (a)(1) of this section, a person that has agreed to acquire securities or other financial instruments pursuant to a securities purchase agreement does not control such securities or financial instruments until the person acquires the securities or financial instruments.

(5) Notwithstanding paragraph (a)(1) of this section, a right that provides a person the ability to acquire securities in future issuances or to convert nonvoting securities into voting securities does not cause the person to control the securities that could be acquired under the right, so long as the right does not allow the person to acquire a higher percentage of the class of securities than the person controlled immediately prior to the future acquisition.

(6) Notwithstanding paragraph (a)(1) of this section, a preferred security that would be a nonvoting security but for a right to vote on directors that activates only after six or more quarters of unpaid dividends is not considered to be a voting security until the security holder is entitled to exercise the voting right.

(7) For purposes of determining the percentage of a class of voting securities or the total equity percentage of a company controlled by a person that

controls a financial instrument of the type described in paragraph (a)(1) of this section:

(i) The securities controlled by the person under paragraphs (a)(1) through (6) of this section are deemed to be issued and outstanding; and

(ii) Any securities controlled by anyone other than the person under paragraph (a)(1) through (6) of this section are not deemed to be issued and outstanding, unless by the terms of the financial instruments the securities controlled by the other persons must be issued and outstanding in order for the securities of the person to be issued and outstanding.

(b) *Restriction on securities.* A person that enters into an agreement or understanding with a second person under which the rights of the second person are restricted in any manner with respect to securities that are controlled by the second person, controls the securities of the second person, unless the restriction is:

(1) A requirement that the second person offer the securities for sale to the first person for a reasonable period of time prior to transferring the securities to a third party;

(2) A requirement that, if the second person agrees to sell the securities, the second person provide the first person with the opportunity to participate in the sale of the securities by the second person;

(3) A requirement under which the second person agrees to sell its securities to a third party if a majority of security holders agrees to sell their securities to the third party;

(4) Incident to a bona fide loan transaction in which the securities serve as collateral;

(5) A short-term and revocable proxy;

(6) A restriction on transferability that continues only for a reasonable amount of time necessary to complete an acquisition by the first person of the securities from the second person, including the time necessary to obtain required approval from an appropriate government authority with respect to the acquisition;

(7) A requirement that the second person vote the securities in favor of a specific acquisition of control of the issuing company, or against competing transactions, if the restriction continues only for a reasonable amount of time necessary to complete the transaction, including the time necessary to obtain required approval from an appropriate government authority with respect to an acquisition or merger; or

(8) An agreement among security holders of the issuing company intended to preserve the tax status or tax benefits of the company, such as qualification of the issuing company as a Subchapter S corporation, as defined in 26 U.S.C. 1361(a)(1) or any successor statute, or prevention of events that could impair deferred tax assets, such as net operating loss carryforwards, as described in 26 U.S.C. 382 or any successor statute.

(c) *Securities held by senior management officials or controlling equity holders of a company.* A company that controls 5 percent or more of any class of voting securities of another company controls all securities issued by the second company that are controlled by senior management officials, directors, or controlling shareholders of the first company, or by immediate family members of such persons, unless the first company controls less than 15 percent of each class of voting securities of the second company and the senior management officials, directors, and controlling shareholders of the first company, and immediate family members of such persons, control 50 percent or more of each class of voting securities of the second company.

(d) *Reservation of authority.* Notwithstanding paragraphs (a) through (c) of this section, the Board may determine that securities are or are not controlled by a company based on the facts and circumstances presented.

■ 4. Subpart D is revised to read as follows:

**Subpart D—Control and Divestiture Proceedings**

Sec.

225.31 Control proceedings.
225.32 Rebuttable presumptions of control of a company.
225.33 Rebuttable presumption of noncontrol of a company.
225.34 Total equity.

## Subpart D—Control and Divestiture Proceedings

### § 225.31 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board in its sole discretion may issue a preliminary determination of control under the procedures set forth in this section in any case in which the Board determines, based on consideration of the facts and circumstances presented, that a first company has the power to exercise a controlling influence over the management or policies of a second company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the first company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* (1) Within 30 calendar days after issuance by the Board of a preliminary determination of control or such longer period permitted by the Board in its discretion, the first company against whom the preliminary determination has been made shall:

(i) Consent to the preliminary determination of control and either:

(A) Submit for the Board's approval a specific plan for the prompt termination of the control relationship; or

(B) File an application or notice under this part, as applicable; or

(ii) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(2) If the first company fails to respond to the preliminary determination of control within 30 days or such longer period permitted by the Board in its discretion, the first company will be deemed to have waived its right to present additional information to the Board or to request a hearing or other proceeding regarding the preliminary determination of control.

(c) *Hearing and final determination.* (1) The Board shall order a hearing or other appropriate proceeding upon the petition of a first company that contests a preliminary determination of control if the Board finds that material facts are in dispute. The Board may, in its discretion, order a hearing or other appropriate proceeding without a petition for such a proceeding by the first company.

(2) At a hearing or other proceeding, any applicable presumptions established under this subpart shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(3) After considering the submissions of the first company and other evidence, including the record of any hearing or other proceeding, the Board will issue a final order determining whether the first company has the power to exercise a controlling influence over the management or policies of the second company. If a controlling influence is found, the Board may direct the first company to terminate the control relationship or to file an application or notice for the Board's approval to retain the control relationship.

(d) *Submission of evidence.* (1) In connection with contesting a preliminary determination of control

under paragraph (b)(1)(ii) of this section, a first company may submit to the Board evidence or any other relevant information related to its control of a second company.

(2) Evidence or other relevant information submitted to the Board pursuant to paragraph (d)(1) of this section must be in writing and may include a description of all current and proposed relationships between the first company and the second company, including relationships of the type that are identified under any of the rebuttable presumptions in §§ 225.32 and 225.33 of this part, copies of any formal agreements related to such relationships, and a discussion regarding why the Board should not determine the first company to control the second company.

(e) *Definitions.* For purposes of this subpart:

(1) *Board of directors* means the board of directors of a company or a set of individuals exercising similar functions at a company.

(2) *Director representative* means any individual that represents the interests of a first company through service on the board of directors of a second company. For purposes of this paragraph (e)(2), examples of persons who are directors of a second company and generally would be considered director representatives of a first company include:

(i) A current officer, employee, or director of the first company;

(ii) An individual who was an officer, employee, or director of the first company within the prior two years; and

(iii) An individual who was nominated or proposed to be a director of the second company by the first company.

(iv) A director representative does not include a nonvoting observer.

(3) *First company* means the company whose potential control of a second company is the subject of determination by the Board under this subpart.

(4) *Investment adviser* means a company that:

(i) Is registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*);

(ii) Is registered as a commodity trading advisor with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(iii) Is a foreign equivalent of an investment adviser or commodity trading advisor, as described in paragraph (e)(4)(i) or (ii) of this section; or

(iv) Engages in any of the activities set forth in § 225.28(b)(6)(i) through (iv) of this part.

(5) *Limiting contractual right* means a contractual right of the first company that would allow the first company to restrict significantly, directly or indirectly, the discretion of the second company, including its senior management officials and directors, over operational and policy decisions of the second company.

(i) Examples of limiting contractual rights may include, but are not limited to, a right that allows the first company to restrict or to exert significant influence over decisions related to:

(A) Activities in which the second company may engage, including a prohibition on entering into new lines of business, making substantial changes to or discontinuing existing lines of business, or entering into a contractual arrangement with a third party that imposes significant financial obligations on the second company;

(B) How the second company directs the proceeds of the first company's investment;

(C) Hiring, firing, or compensating one or more senior management officials of the second company, or modifying the second company's policies or budget concerning the salary, compensation, employment, or benefits plan for its employees;

(D) The second company's ability to merge or consolidate, or its ability to acquire, sell, lease, transfer, spin-off, recapitalize, liquidate, dissolve, or dispose of subsidiaries or assets;

(E) The second company's ability to make investments or expenditures;

(F) The second company achieving or maintaining a financial target or limit, including, for example, a debt-to-equity ratio, a fixed charges ratio, a net worth requirement, a liquidity target, a working capital target, or a classified assets or nonperforming loans limit;

(G) The second company's payment of dividends on any class of securities, redemption of senior instruments, or voluntary prepayment of indebtedness;

(H) The second company's ability to authorize or issue additional junior equity or debt securities, or amend the terms of any equity or debt securities issued by the second company;

(I) The second company's ability to engage in a public offering or to list or de-list securities on an exchange, other than a right that allows the securities of the first company to have the same status as other securities of the same class;

(J) The second company's ability to amend its articles of incorporation or by-laws, other than in a way that is solely defensive for the first company;

(K) The removal or selection of any independent accountant, auditor, investment adviser, or investment banker employed by the second company; or

(L) The second company's ability to significantly alter accounting methods and policies, or its regulatory, tax, or liability status (*e.g.,* converting from a stock corporation to a limited liability company); and

(ii) A limiting contractual right does not include a contractual right that would not allow the first company to significantly restrict, directly or indirectly, the discretion of the second company over operational and policy decisions of the second company. Examples of contractual rights that are not limiting contractual rights may include:

(A) A right that allows the first company to restrict or to exert significant influence over decisions relating to the second company's ability to issue securities senior to securities owned by the first company;

(B) A requirement that the first company receive financial reports or other information of the type ordinarily available to common stockholders;

(C) A requirement that the second company maintain its corporate existence;

(D) A requirement that the second company consult with the first company on a reasonable periodic basis;

(E) A requirement that the second company provide notices of the occurrence of material events affecting the second company;

(F) A requirement that the second company comply with applicable statutory and regulatory requirements;

(G) A market standard requirement that the first company receive similar contractual rights as those held by other investors in the second company;

(H) A requirement that the first company be able to purchase additional securities issued by the second company in order to maintain the first company's percentage ownership in the second company;

(I) A requirement that the second company ensure that any security holder who intends to sell its securities of the second company provide other security holders of the second company or the second company itself the opportunity to purchase the securities before the securities can be sold to a third party; or

(J) A requirement that the second company take reasonable steps to ensure

the preservation of tax status or tax benefits, such as status of the second company as a Subchapter S corporation or the protection of the value of net operating loss carry-forwards.

(6) *Second company* means the company whose potential control by a first company is the subject of determination by the Board under this subpart.

(7) *Senior management official* means any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of a company.

(f) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Board to take any supervisory or enforcement action otherwise permitted by law, including an action to address unsafe or unsound practices or conditions, or violations of law.

**§ 225.32 Rebuttable presumptions of control of a company.**

(a) *General.* (1) In any proceeding under § 225.31(b) or (c) of this part, a first company is presumed to control a second company in the situations described in paragraphs (b) through (i) of this section. The Board also may find that a first company controls a second company based on other facts and circumstances.

(2) For purposes of the presumptions in this section, any company that is a subsidiary of the first company and also a subsidiary of the second company is considered to be a subsidiary of the first company and not a subsidiary of the second company.

(b) *Management contract or similar agreement.* The first company enters into any agreement, understanding, or management contract (other than to serve as investment adviser) with the second company, under which the first company directs or exercises significant influence or discretion over the general management, overall operations, or core business or policy decisions of the second company. Examples of such agreements include where the first company is a managing member, trustee, or general partner of the second company, or exercises similar powers and functions.

(c) *Total equity.* The first company controls one third or more of the total equity of the second company.

(d) *Ownership or control of 5 percent or more of voting securities.* The first company controls 5 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1)(i) Director representatives of the first company or any of its subsidiaries comprise 25 percent or more of the board of directors of the second company or any of its subsidiaries; or

(ii) Director representatives of the first company or any of its subsidiaries are able to make or block the making of major operational or policy decisions of the second company or any of its subsidiaries;

(2) Two or more employees or directors of the first company or any of its subsidiaries serve as senior management officials of the second company or any of its subsidiaries;

(3) An employee or director of the first company or any of its subsidiaries serves as the chief executive officer, or serves in a similar capacity, of the second company or any of its subsidiaries;

(4) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis; or

(5) The first company or any of its subsidiaries has any limiting contractual right with respect to the second company or any of its subsidiaries, unless such limiting contractual right is part of an agreement to merge with or make a controlling investment in the second company that is reasonably expected to close within one year and such limiting contractual right is designed to ensure that the second company continues to operate in the ordinary course until the merger or investment is consummated or such limiting contractual right requires the second company to take an action necessary for the merger or investment to be consummated.

(e) *Ownership or control of 10 percent or more of voting securities.* The first company controls 10 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) The first company or any of its subsidiaries propose a number of director representatives to the board of directors of the second company or any of its subsidiaries in opposition to nominees proposed by the management or board of directors of the second company or any of its subsidiaries that, together with any director representatives of the first company or any of its subsidiaries on the board of directors of the second company or any of its subsidiaries, would comprise 25 percent or more of the board of directors of the second company or any of its subsidiaries;

(2) Director representatives of the first company and its subsidiaries comprise more than 25 percent of any committee of the board of directors of the second company or any of its subsidiaries that can take action that binds the second company or any of its subsidiaries; or

(3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that:

(i) Are not on market terms; or

(ii) Generate in the aggregate 5 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis.

(f) *Ownership or control of 15 percent or more of voting securities.* The first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) A director representative of the first company or of any of its subsidiaries serves as the chair of the board of directors of the second company or any of its subsidiaries;

(2) One or more employees or directors of the first company or any of its subsidiaries serves as a senior management official of the second company or any of its subsidiaries; or

(3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis.

(g) *Accounting consolidation.* The first company consolidates the second company on its financial statements prepared under U.S. generally accepted accounting principles.

(h) *Control of an investment fund.* (1) The first company serves as an investment adviser to the second company, the second company is an investment fund, and the first company, directly or indirectly, or acting through one or more other persons:

(i) Controls 5 percent or more of the outstanding securities of any class of voting securities of the second company; or

(ii) Controls 25 percent or more of the total equity of the second company.

(2) The presumption of control in paragraph (h)(1) of this section does not apply if the first company organized and sponsored the second company within the preceding 12 months.

(i) *Divestiture of control.* (1) The first company controlled the second company under § 225.2(e)(1)(i) or (ii) of this part at any time during the prior

two years and the first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company.

(2) Notwithstanding paragraph (i)(1) of this section, a first company will not be presumed to control a second company under this paragraph if 50 percent or more of the outstanding securities of each class of voting securities of the second company is controlled by a person that is not a senior management official or director of the first company, or by a company that is not an affiliate of the first company.

(j) *Securities held in a fiduciary capacity.* For purposes of the presumptions of control in this section, the first company does not control securities of the second company that the first company holds in a fiduciary capacity, except that if the second company is a depository institution or a depository institution holding company, this paragraph (j) only applies to securities held in a fiduciary capacity without sole discretionary authority to exercise the voting rights of the securities.

**§ 225.33 Rebuttable presumption of noncontrol of a company.**

(a) In any proceeding under § 225.31(b) or (c) of this part, a first company is presumed not to control a second company if:

(1) The first company controls less than 10 percent of the outstanding securities of each class of voting securities of the second company; and

(2) The first company is not presumed to control the second company under § 225.32 of this part.

(b) In any proceeding under this subpart, or judicial proceeding under the Bank Holding Company Act, other than a proceeding in which the Board has made a preliminary determination that a first company has the power to exercise a controlling influence over the management or policies of a second company, a first company may not be held to have had control over a second company at any given time, unless the first company, at the time in question, controlled 5 percent or more of the outstanding securities of any class of voting securities of the second company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

**§ 225.34 Total equity.**

(a) *General.* For purposes of this subpart, the total equity controlled by a first company in a second company that is organized as a stock corporation and prepares financial statements pursuant to U.S. generally accepted accounting principles will be calculated as described in paragraph (b) of this section. With respect to a second company that is not organized as a stock corporation or that does not prepare financial statements pursuant to U.S. generally accepted accounting principles, the first company's total equity in the second company will be calculated so as to be reasonably consistent with the methodology described in paragraph (b) of this section, while taking into account the legal form of the second company and the accounting system used by the second company to prepare financial statements.

(b) *Calculation of total equity*—(1) *Total equity.* The first company's total equity in the second company, expressed as a percentage, is equal to:

(i) The sum of Investor Common Equity and, for each class of preferred stock issued by the second company, Investor Preferred Equity, divided by

(ii) Issuer Shareholders' Equity.

(2) *Investor Common Equity* equals the greater of:

(i) Zero, and

(ii) The quotient of the number of shares of common stock of the second company that are controlled by the first company divided by the total number of shares of common stock of the second company that are issued and outstanding, multiplied by the amount of shareholders' equity of the second company not allocated to preferred stock under U.S. generally accepted accounting principles.[1]

(3) *Investor Preferred Equity* equals, for each class of preferred stock issued by the second company, the greater of:

(i) Zero, and

(ii) The quotient of the number of shares of the class of preferred stock of the second company that are controlled by the first company divided by the total number of shares of the class of preferred stock that are issued and outstanding, multiplied by the amount of shareholders' equity of the second company allocated to the class of preferred stock under U.S. generally accepted accounting principles.[2]

(c) *Consideration of debt instruments and other interests in total equity.* (1) For purposes of the total equity calculation in paragraph (b) of this section, a debt instrument or other interest issued by the second company that is controlled by the first company may be treated as an equity instrument if that debt instrument or other interest is functionally equivalent to equity.

(2) For purposes of paragraph (b)(1) of this section, the principal amount of all debt instruments and the market value of all other interests that are functionally equivalent to equity that are controlled by the first company are added to the sum under paragraph (b)(1)(i) of this section, and the principal amount of all debt instruments and the market value of all other interests that are functionally equivalent to equity that are outstanding are added to Issuer Shareholders' Equity.

(3) For purposes of paragraph (c)(1) of this section, a debt instrument issued by the second company may be considered functionally equivalent to equity if it has equity-like characteristics, such as:

(i) Extremely long-dated maturity;

(ii) Subordination to other debt instruments issued by the second company;

(ii) Qualification as regulatory capital under any regulatory capital rules applicable to the second company;

(iii) Qualification as equity under applicable tax law;

(iv) Qualification as equity under U.S. generally accepted accounting principles or other applicable accounting standards;

(v) Inadequacy of the equity capital underlying the debt at the time of the issuance of the debt; or

(vi) Issuance not on market terms.

(4) For purposes of paragraph (c)(1) of this section, an interest that is not a debt instrument issued by the second company may be considered functionally equivalent to equity if it has equity-like characteristics, such as entitling its owner to a share of the profits of the second company.

(d) *Exclusion of certain equity instruments from total equity.* (1) For purposes of the total equity calculation in paragraph (b) of this section, an equity instrument issued by the second company that is controlled by the first company may be treated as not an equity instrument if the equity instrument is functionally equivalent to debt.

[1] If the second company has multiple classes of common stock outstanding and different classes of common stock have different economic interests in the second company on a per share basis, the number of shares of common stock must be adjusted for purposes of this calculation so that each share of common stock has the same economic interest in the second company.

[2] If there are different classes of preferred stock with equal seniority (*i.e., pari passu* classes of preferred stock), the *pari passu* shares are treated as a single class. If *pari passu* classes of preferred stock have different economic interests in the second company on a per share basis, the number of shares of preferred stock must be adjusted for purposes of this calculation so that each *pari passu* share of preferred stock has the same economic interest in the second company.

(2) For purposes of paragraph (d)(1) of this section, an equity instrument issued by the second company may be considered functionally equivalent to debt if it has debt-like characteristics, such as protections generally provided to creditors, a limited term, a fixed rate of return or a variable rate of return linked to a reference interest rate, classification as debt for tax purposes, or classification as debt for accounting purposes.

(e) *Frequency of total equity calculation.* The total equity of a first company in a second company is calculated each time the first company acquires control over equity instruments of the second company, including any debt instruments or other interests that are functionally equivalent to equity in accordance with paragraph (c) of this section.

## PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 5. The authority citation for part 238 continues to read as follows:

**Authority:** 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78l.

### Subpart A—General Provisions

■ 6. Amend § 238.2 by revising paragraphs (e), (r)(2), and (tt) to read as follows:

**§ 238.2 Definitions.**

* * * * *

(e) A person shall be deemed to have *control* of:

(1) A savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(2) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(3) A trust if the person is a trustee thereof;

(4) A company if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company; or

(5) Voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By the company, or by any subsidiary of the company;

(ii) That the company has power to vote or to dispose of;

(iii) In a fiduciary capacity for the benefit of the company or any of its subsidiaries;

(iv) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the company or any of its subsidiaries; or

(v) According to the standards under § 238.9 of this part.

* * * * *

(r) * * *

(2) *Nonvoting securities.* Common shares, preferred shares, limited partnership interests, limited liability company interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the securities are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The securities represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The securities do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company; except that limited partnership interests or membership interests in limited liability companies are not voting securities due to voting rights that are limited solely to voting for the removal of a general partner or managing member (or persons exercising similar functions at the company) for cause, to replace a general partner or managing member (or persons exercising similar functions at the company) due to incapacitation or following the removal of such person, or to continue or dissolve the company after removal of the general partner or managing member (or persons exercising similar functions at the company).

* * * * *

(tt) *Voting percentage.* For purposes of this part, the percentage of a class of a company's voting securities controlled by a person is the greater of:

(1) The quotient, expressed as a percentage, of the number of shares of the class of voting securities controlled by the person, divided by the number of shares of the class of voting securities that are issued and outstanding, both as adjusted by § 238.9 of this part; and

(2) The quotient, expressed as a percentage, of the number of votes that may be cast by the person on the voting securities controlled by the person, divided by the total votes that are legally entitled to be cast by the issued and outstanding shares of the class of voting securities, both as adjusted by § 238.9 of this part.

■ 7. Section 238.8 is amended by revising the section heading and adding paragraphs (b) and (c) to read as follows:

**§ 238.8 Safe and sound operations, and Small Bank Holding Company Policy Statement.**

* * * * *

(b) The Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C) (Policy Statement) applies to savings and loan holding companies as if they were bank holding companies. To qualify or rely on the Policy Statement, savings and loan holding companies must meet all qualifying requirements in the Policy Statement as if they were a bank holding company. For purposes of applying the Policy Statement, the term ''nonbank subsidiary'' as used in the Policy Statement refers to a subsidiary of a savings and loan holding company other than a savings association or a subsidiary of a savings association.

(c) The Board may exclude any savings and loan holding company, regardless of asset size, from the Policy Statement under paragraph (b) of this section if the Board determines that such action is warranted for supervisory purposes.

■ 8. Section 238.9 is revised to read as follows:

**§ 238.9 Control over securities.**

(a) *Contingent rights, convertible securities, options, and warrants.* (1) A person that controls a security, option, warrant, or other financial instrument that is convertible into, exercisable for, exchangeable for, or otherwise may

become a security controls each security that could be acquired as a result of such conversion, exercise, exchange, or similar occurrence.

(2) If a financial instrument of the type described in paragraph (a)(1) of this section is convertible into, exercisable for, exchangeable for, or otherwise may become a number of securities that varies according to a formula, rate, or other variable metric, the number of securities controlled under paragraph (a)(1) of this section is the maximum number of securities that the financial instrument could be converted into, be exercised for, be exchanged for, or otherwise become under the formula, rate, or other variable metric.

(3) Notwithstanding paragraph (a)(1) of this section, a person does not control voting securities due to controlling a financial instrument if the financial instrument:

(i) By its terms is not convertible into, is not exercisable for, is not exchangeable for, and may not otherwise become voting securities in the hands of the person or an affiliate of the person; and

(ii) By its terms is only convertible into, exercisable for, exchangeable for, or may otherwise become voting securities in the hands of a transferee after a transfer:

(A) In a widespread public distribution;

(B) To the issuing company;

(C) In transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of the outstanding securities of any class of voting securities of the issuing company; or

(D) To a transferee that would control more than 50 percent of every class of voting securities of the issuing company without any transfer from the person.

(4) Notwithstanding paragraph (a)(1) of this section, a person that has agreed to acquire securities or other financial instruments pursuant to a securities purchase agreement does not control such securities or financial instruments until the person acquires the securities or financial instruments.

(5) Notwithstanding paragraph (a)(1) of this section, a right that provides a person the ability to acquire securities in future issuances or to convert nonvoting securities into voting securities does not cause the person to control the securities that could be acquired under the right, so long as the right does not allow the person to acquire a higher percentage of the class of securities than the person controlled immediately prior to the future acquisition.

(6) Notwithstanding paragraph (a)(1) of this section, a preferred security that would be a nonvoting security but for a right to vote on directors that activates only after six or more quarters of unpaid dividends is not considered to be a voting security until the security holder is entitled to exercise the voting right.

(7) For purposes of determining the percentage of a class of voting securities of a company controlled by a person that controls a financial instrument of the type described in paragraph (a)(1) of this section:

(i) The securities controlled by the person under paragraphs (a)(1) through (6) of this section are deemed to be issued and outstanding; and

(ii) Any securities controlled by anyone other than the person under paragraphs (a)(1) through (6) of this section are not deemed to be issued and outstanding, unless by the terms of the financial instruments the securities controlled by the other persons must be issued and outstanding in order for the securities of the person to be issued and outstanding.

(b) *Restriction on securities.* A person that enters into an agreement or understanding with a second person under which the rights of the second person are restricted in any manner with respect to securities that are controlled by the second person, controls the securities of the second person, unless the restriction is:

(1) A requirement that the second person offer the securities for sale to the first person for a reasonable period of time prior to transferring the securities to a third party;

(2) A requirement that, if the second person agrees to sell the securities, the second person provide the first person with the opportunity to participate in the sale of the securities by the second person;

(3) A requirement under which the second person agrees to sell its securities to a third party if a majority of security holders agrees to sell their securities to the third party;

(4) Incident to a bona fide loan transaction in which the securities serve as collateral;

(5) A short-term and revocable proxy;

(6) A restriction on transferability that continues only for a reasonable amount of time necessary to complete an acquisition by the first person of the securities from the second person, including the time necessary to obtain required approval from an appropriate government authority with respect to the acquisition;

(7) A requirement that the second person vote the securities in favor of a specific acquisition of control of the issuing company, or against competing transactions, if the restriction continues only for a reasonable amount of time necessary to complete the transaction, including the time necessary to obtain required approval from an appropriate government authority with respect to an acquisition or merger; or

(8) An agreement among security holders of the issuing company intended to preserve the tax status or tax benefits of the company, such as qualification of the issuing company as a Subchapter S corporation, as defined in 26 U.S.C. 1361(a)(1) or any successor statute, or prevention of events that could impair deferred tax assets, such as net operating loss carryforwards, as described in 26 U.S.C. 382 or any successor statute.

(c) *Securities held by senior management officials or controlling equity holders of a company.* A company that controls 5 percent or more of any class of voting securities of another company controls all securities issued by the second company that are controlled by senior management officials, directors, or controlling shareholders of the first company, or by immediate family members of such persons, unless the first company controls less than 15 percent of each class of voting securities of the second company and the senior management officials, directors, and controlling shareholders of the first company, and immediate family members of such persons, control 50 percent or more of each class of voting securities of the second company.

(d) *Reservation of authority.* Notwithstanding paragraphs (a) through (c) of this section, the Board may determine that securities are or are not controlled by a company based on the facts and circumstances presented.

■ 9. Subpart C is revised to read as follows:

**Subpart C—Control Proceedings**

Sec.

238.21 Control proceedings.
238.22 Rebuttable presumptions of control of a company.
238.23 Rebuttable presumption of noncontrol of a company.

## Subpart C—Control Proceedings

### § 238.21 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board in its sole discretion may issue a preliminary determination of control under the procedures set forth in this section in any case in which the Board determines, based on consideration of the facts and circumstances presented, that a first company has the power to exercise a

controlling influence over the management or policies of a second company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the first company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* (1) Within 30 calendar days after issuance by the Board of a preliminary determination of control or such longer period permitted by the Board in its discretion, the first company against whom the preliminary determination has been made shall:

(i) Consent to the preliminary determination of control and either:

(A) Submit for the Board's approval a specific plan for the prompt termination of the control relationship; or

(B) File an application or notice under this part, as applicable; or

(ii) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(2) If the first company fails to respond to the preliminary determination of control within 30 days or such longer period permitted by the Board in its discretion, the first company will be deemed to have waived its right to present additional information to the Board or to request a hearing or other proceeding regarding the preliminary determination of control.

(c) *Hearing and final determination.* (1) The Board shall order a hearing or other appropriate proceeding upon the petition of a first company that contests a preliminary determination of control if the Board finds that material facts are in dispute. The Board may, in its discretion, order a hearing or other appropriate proceeding without a petition for such a proceeding by the first company.

(2) At a hearing or other proceeding, any applicable presumptions established under this subpart shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(3) After considering the submissions of the first company and other evidence, including the record of any hearing or other proceeding, the Board will issue a final order determining whether the first company has the power to exercise a controlling influence over the management or policies of the second company. If a controlling influence is found, the Board may direct the first company to terminate the control relationship or to file an application or notice for the Board's approval to retain the control relationship.

(d) *Submission of evidence.* (1) In connection with contesting a preliminary determination of control under paragraph (b)(1)(ii) of this section, a first company may submit to the Board evidence or any other relevant information related to its control of a second company.

(2) Evidence or other relevant information submitted to the Board pursuant to paragraph (d)(1) of this section must be in writing and may include a description of all current and proposed relationships between the first company and the second company, including relationships of the type that are identified under any of the rebuttable presumptions in §§ 238.22 and 238.23 of this part, copies of any formal agreements related to such relationships, and a discussion regarding why the Board should not determine the first company to control the second company.

(e) *Definitions.* For purposes of this subpart:

(1) *Board of directors* means the board of directors of a company or a set of individuals exercising similar functions at a company.

(2) *Director representative* means any individual that represents the interests of a first company through service on the board of directors of a second company. For purposes of this paragraph (e)(2), examples of persons who are directors of a second company and generally would be considered director representatives of a first company include:

(i) A current officer, employee, or director of the first company;

(ii) An individual who was an officer, employee, or director of the first company within the prior two years; and

(iii) An individual who was nominated or proposed to be a director of the second company by the first company.

(iv) A director representative does not include a nonvoting observer.

(3) *First company* means the company whose potential control of a second company is the subject of determination by the Board under this subpart.

(4) *Investment adviser* means a company that:

(i) Is registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*);

(ii) Is registered as a commodity trading advisor with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(iii) Is a foreign equivalent of an investment adviser or commodity trading advisor, as described in paragraph (e)(4)(i) or (ii) of this section; or

(iv) Engages in any of the activities set forth in 12 CFR 225.28(b)(6)(i) through (iv).

(5) *Limiting contractual right* means a contractual right of the first company that would allow the first company to restrict significantly, directly or indirectly, the discretion of the second company, including its senior management officials and directors, over operational and policy decisions of the second company.

(i) Examples of limiting contractual rights may include, but are not limited to, a right that allows the first company to restrict or to exert significant influence over decisions related to:

(A) Activities in which the second company may engage, including a prohibition on entering into new lines of business, making substantial changes to or discontinuing existing lines of business, or entering into a contractual arrangement with a third party that imposes significant financial obligations on the second company;

(B) How the second company directs the proceeds of the first company's investment;

(C) Hiring, firing, or compensating one or more senior management officials of the second company, or modifying the second company's policies or budget concerning the salary, compensation, employment, or benefits plan for its employees;

(D) The second company's ability to merge or consolidate, or its ability to acquire, sell, lease, transfer, spin-off, recapitalize, liquidate, dissolve, or dispose of subsidiaries or assets;

(E) The second company's ability to make investments or expenditures;

(F) The second company achieving or maintaining a financial target or limit, including, for example, a debt-to-equity ratio, a fixed charges ratio, a net worth requirement, a liquidity target, a working capital target, or a classified assets or nonperforming loans limit;

(G) The second company's payment of dividends on any class of securities, redemption of senior instruments, or voluntary prepayment of indebtedness;

(H) The second company's ability to authorize or issue additional junior equity or debt securities, or amend the terms of any equity or debt securities issued by the second company;

(I) The second company's ability to engage in a public offering or to list or

de-list securities on an exchange, other than a right that allows the securities of the first company to have the same status as other securities of the same class;

(J) The second company's ability to amend its articles of incorporation or by-laws, other than in a way that is solely defensive for the first company;

(K) The removal or selection of any independent accountant, auditor, investment adviser, or investment banker employed by the second company; or

(L) The second company's ability to significantly alter accounting methods and policies, or its regulatory, tax, or liability status (*e.g.,* converting from a stock corporation to a limited liability company); and

(ii) A limiting contractual right does not include a contractual right that would not allow the first company to significantly restrict, directly or indirectly, the discretion of the second company over operational and policy decisions of the second company. Examples of contractual rights that are not limiting contractual rights may include:

(A) A right that allows the first company to restrict or to exert significant influence over decisions relating to the second company's ability to issue securities senior to securities owned by the first company;

(B) A requirement that the first company receive financial reports or other information of the type ordinarily available to common stockholders;

(C) A requirement that the second company maintain its corporate existence;

(D) A requirement that the second company consult with the first company on a reasonable periodic basis;

(E) A requirement that the second company provide notices of the occurrence of material events affecting the second company;

(F) A requirement that the second company comply with applicable statutory and regulatory requirements;

(G) A market standard requirement that the first company receive similar contractual rights as those held by other investors in the second company;

(H) A requirement that the first company be able to purchase additional securities issued by the second company in order to maintain the first company's percentage ownership in the second company;

(I) A requirement that the second company ensure that any security holder who intends to sell its securities of the second company provide other security holders of the second company or the second company itself the opportunity to purchase the securities before the securities can be sold to a third party; or

(J) A requirement that the second company take reasonable steps to ensure the preservation of tax status or tax benefits, such as status of the second company as a Subchapter S corporation or the protection of the value of net operating loss carry-forwards.

(6) *Second company* means the company whose potential control by a first company is the subject of determination by the Board under this subpart.

(7) *Senior management official* means any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of a company.

(f) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Board to take any supervisory or enforcement action otherwise permitted by law, including an action to address unsafe or unsound practices or conditions, or violations of law.

**§ 238.22 Rebuttable presumptions of control of a company.**

(a) *General.* (1) In any proceeding under § 238.21(b) or (c) of this part, a first company is presumed to control a second company in the situations described in paragraphs (b) through (h) of this section. The Board also may find that a first company controls a second company based on other facts and circumstances.

(2) For purposes of the presumptions in this section, any company that is a subsidiary of the first company and also a subsidiary of the second company is considered to be a subsidiary of the first company and not a subsidiary of the second company.

(b) *Management contract or similar agreement.* The first company enters into any agreement, understanding, or management contract (other than to serve as investment adviser) with the second company, under which the first company directs or exercises significant influence or discretion over the general management, overall operations, or core business or policy decisions of the second company. Examples of such agreements include where the first company is a managing member, trustee, or general partner of the second company, or exercises similar powers and functions.

(c) *Ownership or control of 5 percent or more of voting securities.* The first company controls 5 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1)(i) Director representatives of the first company or any of its subsidiaries comprise 25 percent or more of the board of directors of the second company or any of its subsidiaries; or

(ii) Director representatives of the first company or any of its subsidiaries are able to make or block the making of major operational or policy decisions of the second company or any of its subsidiaries;

(2) Two or more employees or directors of the first company or any of its subsidiaries serve as senior management officials of the second company or any of its subsidiaries;

(3) An employee or director of the first company or any of its subsidiaries serves as the chief executive officer, or serves in a similar capacity, of the second company or any of its subsidiaries;

(4) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis; or

(5) The first company or any of its subsidiaries has any limiting contractual right with respect to the second company or any of its subsidiaries, unless such limiting contractual right is part of an agreement to merge with or make a controlling investment in the second company that is reasonably expected to close within one year and such limiting contractual right is designed to ensure that the second company continues to operate in the ordinary course until the merger or investment is consummated or such limiting contractual right requires the second company to take an action necessary for the merger or investment to be consummated.

(d) *Ownership or control of 10 percent or more of voting securities.* The first company controls 10 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) The first company or any of its subsidiaries propose a number of director representatives to the board of directors of the second company or any of its subsidiaries in opposition to nominees proposed by the management or board of directors of the second company or any of its subsidiaries that, together with any director representatives of the first company or any of its subsidiaries on the board of directors of the second company or any of its subsidiaries, would comprise 25 percent or more of the board of directors

of the second company or any of its subsidiaries;

(2) Director representatives of the first company and its subsidiaries comprise more than 25 percent of any committee of the board of directors of the second company or any of its subsidiaries that can take action that binds the second company or any of its subsidiaries; or

(3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that:

(i) Are not on market terms; or

(ii) Generate in the aggregate 5 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis.

(e) *Ownership or control of 15 percent or more of voting securities.* The first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) A director representative of the first company or of any of its subsidiaries serves as the chair of the board of directors of the second company or any of its subsidiaries;

(2) One or more employees or directors of the first company or any of its subsidiaries serves as a senior management official of the second company or any of its subsidiaries; or

(3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis.

(f) *Accounting consolidation.* The first company consolidates the second company on its financial statements prepared under U.S. generally accepted accounting principles.

(g) *Control of an investment fund.* (1) The first company serves as an investment adviser to the second company, the second company is an investment fund, and the first company, directly or indirectly, or acting through one or more other persons, controls 5 percent or more of the outstanding securities of any class of voting securities of the second company.

(2) The presumption of control in paragraph (g)(1) of this section does not apply if the first company organized and sponsored the second company within the preceding 12 months.

(h) *Divestiture of control.* (1) The first company controlled the second company under § 238.2(e)(1) or (2) of this part at any time during the prior two years and the first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company.

(2) Notwithstanding paragraph (h)(1) of this section, a first company will not be presumed to control a second company under this paragraph if 50 percent or more of the outstanding securities of each class of voting securities of the second company is controlled by a person that is not a senior management official or director of the first company, or by a company that is not an affiliate of the first company.

(i) *Securities held in a fiduciary capacity.* For purposes of the presumptions of control in this section, the first company does not control securities of the second company that the first company holds in a fiduciary capacity, except that if the second company is a depository institution or a depository institution holding company, this paragraph (i) only applies to securities held in a fiduciary capacity without sole discretionary authority to exercise the voting rights of the securities.

### § 238.23 Rebuttable presumption of noncontrol of a company.

(a) In any proceeding under § 238.21(b) or (c) of this part, a first company is presumed not to control a second company if:

(1) The first company controls less than 10 percent of the outstanding securities of each class of voting securities of the second company; and

(2) The first company is not presumed to control the second company under § 238.22 of this part.

(b) In any proceeding under this subpart, or judicial proceeding under the Home Owners' Loan Act, other than a proceeding in which the Board has made a preliminary determination that a first company has the power to exercise a controlling influence over the management or policies of a second company, a first company may not be held to have had control over a second company at any given time, unless the first company, at the time in question, controlled 5 percent or more of the outstanding securities of any class of voting securities of the second company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

By order of the Board of Governors of the Federal Reserve System, February 14, 2020.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2020–03398 Filed 2–27–20; 8:45 am]

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